



Meeting Minutes

Meeting of the California Water Commission

Wednesday, October 20, 2021

Remote Meeting

Beginning at 9:30 a.m.

1. Call to Order

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

2. Roll Call

Executive Secretary Kimberly Muljat called the roll. Commissioners Alvarado, Arthur, Curtin, Gallagher, Makler, Solorio, Steiner, and Swanson were present, constituting a quorum.

3. Closed Session

The Commission did not hold a closed session.

4. Approval September 14, 2021 Meeting Minutes

Commissioner Solorio motioned to approve the September 14, 2021 meeting minutes. Vice Chair Swanson seconded the motion. Chair Alvarado abstained. All other Commissioners voted in favor.

5. Executive Officer's Report

Executive Officer Joseph Yun said staff submitted a formal comment, consistent with the Commission's conveyance white paper, to the State Water Board on the San Diego Basin Plan for amendments to biological objectives. Executive Officer Yun announced that the Commission's Groundwater Trading Workshops take place next week and should be well attended, with roughly 184 registrants so far. Staff will be attending a variety of local group meetings to discuss the groundwater trading work. The applicants for the Ken Fan Groundwater Storage Project requested the applicant be changed to a newly formed joint powers authority, the Groundwater Banking Joint Powers Authority. All seven Water Storage Investment Project (WSIP) projects are scheduled for feasibility determinations beginning today through the December meeting. Screening projects received include the Del Puerto Canyon Reservoir. Meetings will continue to be online until the end of January 2022. The Commission received a comment this morning at 8:22 a.m. regarding Item 9 that was not included in the Commission's packet but will be posted on the meeting page.

Chair Alvarado asked to consider posting the San Diego Basin Plan formal comment on the Commission's website, and asked if the groundwater trading workshops have been shared on social media.

6. Commission Member Reports

There were no Commission member reports. Commissioner Makler said he would need to leave the meeting at 1:30. Vice Chair Swanson said he would need to leave the meeting at noon.

7. Public Testimony

There was no public testimony.

8. Water Storage Investment Program: Harvest Water Program Continuing Eligibility and Feasibility Determination (Action Item)

WSIP Program Manager Amy Young presented the staff recommendation regarding the Harvest Water Program's feasibility consistent with WSIP regulations, and as required by Water Code §79757, for the Commission's consideration. By January 1, 2022, feasibility studies must be complete, draft environmental documentation must be available for public review, the Director of the Department of Water Resources (DWR) must receive commitments for not less than 75% of non-public benefit cost share of the project, and the Commission must find the project is feasible and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta. The five categories of feasibility are technical, environmental, economic, financial, and constructability. A review of project operations, engineering designs, costs, and construction methods found the project can be technically and physically constructed and operated. Recently completed environmental documentation indicated no significant impacts, showing environmental feasibility. A review found the value of benefits exceeds the expected costs showing the project's benefit to cost ratio is greater than one, showing economic feasibility. The applicant, the Sacramento Regional County Sanitation District (Regional San), is the primary beneficiary of non-public benefits and is expected to provide financial commitment for the project, showing financial feasibility. Statutory requirements have been met. Based on documents received, staff recommended the Commission find the project feasible.

Commissioner Arthur asked about the progress on working with landowners on contracts for irrigation. Terrie Mitchell, Manager of Legislative and Regulatory Affairs and of Harvest Water for Regional San, said landowners have had a positive response to signing the letters of intent and a high demand for irrigation.

Commissioner Makler asked staff about the location of findings for Harvest Water on the Commission website. Ms. Young explained the path to find informational environmental documents with more detail for Harvest Water.

Commissioner Solorio asked about sources of additional funding and what more can be done to support the project financially. Ms. Young explained the project received early funding and the current determination is a finding of feasibility. There are no funding decisions at the present time. Mr. Yun said Regional San requested the maximum amount for early funding and there are no additional funds that can come from the Commission. Ms. Mitchell explained the sources of funding being utilized and challenges that come with it. Dave Richardson from Woodard & Curran Consulting added the project will be ready to seek final funding in 2022.

Chair Alvarado entertained a motion to find the project feasible and adopt a supporting resolution to that effect. Commissioner Solorio moved to accept the motion and Commissioner Steiner seconded the motion. All Commission members voted in favor.

9. Water Storage Investment Program: Los Vaqueros Reservoir Expansion Project Continuing Eligibility and Feasibility Determination (Action Item)

WSIP Program Manager Amy Young presented the staff recommendation regarding the Los Vaqueros Reservoir Expansion Project's feasibility consistent with WSIP regulations, and as required by Water Code §79757, for the Commission's consideration. By January 1, 2022, feasibility studies must be complete, draft environmental documentation must be available for public review, the Director of the Department of Water Resources (DWR) must receive commitments for not less than 75% of non-public benefit cost share of the project, and the Commission must find the project is feasible and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta. The five categories of feasibility are technical, environmental, economic, financial, and constructability. A review of project operations, engineering designs, costs, and construction methods found the project can be technically and physically constructed and operated. A review found the final supplemental EIS/EIR has been prepared and potentially significant impacts from the project will be mitigated and a mitigation monitoring plan was prepared, showing environmental feasibility. A review of all benefits and costs under different assumptions found economic feasibility. Funds from all sources are sufficient to cover all costs, showing financial feasibility, though not obtaining federal funds could affect this. The Director of DWR received a letter and supporting documentation on October 7, 2021. Statutory requirements have been met. Based on documents received, staff recommends the Commission find the project feasible.

Public comment from Ellen Wehr of the Grassland Water District, one of the project's many ecosystem beneficiaries, who said this is a momentous step for the project and the Commission, and expressed her support. The staff review was thorough and detailed. They are looking forward to working with the California Department of Fish and Wildlife on the public benefit agreements for refuge water supply, and with the Bureau of Reclamation to secure federal support for long-term refuge water deliveries. This project represents the best path forward for the wetland habitats of the San Joaquin Valley.

Commissioner Makler asked the applicant to explain the letter sent to the DWR Director regarding funding, which indicates a good portion will come from federal sources, and what the path forward is other than the MCED. Contra Costa Water District (CCWD) Assistant General Manager Marguerite Patil said they anticipate a combination of local, state, and federal funding. They have been authorized for 25% federal funding. The appropriation process is year to year, and CCWD received \$14 million last fiscal year, \$15 million in the current fiscal year, and are eligible for infrastructure funding. Among local partners, they have identified funding sources for the entirety and need to execute final agreements.

Commissioner Solorio complimented staff for good review and preparation, and suggested some Tweets from the Commission Twitter account about the positive action occurring today.

Commissioner Arthur asked about operations and maintenance (O&M) costs for wildlife refuges. Ms. Patil said the federal government shares the State's interest in having a secure water supply for the wildlife refuge. Prop 1 funding only covers construction. Federal funding will cover O&M, water transfer and conveyance costs. The federal award adjusts for inflation.

Chair Alvarado entertained a motion to find the project feasible and adopt a supporting resolution to that effect. Commissioner Gallagher moved to accept the motion and Commissioner Curtin seconded the motion. All Commission members voted in favor.

Chair Alvarado said these are milestone moments in the WSIP and looks forward to how staff will acknowledge that in social media and other ways.

10. Consideration of Division of Safety of Dams Enforcement Regulations (Action Item)

The Department of Water Resources' Division of Safety of Dams (DSOD) Division Manager Sharon Tapia presented proposed regulations to impose administrative civil penalties, punitive reservoir restrictions, and other actions to ensure compliance with California's Dam Safety Program for Commission approval. This is DSOD's third set of regulations to support new laws established in 2017 under SB92. DSOD completed rulemaking that established technical requirements for inundation maps in 2018, and a methodology to assess annual fees was completed in 2019. Prior to SB92, existing authority for dam safety issues consisted of directives and orders, and criminal penalties. New authority, upon promulgation of regulations, includes civil monetary penalties, property liens and punitive reservoir restrictions, and reimbursement for emergency action plan (EAP) preparation. The proposed regulations specify the Department's process for requesting information from dam owners, or suspected dam owners, about dam ownership, construction, and O&M. The administrative enforcement framework includes notice of violation, issuance of administrative complaint, administrative hearing, and post-hearing final orders. Types of violations include dam safety issues, maps, and EAPs. Types of civil penalties assessed include civil monetary penalties, reservoir restrictions, and property liens. The objectives of penalties are to align the violation to actual or potential public harm, deter owners from additional violations, deter the regulated community, and eliminate any non-compliance economic advantage. Administrative hearing options for most cases include either DWR as presiding officer with advisors, with a hearing process per the regulations; or Office of Administrative Hearings for administrative law judge, with a hearing process per the Administrative Procedure Act, for complex cases.

The 55-day public comment period for the initial regulation text received 28 comments. The 19-day public comment period for modified text received four comments. Three key comments incorporated into the regulations were to provide more than 20 days for a dam owner to request a hearing following the issuance of a Notice of Violation; to leave documents at the dam site with a person over the age of 18 should only be considered if all other options are unavailable; and the need for further clarity on punitive reservoir restrictions. Key comments

considered, with no resulting changes, were to consider that a dam owner is being cooperative or acting in good faith when considering enforcement actions; provide additional information as to why DWR would send an information request; and consider impacts to electricity rates in the determination of monetary civil administrative penalties. Clarifications to text include specifying that enforcement actions regarding EAPs include both the initial submittals and updates, required every 10 years by statute, as well as an added section on how punitive reservoir restrictions will be established versus reservoir restrictions imposed as a risk-reduction measure for dam safety. If approved, next steps are to submit a final rulemaking package to Office of Administrative Law, adopt approved regulations, and begin implementing enforcement actions.

Commissioner Gallagher asked for clarity on what they are voting on and was told that in 2017 the water code was modified to allow DSOD to administer civil penalties, but did not give any process. This year began the rulemaking process.

Commissioner Steiner asked if DWR plans to have a group of people trained as a ready source to run these hearings. Ms. Tapia said they are working on a plan, and are very cognizant of keeping the separation of the presiding officers from DSOD, and that they are very well trained.

Commissioner Curtin asked if they have the ability to call for dam removals if they are serious enough, and how big their staff is. Ms. Tapia said typically they do not dictate the dam to be removed. If they have a dam of high concern they can order them to empty the reservoir, or under an emergency order go in and breach a dam. They try to work with dam owners to resolve the issues. If they identify an illegal dam, there are three options: remove, alter, or bring up to current standards. Their program has expanded to bring staff up from 61 in 2017 to 81 today, and will have to expand further because enforcement cases will require additional resources.

Vice Chair Swanson asked what is standing in the way of people resolving these issues, knowing the seriousness of what can happen down the road. Ms. Tapia said there is a small percentage of owners who may not care to be regulated. In general dam owners have aging infrastructure, a lot were not built to current standards, and the cost to replace is significant. Part of the problem is financing. Permitting can be lengthy: minimum of five years for moderate size dam, 15 years for some.

Commissioner Solorio said some cities and counties have code enforcement departments that might want to help.

Public comment from Stuart Weil, a small farmer in Madera County, who said the County set up a policy that farms like his have to reduce how much water they pump. Members of the irrigation district are not under the same restrictions. The State has pitted neighbor against neighbor and created tremendous distrust. The County says they have no jurisdiction over farmers using district water, that is controlled by the State.

Chair Alvarado commended DSOD staff on a clear, essential, and prudent set of expectations around maintenance, emergency preparedness, and enforcement actions.

Chair Alvarado entertained a motion to approve the proposed regulations. Commissioner Curtin moved to accept the motion and Commissioner Steiner seconded the motion. All Commission members voted in favor.

11. Groundwater Trading: Overview of Out-of-State Discussions and Emerging Themes

As part of the Commission's consideration of well-managed groundwater trading programs to support Water Resilience Portfolio Action 3.6, Assistant Executive Officer Laura Jensen presented an overview of information shared by out-of-state representatives in conversations with staff and synthesized themes emerging from groundwater trading panels hosted during previous Commission meetings. Outreach efforts included conversations with people from Texas, Arizona, Colorado, Florida, Nebraska, and Australia to understand how they have approached groundwater trading, what role the state plays, and the lessons learned. Commission staff learned that groundwater management takes time and varies greatly; local control is important; the state serves as catalyst, providing distant and important oversight; and stakeholder and community engagement is important. There are many types of allocations; household wells and de minimus users are frequently exempted; single-year allocations may increase pumping because of a use-it-or-lose-it mentality; allocations can be used creatively; there is not a high volume of trades; trading takes time; you need to understand the basin in a hydrologic and human context; water sources can be protected by putting rules in place, such as direction of trading or proportion of allocation that is tradable; disadvantaged communities and smaller farmers are not explicitly addressed; enforcement is critical, and there is no wiggle room on compliance. An economist advised that good governance is a 40-year process and the market will stress-test governance; with design, start small and let people trade within their own pool; you need community buy-in; pumpers need to understand the rules; small farmers can be protected through market design.

Nineteen of the 46 Groundwater Sustainability Plans (GSPs) submitted to date under the Sustainable Groundwater Management Act (SGMA) said they consider setting up groundwater trading. GSAs have the authority to allocate and manage groundwater. The state ensures that GSAs are compliant with SGMA when reviewing GSPs. Groundwater trading best case scenario is a flexible, efficient approach to reduction of groundwater use; reduced economic impact to individuals, communities, and regions; no negative impacts on third parties; and opportunities for diverse water users to participate in ways that benefit them. Impacts to small farmers, community drinking water, and ecosystems include concentrated pumping that causes shallow wells to go dry; contaminated drinking water wells; and reduced river flows needed for endangered fish. Rules that could help minimize these impacts include spatial concentration limits, pumping schedules and directional restrictions, requirements to provide substitute water, notice and consent requirements, and mitigation and compensation requirements. Cross-cutting themes include trust is critical; this is part of a larger groundwater management effort; good data is imperative; start small geographically and temporally; beware of market

power and gaming the system; and there are differing views on what role the State can play. Things we learned from previous panels include allocating sufficient water for communities. The role for the state could be to provide information, education, technical and financial assistance, guidance and minimum standards to ensure metrics and monitoring are in place and the Human Right to Water is met, and to enforce safeguards for vulnerable users. Points of divergence, to be addressed at the public workshops on October 28 and 29, are confidentiality versus transparency, customization versus standardization, and local control versus state oversight.

Commissioner Curtin asked if this is just a system that helps them manage while trying to reach sustainability goals, does it help them meet their sustainability goals, or is it a way to sort out the feuds that will surround sustainability. Ms. Jensen said the primary benefit is thinking about flexibility. There is the ability to build a program that thinks about the undesirable results in SGMA and sets up rules that directs trading away from areas of subsidence, for instance. Commissioner Curtin asked how you define a basin. Ms. Jensen said we are looking at trading within basins as defined by SGMA, which includes many jurisdictions managing groundwater.

Commissioner Makler said the Commission is still in the data collection phase and he looks forward to identification of some of the critical steps that need to be taken in the formation of a trading program. You cannot trade anything without common understanding of underlying rights. Basins need to work collaboratively. What are some of the issues and concerns with creating a trading market? We need to get this into categories of what we are looking at.

Commissioner Steiner asked what is being traded, water or water rights? Ms. Jensen said SGMA gives GSAs the ability to create groundwater allocations, which are essential to trading. You are not actually trading water rights nor are you moving water, you are essentially saying, I have the ability to pump an acre-foot, but I am going to fallow my land and sell you the right to pump an extra acre-foot beyond your own allocation.

Commissioner Curtin said with groundwater you have rights to pump water on the land you own, but GSAs are saying you can only pump so much. It is not a question of the ability to pump but the authority to pump. Ms. Jensen said groundwater pumping will be regulated by GSAs. These programs are a way of managing water and reducing the economic impacts.

Commissioner Makler said there first has to be common agreement on the amount of water available, and once allocations are made, then a regime could be set up to allow for the trading of those allocations. The question is, what can the State do to help these basins figure out by contract how to bring the parties together to come up with the allocations, and figure out a fair way to deal with the dynamics of changing allocations over time. Ms. Jensen said a basin is larger than a single GSA, so there is a need for communication across GSAs.

Commissioner Solorio said our role is about safeguarding, and it might be helpful to know what the other agencies' responsibilities are in this area. Our challenge is to better understand our

role versus other entities' roles. Ms. Jensen said we are meeting regularly with the implementing agencies to understand how our work overlaps with what they have been doing.

Chair Alvarado read the letter from the Secretaries for Natural Resources, Environmental Protection, and Food and Agriculture that requested the Commission's assistance in facilitating a robust public discussion on groundwater trading, looking on engagement, governance, and oversight.

Commissioner Arthur said the statute of SGMA specifically differentiates rights versus allocations, and said our white paper could ideally outline what needs to be in place for a groundwater trading system to be successful and productive, and really look at safeguards.

12. Consideration of Items for Next California Water Commission Meeting

The next meeting of the Water Commission is currently scheduled for Wednesday, November 17, 2021, when the Commission will make feasibility determinations for another project in the WSIP, the Chino Basin Program; receive its final State Water Project (SWP) briefing of the year, an update on SWP construction projects; receive its final SB 49/Emissions reduction study briefing; and hear a presentation on the results of the groundwater trading workshops.

Commissioner Solorio asked for an update about other agencies' work on conveyance projects.

Chair Alvarado suggested, should the Federal Infrastructure package pass, an overview from someone within DWR about the implications for California.

13. Adjourn

The Commission adjourned at 12:03 p.m.