



Meeting Minutes

Meeting of the California Water Commission

Wednesday, November 15, 2023

March Fong Eu Secretary of State Building

1500 11th Street, Multi-Purpose Room

Sacramento, California 95814

Beginning at 9:30 a.m.

1. Call to Order

Chair Matt Swanson called the meeting to order at 9:30 a.m.

2. Roll Call

Commissioners Bland, Curtin, Gallagher, Matsumoto, Steiner, and Swanson were present, constituting a quorum. Commissioner Solorio attended remotely.

3. Closed Session

The Commission did not hold a closed session.

4. Acknowledgement of California Native American Tribal Governments

The Commission provided an opportunity for elected Tribal leaders and formally designated Tribal representatives to identify themselves and to specify the agenda item(s) on which they will comment, as described in the Commission's California Native American Tribal Leadership Comment Policy. No Tribal leaders or representatives requested to comment.

5. Approval October 18, 2023, Meeting Minutes

Commissioner Steiner motioned to approve the October 18, 2023 meeting minutes.

Commissioner Gallagher seconded the motion. Commissioners Bland, Gallagher, Matsumoto, Solorio, and Steiner voted to approve the minutes. Commissioner Swanson abstained.

6. Executive Officer's Report

Executive Officer Joe Yun informed the Commission that there will not be a Commission meeting in December. Mr. Yun stated that the Commission's work in 2024 will include the development of a new strategic plan and that Assistant Executive Officer Laura Jensen will be presenting the 2024 workplan at the January Commission meeting.

7. Commission Member Report

Commissioner Matsumoto said that she had attended multiple events in the water industry and had received positive feedback for the Commission's work on the draft drought white paper.

Commissioner Solorio announced that he was attending the meeting remotely.

8. Public Testimony

No public comment was provided on this item.

9. Presentation about Agreements to Support Healthy Rivers and Landscapes

Executive Manager for the Healthy Rivers and Landscapes Program Erik Loboschefskey discussed the drivers behind the Agreements to Support Healthy Rivers and Landscapes (Agreements), which include alignment with the update of the Bay-Delta Water Quality Control Plan (WQCP) overseen by the State Water Resources Control Board (Water Board) and other regulations, and the need for increased viability of native fish species and water supply reliability. To benefit species, the Agreements will provide habitat and flow, including 750 to 825 thousand acre-feet (TAF) in middle water year types and thirty thousand acres of new habitat.

Commissioner Curtin asked what the thirty thousand acres means in relation to the need for the geographic region as a whole. Dr. Loboschefskey stated that the need can be difficult to unpack, but high-level summaries estimate that ninety-five percent of the historic wetlands in the Delta have been lost; thirty thousand acres is a small proportion of the entire system.

Dr. Loboschefskey then discussed core program components of the Agreements, including shared governance, habitat enhancement and restoration project implementation, flow operations and accounting, and science and monitoring. The Agreements are included in the Water Board's Staff Report on the WQCP and will be part of the public review of and upcoming hearings for the Staff Report. Dr. Loboschefskey noted that additional information regarding the Agreements can be found on the California Natural Resources Agency's website and that no action has been taken by the Water Board to date.

Public comment from Ben King, who stated that the map shown to the Commission earlier in the presentation ignores the Colusa Trough and the relationship between the Sacramento River and the Sycamore Slough, including related riparian water rights. Mr. King referred to a United States Fish and Wildlife report from 2011, which stated that the groundwater in the Colusa Refuge is contaminated by mercury, as well as the Sacramento Refuge. Mr. King stated that he believes the Colusa Refuge, Sacramento Refuge and the Yolo Bypass are all 303 sites and that it is nonsensical to ignore the west side since they act as natural tributaries to the Sacramento River and Yolo Bypass. He stated that there is so much money going into the Yolo Bypass, and it doesn't make sense to not investigate what is going into those systems.

Public comment from Erin Wooley, Senior Policy Strategist at Sierra Club California, who stated that the best available science shows that flows are the primary driver of species decline in the Delta, and the minimum requirements are below the current flow happening in the Delta. The Agreements are a proposal that was crafted without the input of environmental organizations, fishing groups, and Tribes. Ms. Wooley stated that the Water Board has proposed regulations that would increase instream flows between thirty-five and seventy-five percent. The would not provide the instream flow benefits that the ecosystem needs. She stated that the science regarding the Delta is clear, that fish need flows, and that habitat cannot be used interchangeably to replace the flows that the fish need.

Commissioner Gallagher referred to Commissioner Curtin's question regarding the thirty thousand acres of habitat restoration and asked Dr. Loboschefskey whether that meant they were purchasing land or using existing land. Commissioner Curtin clarified that his question was regarding the scope of the need compared to the thirty thousand acres. Dr. Loboschefskey offered to circle back with the Commissioner regarding his question and confirmed with Commissioner Gallagher that the thirty thousand acres could include purchasing land.

Commissioner Steiner asked Dr. Loboschefskey who is signing the agreements and who is involved in making them. He stated that, when developed, the Memorandum of Understanding (MOU) driving the Agreements included involvement from NGOs and Tribal interests. He said that there would be legal agreements in place with water rights owners that would be signing the Agreements, as well as the State. These would be enforceable by the Water Board.

Commissioner Steiner asked if there was any thought to reengaging the participants in the first MOU. Dr. Loboschefskey answered that the public comment period is a good time for that, and that he is looking forward to the commentary that is received. Commissioner Steiner asked if anything has been signed. Dr. Loboschefskey stated that the only piece that has been signed is the MOU, and they welcome participation of NGOs and Tribes going forward.

Commissioner Bland asked what the Agreements could cost. Dr. Loboschefskey answered that the MOU estimates the cost at 2.6 to 2.7 billion dollars. Commissioner Bland asked when the MOU had been signed, and Dr. Loboschefskey said it was signed in 2022. Commissioner Bland stated that the costs in 2025 could be considerably higher. Dr. Loboschefskey concurred, noting that the shared governance structure is structured to rectify unforeseen costs should they arise, and he confirmed that the project has an eight-year lifespan.

Commissioner Matsumoto stated that the lack of participation from NGOs is due to the dueling hypotheses between the degree to which flows are part of the solution versus the degree to which habitat in conjunction with flows can offset the need for increased in flows, the latter of which is being advanced by the Agreements. She asked whether, at the end of eight years, there is an opportunity to test the other hypothesis if the current one isn't working. She also asked what metrics are expected to be hit in eight years. Dr. Loboschefskey answered that, at the end of the eight years, they hope to be in a red light, yellow light, and green light process, where they can determine whether the proposed habitat restorations and flow deployments are helping fish population trajectories. Commissioner Matsumoto asked if there is a way to test the effectiveness of the process prior to the end of that eight-year period. Dr. Loboschefskey answered that they need to put together the right science and monitoring infrastructure to best inform the decision at the end of the eight-year cycle.

Commissioner Steiner referred to Mr. King's comments and asked if Dr. Loboschefskey would like to address those. Dr. Loboschefskey stated he would like to circle back with Mr. King and added that they have spoken to some representatives from the Colusa region.

Commissioner Swanson asked if there were any comments from Commission staff on this item. Executive Officer Yun stated that there are some similarities between components of the Agreements and the content of the draft drought white paper.

10. Water Storage Investment Program: Chino Basin Program Request to Increase Early Funding Award Amount (Action Item)

WSIP Program Manager Amy Young provided background information on the early funding request for the Chino Basin Program, which is requesting an additional \$1,844,270 in early funding from the Commission. Ms. Young informed the Commission that they could either increase the award for early funding or keep early funding at the current amount.

Commissioner Steiner asked for clarification on what type of actions the funding can be used for. Ms. Young stated that the funding can only be used for planning-related activities.

Chino Basin Program Manager for Inland Empire Utilities Agency Elizabeth Hurst provided an overview of the Chino Basin Program, touching on the project infrastructure, which involves the treatment of recycled water, the storage of said water, as well as the production of additional water which is then pumped into metropolitan systems. She also discussed benefits of the program, such as 357,000 acre-feet being dedicated to the Delta water supply and 50,000 acre-feet available as emergency supply. Ms. Hurst noted that they have also completed a number of feasibility and technical studies. With the additional funding, the program would continue to support local stakeholder and community outreach programs, as well as pursue public benefit contracts, finalize permitting plans, and complete preliminary design reports. The project is maintaining its goal of having everything operational by 2030.

Commissioner Solorio asked Ms. Hurst whether they were receiving letters of support or MOUs from project supporters and if Orange County would benefit from the project. She confirmed that they do have MOUs with their project partners and are making efforts to reach out to local stakeholders. They have received positive input from business councils and local watersheds. Ms. Hurst stated that the project would benefit metropolitan systems like Orange County.

Commissioner Makler asked Ms. Hurst about the output of water that the project is expected to generate, the overall capital cost of the project, how much the capital cost is dependent upon WSIP funding, as well as rate payer funding. Commissioner Makler stated he is concerned by the lack of information presented regarding the budget and asked Ms. Hurst to expand upon that. Ms. Hurst said that the project budget changes almost daily. When the project initially applied for the grant, the budget was \$385 million, and in 2019 it grew to \$685 million, and the budget is now double that \$685 million figure. They are refining costs and looking at ways to cut costs. Ms. Hurst stated that the amount of water the project will generate and the pulse flows are equivalent, and that 15 TAF will be stored every year over a 25 year period for a total of 375 TAF. The pulse flows will be equivalent to that 375 TAF, in approximately 50 TAF chunks. Commissioner Makler asked if rate payers would be picking up the balance of the project costs not covered by WSIP funding and asked if they were depending on other sources of funding. Ms. Hurst confirmed that they are applying for federal funding from the United States Bureau

of Reclamation (USBR) and the Federal Emergency Management Agency, that project partners will also contribute to costs, and, in the instance where partners would not be involved in the project's regional master plan, costs would be dependent on rate payers. Commissioner Makler asked Ms. Hurst if the \$1.8 million early funding increase will allow the project to meet the criteria of the WSIP program. Ms. Hurst confirmed that it will support facilities design work and permitting. They also have existing funding to supplement that portion of the project and a planning grant from USBR to see them through to the next phase of the project. Commissioner Makler stated that he would like to see a table of the sources of funding and the uses for said funding. Ms. Hurst stated that she is happy to provide that to the Commission.

Commissioner Steiner stated that the Commission is currently expecting to see the Chino Basin program again in March 2025 and asked if that was accurate. Ms. Hurst confirmed that is still their target and they are currently working with Commission staff to determine which permits need to be completed prior to that date.

Commissioner Steiner asked if Commission staff had any concerns regarding this project and their request for early funding. Ms. Young confirmed that staff has no concerns.

Commissioner Gallagher motioned to award the Chino Basin Program its full MCED. Commissioner Steiner seconded the motion. Commissioners Bland, Curtin, Gallagher, Matsumoto, Steiner, Solorio, and Swanson voted yes. Commissioner Makler voted no. Motion passed 7-1.

11. Water Storage Investment Program: Project Update

WSIP Program Manager Amy Young provided an update on the progress of projects in WSIP. Ms. Young stated that staff is working with the project proponent on putting the funding agreement together for the Harvest Water Program. Willow Springs Water Bank was originally scheduled to present at today's meeting; however they requested additional time and are now scheduled to present at the January Commission meeting. The Sites Reservoir Project has shifted their final funding date from the end of 2024 to May 2025. Ms. Young stated that the Sites project will be the first to use the Governor's infrastructure streamlining law, but that it should not change the final funding date. There are no further updates on the Los Vaqueros Reservoir, Kern Fan Groundwater, and Pacheco Reservoir projects.

Public comment from Ben King, who stated that he hopes the Commission approves the early funding for the Sites Reservoir project. He said the Commission should note that the Colusa Sub-Basin groundwater sustainability plan was deemed incomplete by the Department of Water Resources (DWR) and that one of the concerns was subsidence. Mr. King said he is trying to convert 250 acres into wetlands through the Natural Resources Conservation Service (NRCS) and has engaged with Floodplains Reimagined, but he can only do so much, and it is the Commission's responsibility to approve funds for these projects.

Commissioner Steiner referred to public comments received at the previous Commission meeting in October regarding the Pacheco Reservoir project and suggested that representatives

for the Pacheco project come back to the Commission in March of 2024 to address those comments and concerns. She also suggested that representatives for the Kern Fan project provide the Commission with an update in April or May of 2024.

Commissioner Matsumoto asked Ms. Young for an explanation of what the Commission can do regarding the allocation of funds. In the instance where a project does not go forward, can the Commission take those funds and allocate them to a project that has already received their final funding award. Commission Legal Counsel Holly Stout confirmed that the resolution the Commission adopted regarding the Harvest Water Project does allow the inclusion of additional funds, should they become available. Commissioner Matsumoto asked if Harvest Water had additional public benefits that were beyond what the Commission is currently funding. Executive Officer Joe Yun confirmed that there was additional value, however there are currently no provisions for the Commission to lean on to determine how to redistribute funds, so that would require regulatory changes. Commissioner Matsumoto asked about the status of projects that had previously met the feasibility deadline to qualify for WSIP and if they were worth tracking. Ms. Young stated that the projects are still moving forward and that one of them may be in the construction phase. Commissioner Matsumoto stated that there were budgetary concerns with the Pacheco project, as well as a public comment regarding the legality and feasibility of the project's impact on Henry Coe State Park and she would like to know whether there are answers to those concerns. Ms. Young stated that Commission staff will make sure Valley Water receives those questions and responds to the Commission. Commissioner Matsumoto added that the Pacheco project has one of the farthest future completion dates and one of the largest allocations and she wonders if there ought to be a set of standards the Commission could utilize to determine when or if to deploy funding. Counsel Stout said that, in WSIP, each project is evaluated individually, and each project operates on different schedules with different components, so it may be difficult to come up with standards that could apply to all WSIP projects.

Commissioner Curtin said it was his assumption that each project has distinct timelines and that the Commission has a decision to make at the point the projects do or do not meet their deadlines. Ms. Young confirmed that the Commission's decision occurs when the project believes they are ready to ask for the final award amount. Commissioner Curtin asked if they have a deadline to come before the Commission. Ms. Young indicated they do not.

Commissioner Makler followed up on Commissioner Matsumoto's question and added that every project proponent in the WSIP program has run into unanticipated costs or supply chain issues, and while each project may have different sources of financing it is not always clear until the projects come before the Commission. He asked if half the projects were to drop out and a billion dollars became available to distribute, could the remaining projects absorb those funds. Counsel Stout speculated that the Commission could spread the funds proportionally among the remaining projects or hold the funds until a later date. She added that the additional benefits of a project that were not previously calculated would be outside the scope of the regulations and decisions made in 2018. Commissioner Makler clarified that there may not be new benefits, but asked if there could there be a reevaluation of the original benefits. Counsel

Stout said there could not be under the current regulations. Commissioner Makler stated that there is a question as to whether the projects are viable, and that in the current process there is not a mechanism to vet the projects on an interim basis. The Commission is waiting for the final award hearing, and until then there is not much visibility on project development.

Commissioner Swanson commented that there is good work being done by the project proponents, that it is important to maintain communication with the projects, and that it is the Commission's responsibility to challenge the understanding of where each project is.

Commissioner Makler asked if there was a point where the Commission could review a project that may not move forward and redistribute that project's funding to other projects that are moving forward and are facing capital constraints. Executive Officer Yun commented that the piece of the statute that is being discussed by the Commission states that the Commission has the discretion to pull the MCED for a project if that project is not making sufficient progress.

Commissioner Swanson suggested that the Commission could continue to discuss the language of the regulation and project viability as an agenda item at a future meeting.

Commissioner Solorio commented that changes such as the Covid-19 pandemic, supply chain issues, and inflation issues have caused project proponents to have to reassess. Because of this, the Commission should hesitate to remove projects.

Commissioner Swanson added that he is starting to see construction prices come down and is excited for the projects to rebid and reevaluate and hopefully benefit from the relaxed prices.

The Commission took a five-minute break.

12. Drought Strategies: Presentation of Draft White Paper

Assistant Executive Officer Laura Jensen provided context for the draft drought white paper by reviewing the request the Commission received from the Secretaries for Food and Agriculture, Natural Resources and Environmental Protection and the Commission's process for developing the paper. Ms. Jensen then walked through the paper, focusing on the four proposed potential drought strategies proposed in the draft white paper and the potential state actions embedded under each. Ms. Jensen commented on the next steps for the draft drought white paper, which include the public comment period being open until December 15, 2023, and the presentation of the final drought white paper at the January 2024 Commission meeting.

Public comment from Ben King, who said that California should be engaging with the federal government through the Resource Conservation Districts. He said he approves of the Healthy Soils Initiative and that the State should provide incentives for people to recharge water and use cover crops. Mr. King said it is important for the state to engage the human right to water as well as the anti-racism resolution of the Water Board.

Public comment from Donna Miranda Begay, formal Tribal chairwoman of the Tübatulabal of Kern Valley and current Tribal cultural practitioner and researcher, who has participated in the outreach efforts for the draft drought white paper since November 2022. Ms. Begay asked if the definition of Tribe could be defined in the paper and pointed to specific language. She suggested including the findings of the California Water Summit. She appreciates the inclusion of traditional ecological knowledge (TEK). She asked for more support for those living on Tribal allotments and asked that Tribal lands be included on maps. Ms. Begay thanked the Commission for the draft paper and wished everyone a happy Native American Heritage month.

Public comment from Dierdre Des Jardins, California Water Research and Climate Action, California, who is concerned that the strategies presented do not recognize and address accelerated climate impacts Ms. Jardins is concerned that the focus is only on seasonal predictability and not looking at the last decade of droughts potentially being the future. She said it is critically important for State agencies to consider recent research that shows accelerated warming, the drying of Colorado and Sierra watersheds, and possibly longer and drier periods of reduced precipitation.

Commissioner Makler suggested that the phrase “weather whiplash” could be elevated to the first paragraph in the executive summary. Commissioner Makler added that there needs to be a larger capital program that is taxpayer funded to address the circumstances surrounding extreme drought and water availability.

Commissioner Steiner said she appreciated the new definition of drought as well as how the topic of supply and demand was addressed. She also appreciated how the paper noted the success stories of groups that participated in the process, saying that when there is participation the Commission truly does pay attention to that.

Commissioner Matsumoto offered her thanks to all the stakeholders who participated in the process. She asked if it is possible for the Commission to work with the appropriate State agencies to tease out where some of the tools the draft drought white paper suggests may be more useful. For example, if proactive planning in streams in the north coast is easier than in other watersheds. She suggested that there may be a way to categorize rivers and streams to avoid waiting until certain water systems are near extinction prevention status, benefitting not just the ecosystem, but the water users as well by potentially preventing future regulation.

13. Consideration of Items for Next California Water Commission Meeting

The Commission will not meet in December. The next meeting of the Water Commission is currently scheduled for Wednesday, January 17, 2024, when the Commission will hold elections for Chair and Vice-chair; receive presentations on the 2024 Commission workplan, DWR’s strategic plan, the draft 2023 State Water Project Annual Report, and a WSIP Project Update; and receive the Final White Paper on Drought Strategies.

14. Adjourn

The Commission adjourned at 12:15 p.m.