

Meeting of the California Water Commission

Wednesday, January 20, 2021

Remote Meeting

Beginning at 9:30 a.m.

1. Call to Order

Chairperson Alvarado called the meeting to order at 9:30 a.m.

2. Roll Call

Assistant Executive Officer Laura Jensen called the roll. Commissioners Alvarado, Arthur, Curtin, Gallagher, Makler, Steiner and Swanson were present, constituting a quorum. Chairperson Alvarado welcomed two new members, Commissioners Gallagher and Steiner.

In order to accommodate Commissioner Curtin's scheduling commitment, agenda items were reordered so action items could take place before 11 a.m. After item 8, Commission would proceed to item 12 and work backwards to item 9.

3. Closed Session

The Commission did not hold a closed session.

4. Approval of December 16, 2020, Meeting Minutes

Vice-chair Swanson motioned to approve the December 16, 2020 meeting minutes. Commissioner Makler seconded the motion. All Commission members present voted in favor.

5. Executive Officer's Report

Executive Officer Yun welcomed the two new Commissioners and reported that staff concluded the third water conveyance workshop, and the final workshop will be held the following week. Staff is currently working on the State Water Project 2020 review and will bring it before the Commission at the March meeting.

6. Commission Member Reports

Chairperson Alvarado thanked Legal Counsel Holly Stout for meeting with Commission members individually and providing background on the Water Storage Investment Program (WSIP). The Chairperson also thanked Assistant Executive Officer Jensen for putting together the water conveyance workshops.

7. Public Testimony

There was no public testimony.

8. Election of Commission Officers (Action Item)

Commissioner Makler asked if the current Chair and Vice-chair would like to serve another year. Both Chairperson Alvarado and Vice-chair Swanson said they would be happy to serve. Commissioner Makler motioned to nominate Teresa Alvarado as Chair and Matt Swanson as Vice-chair; Commissioner Arthur seconded the motion. Assistant Executive Officer Jensen called roll. Commission voted unanimously to re-elect current Chair and Vice-chair.

12. Water Storage Investment Program: Adjustment of Maximum Conditional Eligibility Determinations (Action Item)

This is a continuing discussion on how to utilize the \$171.3 million Temperance Flat Maximum Conditional Eligibility Determination (MCED) that was returned by Temperance Flat Reservoir Authority in October.

Executive Officer Yun provided the Commission with information requested during the December 16, 2020, meeting regarding staff's recommendations to adjust the MCEDs for two projects, Kern Fan Groundwater Storage Project and Willow Springs Water Bank Conjunctive Use Project, that received MCEDs of less than their original request ("rank 3" projects) and to adjust the MCEDs of all seven projects within the Water Storage Investment Program (WSIP) for inflation. Executive Officer Yun explained the Commission's intent was to deploy the funding as quickly as possible in order to realize the public benefits of the projects. Adjusting the MCEDs shows the state's intent to support the projects. Applicants would be better able to advance their needed planning efforts, as well as reduce their efforts to resolve the funding gap, such as through adjusting rates for water users. No adjustment could mean either a funding gap or possible benefit modification. The MCEDs express what funding amount is possible for a project to receive from the state. The Commission retains discretion to award less than the MCED if the public benefits change before the final award hearing.

The staff recommendation to increase the MCEDs of the Kern Fan Project and Willow Springs Project to the applicants' original request would use about \$46 million of the \$171.3 million available. The recommendation to provide a 2.5% adjustment for inflation for all seven projects would take approximately \$61 million, leaving \$64 million act as incentive for the screening process and potentially go toward a second solicitation, should the Commission decide to go through a rule-making process and open a second solicitation.

In December, the Commissioners asked if the Commission has the legal standing to make MCED adjustments. Executive Officer Yun confirmed that the Commission has the authority to move forward and address changes on a case-by-case basis.

The Commission received public comment in support of the staff recommendations to increase the two Rank 3 project MCEDs and the 2.5% inflationary adjustments for all projects from Fiona Sanchez, Irvine Ranch Water District; Bart Broome, Santa Clara Valley Water District; Ellen Wehr, Grassland Water District; Mark Smith, California Waterfowl Association; Marguerite Patil, Contra Costa Water District; Mark Beuhler, Willow Springs Water Bank; and Terrie Mitchell, Sacramento Regional Sanitation District.

Mitchell also said the Harvest Water project's inflation gap is \$81 million.

Bart Broome also said that Pacheco Reservoir Expansion Project costs have increased from \$969 million to \$2.2 billion due to inflation and changes in condition not known at the time of

application. He urged the Commission to consider allowing currently funded projects to apply for additional funding.

The Commission received public comment from Aaron Fukuda, Tulare Irrigation District, who asked the Commission to hold off on inflationary adjustments and instead allow time for new projects to come in through the screening process

Commissioner Makler asked the applicants to explain their rate-setting process and the need for better clarity. Fiona Sanchez said they have to set the budget in January, consider the budget and notice the public by the end of April, and consider any rate adjustment in June.

Commissioner Makler asked if the screening process for new projects has begun. Executive Officer Yun said yes, as of this morning we are accepting screening information.

Vice-Chair Swanson asked is this inflationary adjustment is a one-time thing or could it be considered on an annual basis. Executive Officer Yun said as funding becomes available the Commission will be faced with the same question if no new projects are eligible.

Commissioner Gallagher asked if Kern Fan and Willow Springs were the only two rank 3 projects not awarded their full request. Executive Officer Yun explained that the Sites Project was also rank 3, but they are currently resizing their project and are not sure what the changes will do to the public benefits. Commissioner Steiner asked if Sites would be eligible in the future to ask for an increase in their MCED. Executive Officer Yun said yes, they would be eligible.

Commissioner Curtin motioned to motioned to approve the staff recommendations to increase the Kern Fan and Willow Springs MCEDs to their original requests and increase all projects' MCEDs for inflation. Vice-Chair Swanson seconded the motion. Assistant Executive Officer Jensen called the roll. Motion passed unanimously.

11. Water Storage Investment Program: Screening Process

At the December meeting, the Commission approved moving forward with a screening process to find potential projects that could be eligible for the WSIP. The process is designed to allow potential projects to meet the statutory deadline, which requires the Commission to make findings of feasibility prior to January 1, 2022. WSIP Manager Amy Young updated the Commission on the screening process, including the submittal content needed to obtain a finding of feasibility from the Commission. Screening submittal includes basic project information, statutorily required information – completed feasibility study, draft environmental documents, 75% cost share commitments – and information on how the project will advance restoring ecological health to the Delta. Staff will need to receive the information by October 22, 2021 to meet the January 1, 2022 deadline. Staff will review the information and present it at a future meeting for the Commission to consider and decide whether to make a finding of feasibility. Those projects would then be eligible to apply during a second solicitation, should the Commission open another solicitation.

Ms. Young explained that considering new projects for WSIP will be a three-step process: screening, rulemaking, and a second solicitation. If the screening process results in a pool of eligible projects, the Commission may opt to move forward with rulemaking. Rulemaking would take place in 2022. Solicitation would begin in 2023.

The Commission received public comment from Bart Broome, Santa Clara Valley Water District. Mr. Broome reiterated his comment to allow existing projects to apply for the new solicitation based on public benefits not previously considered by the Commission. Pacheco can deliver more public benefits that were not included in the original application.

Commissioner Curtin said the initial solicitation process was complex and interesting, groundbreaking in many ways, noting that the Commission tried to balance larger and smaller projects and encouraging the Commission to help the projects get so that previous work is not stranded.

Vice-Chair Swanson stressed the importance of WSIP to California.

Chairperson Alvarado said that the Commission needs to help current projects to realize their public benefits, noting that inflation adjustments demonstrate Commission support for these projects.

Commissioner Curtin left the meeting following this agenda item.

10. Public Hearing for the Adoption of Regulations: Special Application for Early Funding (Action Item)

The Commission considered the adoption of regulations governing the special application for early funding in the WSIP through the regular rulemaking process, pursuant to the Notice of Proposed Action published on November 27, 2020, to ensure the regulations become permanent. The Commission has already granted one request for early funding under the emergency regulations at its October 2020 meeting. There are three other current projects that are potentially eligible.

Legal Counsel Holly Stout said the Commission adopted these regulations as emergency regulations at its August 19, 2020 meeting. Due to their emergency status, the regulations had a short public notice period. Because of Covid-19's impacts to projects, there was a desire to allow applicants who did not request early funding in 2018 to revisit that decision and ask the Commission for early funding now. Ms. Stout explained that emergency regulations are temporary and will expire in August 2021, and that they need to be adopted through the formal rulemaking process to ensure proper public participation. The decision today is to adopt the regulations and direct staff to complete the rulemaking requirements. This decision will validate the decision in August and the emergency regulations will become permanent.

The formal 45-day public comment period on the regulations started on November 27, 2020 and closed on January 13, 2021. The Commission received four written public comments. Three were a form letter that objects to giving the Temperance Flat Reservoir Authority any additional funding and objects to extending the statutory deadline, which the Commission does not have the authority to do. In another comment, Leland Frayseth objected to the early funding amendments.

Commissioner Arthur asked if the regulations open the early funding opportunity to not only those who did not apply but also to those who did not receive it. She was told that the only applicant that applied for early funding but did not receive it was Temperance Flat and they are no longer part of the WSIP.

Commissioner Makler motioned to adopt the regulations. Commissioner Arthur seconded the motion. Assistant Executive Officer Jensen called role. All Commissioners present voted in favor.

9. Assessing a State Role in Financing Conveyance Projects

The Commission is in the process of assessing a state role in financing conveyance projects that could help meet needs in a changing climate, as tasked by Action 19.4 in the Water Resilience Portfolio. Assistant Executive Officer Laura Jensen reviewed information presented by the December expert panel on public benefits and discussed a list of public benefits that the State might fund and how the State could consider valuing those benefits.

Ms. Jensen stated that the goal is to create high-level recommendations for state policy makers. She provided a series of economic definitions, explaining that the beneficiary pays principle asserts that those who benefit from a project should pay for the project. Private benefits that accrue to specific entities or individuals are frequently transactional in nature and therefore easy to value. Public benefits are those that benefit people broadly and for which it's hard to find a user or beneficiary group to pay for them. Subsidies occur when public funds are used to pay for private benefits.

Ms. Jensen then walked through a list of public benefits that included ecosystems, flood protection, collaborative management, water quality improvements, emergency response, recreation, greenhouse gas reduction, the human right to water, regional economic stimulus, and community enhancement.

Chairperson Alvarado asked to revisit the term public benefits in relation to Commission's purview. Assistant Executive Officer Jensen said that public benefits are something that apply society wide, and for which it is hard to recoup costs for because there is not necessarily a person or user group willing to pay for it, noting that applying this definition is a bit of a balancing act because it will be impossible to fund everything.

Chairperson Alvarado then suggested that the Commission should spend more time considering policy priorities rather than a list of public benefits and asked about local, regional, and state

integration. Assistant Executive Officer Jensen said the system is integrated but there is the expectation that water users will pay for the water supply that they are using, and that the Commission must consider where there will be a big enough benefit to warrant a state investment.

Chairperson Alvarado noted that the Commission may want to assess how, if water delivery systems are an integrated, relieving pressure off one area of the state might relieve pressure off the entire system. Assistant Executive Officer Jensen said that projects will have to be looked at individually; the Commission will create a high-level means of guiding how the state is investing in these projects.

Commissioner Makler asked if there a role for the state using taxpayers' dollars to make for greater optimization of our water systems. Ranking criteria as opposed to direct investment of taxpayer money is something worth exploring.

Vice-Chair Swanson said the Commission must make judgements on a project-by-project basis, noting that you could have a well-financed project that is lower on the scale for public benefits or you could have a project with human right to water that struggles to find funding. He asked whether staff recommends a broad interpretation or to fine tune. Assistant Executive Officer Jensen said Commission recommendations should not be too specific because we do not know how this is going to play out: there is no money at this time and we do not know who would implement a funding program. She noted that the Commission can be powerful in its recommendations by thinking broadly and providing guidance and thought for policymakers to consider when setting up the bounds for spending that money.

Commissioner Steiner asked what community enhancement is and to explain recreation as a public benefit. Assistant Executive Officer Jensen said community enhancement might be tied to the economy, or it might be tied to an investment in the community's institutions. She explained that recreation is a public benefit that has already been vetted as part of the WSIP. Executive Officer Yun said as far as recreation, green conveyance may certainly provide some opportunities.

Assistant Executive Officer Jensen said there are two possible means of valuing public benefits. The assigned cost approach defines public benefits that can be funded with state money, quantifies them, and allocates money to spend on them; this is a methodical and precise process with a high bar of entry for smaller or under-resourced projects. The cost share approach says that if a project meets certain qualifications it qualifies for state cost share; this is easier to access funding but not as precise, and the state may be overpaying for the value of the public benefit.

Vice-Chair Swanson said valuing around financial wherewithal should be part of the calculus, noting that there are areas that will struggle to fund but have important and beneficial projects that could provide improvement to the region.

Commissioner Arthur said because there is no funding this is more theoretical, expressing that the Commission has to weigh public benefits and impacts of a project, and look at the net benefits.

Commissioner Makler said public benefits do not include taxpayer funding regarding mitigation; that is something that is appropriately paid for by rate payers not taxpayers.

Assistant Executive Officer Jensen recapped the next steps in the Commission's work on conveyance financing.

The Commission received public comment from Marguerite Patil, Contra Costa Water District. She participated in all three workshops so far, and they really stood out for transparency and creative ways of engaging such a diverse group of participants.

13. Consideration of Items for Next California Water Commission Meeting

The next meeting of the Water Commission is scheduled for February 17, 2021. Agenda items will include the presentation of a workplan for 2021, an update on the Commission's work on resilient conveyance, and consideration of any WSIP early funding requests received by the Commission.

14. Adjourn

The Commission adjourned at 12:05 p.m.