



## **Meeting Minutes**

Meeting of the California Water Commission

Wednesday, May 17, 2023

California Natural Resources Building

715 P Street, First Floor Auditorium

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, Makler, Matsumoto, Solorio, Steiner, and Swanson were present, constituting a quorum.

### **3. Closed Session**

The Commission did not hold a closed session.

### **4. Acknowledgement of California Native American Tribal Governments**

Chair Swanson invited any Tribal leaders present to identify themselves so he could acknowledge their designation and presence, and provide their comments on agenda items before the Commission takes public comment during the meeting. Elected Tribal leaders were invited to speak first, followed by formally designated Tribal representatives. No Tribal leaders or designated representatives identified themselves.

### **5. Approval April 19, 2023 Meeting Minutes**

Vice-chair Steiner motioned to approve the April 19, 2023, meeting minutes. Commissioner Matsumoto seconded the motion. Commissioners Bland, Curtin, Gallagher, Matsumoto, Solorio, Steiner, and Swanson voted to approve the minutes. Commissioner Makler abstained.

### **6. Executive Officer's Report**

Executive Officer Joe Yun reported that he presented at a meeting of the League of Women Voters of Greater Los Angeles on April 20 on changing hydrology and the Commission's water storage and drought work. Assistant Executive Office (AEO) Laura Jensen is briefing state agencies on the Commission's current drought work, beginning outreach to targeted groups, and planning July workshops. June's Commission meeting will be a full day. September's meeting will be held at the Oroville fish hatchery and dam facilities.

Vice-chair Steiner asked if the drought workshops in July would be hybrid, and was told they would be virtual and focused on different regions of the state.

## **7. Commission Member Report**

There were no Commission member reports.

## **8. Public Testimony**

There was no public testimony.

## **9. Consideration of Action on Resolutions of Necessity for the Yolo Bypass Salmonid Habitat Restoration and Fish Passage Project (Big Notch Project) - AMENDMENTS (Action Items)**

On July 13, 2022, the Department of Water Resources (DWR) notified the Commission of its intent to seek Resolutions of Necessity (RONs) for the Big Notch Project (BNP) in furtherance of a potential eminent domain action for additional properties. DWR cannot commence an eminent domain proceeding unless the Commission first adopts a RON. At the Commission's September 2022, meeting, DWR presented a report on each property noted on the agenda, containing information required by Code of Civil Procedure. On October 19, 2022, the Commission adopted RONs for these properties. The RONs were missing a required statutory reference. At this meeting, the Commission considered adopting the amended RONs, determining if there was enough evidence to satisfy Code of Civil Procedure, which requires the Commission find the public interest and necessity require the proposed project; the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; the property described in the RON is necessary for the project; and that either the offer required by the Government Code has been made to the owner or owners of record, or the offer has not been made because the owner cannot be located with reasonable diligence. To adopt a RON requires a two-thirds vote of all members, which is a minimum of six votes in favor, regardless of the number of Commission members present.

Commission Legal Counsel Holly Stout thanked all the DWR employees and Commission staff that worked behind the scenes on the BNP RON proceedings, and explained that this is the second step for the RONS that were presented at the October 2022 meeting.

Liz Vasquez, Environmental Program Manager I from DWR's Division of Integrated Science and Engineering, presented an overview of the BNP, and its goals and impacts on State Water Project (SWP) operations. The BNP is a regulatory requirement to mitigate for SWP and Central Valley Project (CVP) impacts to endangered fish, will enhance floodplain rearing habitat and fish passage in the Yolo Bypass, and is required for the long-term coordinated operations of the SWP and CVP compliance by the 2019 National Marine Fisheries Service Biological Opinion and the 2020 California Department of Fish and Wildlife (CDFW) Incidental Take Permit. The Fremont Weir diverts Sacramento River flood flows into the Yolo Bypass and disconnects the river and the floodplain during fish migration periods. The proposed BNP includes excavated channels and a gated headworks that reintroduce the connection. The operation period is from November 1 to March 15. In March 2022, DWR filed a Notice of Exemption with Yolo County which provided a CEQA exemption to allow acquisition of properties for restoration purposes.

Rachel Taylor, from DWR's Office of General Counsel, presented information on the specific properties listed on the agenda and how they are necessary to meet the goals of the BNP, and updated the Commission on the efforts DWR has made to work with the landowners. The seven amended RONs presented at this meeting were adopted in October but were missing a compatible use citation. DWR is seeking flowage easements for the purpose of fish passage as required mitigation for the long-term operations of the SWP and has authority under Water Code to acquire the necessary property rights. They also seek future rights for adaptive management of the easements, but the project is not permitted to operate under adaptive management and is not something the Commission would be approving at this time.

**9A. Ray and Della Thompson Trust.** DWR is seeking a 142.09-acre easement. The land is currently used for duck hunting, recreation, and conservation. The U.S. Fish and Wildlife Service (USFWS) holds a conservation easement and are doing an independent assessment of compatibility. DWR's compatibility analysis is in the Environmental Impact Report (EIR).

Public comment by Curt McCasland, Assistant Regional Director with the USFWS, who said he submitted written comment for six of the parcels on the day's agenda, and his comments should apply to 9A, 9B, 9C, 9D, 9F, and 9G. USFWS holds a conservation easement in each of these parcels to maintain migratory bird habitat. It is not clear if the proposed flowage easements are compatible with the conservation easements, and they are working with DWR to collect more information and analyze the issue. The USFWS compatibility determination process is markedly different than the compatibility assessment conducted by DWR, and they question the finding that the flowage easement will have no negative impact on duck clubs and waterfowl habitats. While the USFWS is in overall support of the BNP, they have concerns over the issuance of RONs for these parcels as the additional flooding could have negative effects to the public benefits which their easement requires.

Vice-chair Steiner asked what happens if there is no agreement with USFWS. Ms. Vasquez said they do not see that happening as there is no reason to think these are incompatible activities. She then asked if it could lead to litigation. Ms. Taylor said California law allows them to enter an agreement with an easement holder. While a court could settle it, because of their relationship with USFWS, it is likely to be settled between the agencies.

Commissioner Solorio motioned to adopt the RON for the property. Commissioner Curtin seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

**9B. Huntington Family Trust.** DWR is seeking a 158.1-acre easement. The land is currently used for duck hunting, recreation, and conservation. USFWS holds a conservation easement.

Public comment from Kristen Renfro, from Desmond, Livaich & Cunningham, who asked that her comments pertain to agenda item 9C as well. She said the Commission has no evidence before it to support a conclusion that there is compatibility. There has been no completed compatibility determination according to federal regulations. The Commission is lacking the information they need to make this decision. The scope of the easement language does not

mention the BNP or its parameters, nowhere is there a reference to adaptive management, and there are no limitations included in the language. An adopted RON will set the extent of the rights that will be taken in a condemnation action. The property owners have obligations under the conservation easement, and are being put through a process where it is very unclear what the scope of rights to be taken and impacts to their property will be. The Commission is being asked to authorize the taking of property interests to accommodate a non-existent, potential future project.

Commissioner Bland asked if they could give landowners clarity on the 6,000 v. 12,000 cubic feet per second (cfs). Ms. Taylor said adaptive management is required by the Delta Reform Act, where data will be used to assess whether the project is meeting its goals. For purposes of compensation, the landowners need to know what the worst-case scenario would be, and that was the 12,000 cfs modeling.

Vice-chair Steiner asked if the future project were to be very different, would they be able to go ahead with it. Ms. Taylor said they would need to do CEQA and permitting, and there is no guarantee they would get future approval to do the project.

Commissioner Solorio motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 7-0 to adopt the RON. Motion passed. Commissioner Curtin was away from the dais when the vote was called.

**9C. Swanston Properties.** DWR is seeking a 490.94-acre easement. The land is currently used for row crops, field crops, non-farmable, duck hunting, and recreation. USFWS holds a conservation easement.

Commissioner Gallagher motioned to adopt the RON for the property. Commissioner Curtin seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

Vice-chair Steiner asked that the Commissioner's comments on Item 9B also apply to Item 9C.

**9D. EIP California, LLC.** DWR is seeking a 1,728.17-acre easement. The land is currently used for rice farming, duck hunting, and conservation. Natural Resources Conservation Service (NRCS) and USFWS hold conservation easements. NRCS has asked DWR to submit a compatibility package for their analysis process. DWR is in the process of submitting the information.

Commissioner Curtin motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

**9E. Lucky Five Farm.** DWR is seeking a 481.09-acre easement. The land is currently used for duck hunting, recreation, and conservation. NRCS holds a conservation easement.

Vice-chair Steiner motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 7-0 to adopt the RON. Motion passed. Commissioner Curtin was away from the dais when the vote was called.

**9F. Rodney Williams.** DWR is seeking a 100.13-acre easement. The land is currently used for recreational hunting and migratory bird conservation. USFWS holds a conservation easement.

Commissioner Matsumoto asked if it was necessary to put an action on the one parcel that has been settled and the one that is being sold. Ms. Taylor said the parcel numbers on the original RON remain on the amended RON. The sales contract has not yet been executed.

Commissioner Makler motioned to adopt the RON for the property. Commissioner Bland seconded. Commissioners voted 7-0 to adopt the RON. Motion passed. Commissioner Curtin was away from the dais when the vote was called.

**9G. Channel Ranch.** DWR is seeking a 191.16-acre easement. The land is currently used for duck hunting, recreational purposes, and conservation. USFWS holds a conservation easement.

Commissioner Solorio motioned to adopt the RON for the property. Commissioner Gallagher seconded. Commissioners voted 8-0 to adopt the RON. Motion passed.

#### **10. Water Storage Investment Program: Projects Update**

Water Storage Investment Program (WSIP) Manager Amy Young provided an update on the progress of projects being considered for funding. The Harvest Water Program is still working on their contracts for administration of public benefits (CAPBs) and staff is hopeful they will appear before the Commission in June for a final funding hearing. The Willow Springs project proponents will come in next month to provide a project update. Valley Water, proponent for the Pacheco Reservoir Expansion Project, will provide a project update at the October meeting.

Chair Swanson asked if the work done on Harvest Water's CAPBs will be beneficial to future projects, or if the CAPBs specific to each project and site. He was told the administering agencies are working individually with each project, and most discussion is project-specific.

Commissioner Matsumoto asked if the administering agencies could be present when Valley Water gives their update in October, as she would like CDFW to address an issue with the refuge water deliveries. She was told that they can be asked to be available.

Commission Chair Swanson elected to take Agenda Item 12 next.

#### **12. Revisions to Procedures for Resolutions of Necessity and Eminent Domain (Action Item)**

Commission Counsel Holly Stout presented proposed revisions to the Commission's RON procedure, which currently provides an additional "informational meeting" that is not required by statute. The information presented at this step is substantially the same as that at the adoption hearing. The proposed change eliminates the informational meeting and allows the

Commission to adopt RONs at the meeting when the project is first presented. Currently, there is a 21-day notification period prior to the first and second meetings. The elimination of the informational meeting streamlines government efforts, eliminates bureaucracy, and saves staff resources for both the Commission and DWR. The new process includes a 60-day notice requirement from DWR to the Commission that they intend to seek a RON, and requires the property owner notices be provided to the Commission by DWR at least 14 days before the mailing deadline.

Vice-chair Steiner said the two meetings were intended to provide additional transparency and more opportunity for comment, but that has not occurred. There is, however, some confusion as to why they do not vote at the first meeting. She supports the revised procedure.

Commissioner Matsumoto said she hopes this will alleviate some of the burden on the landowners and staff, and supports the revised procedure.

Commissioner Makler said, for clarity, any reference to “days” should be calendar days.

Vice-chair Steiner motioned to adopt the proposed revisions with the change Commissioner Makler suggested. Commissioner Gallagher seconded. Commissioners voted 7-0 in favor. Motion passed. Commissioner Curtin was away from the dais when the vote was called.

#### **11. Water Storage Investment Program: Request to Increase Early Funding Award Amount (Action Item)**

In February 2022, the Commission voted to adjust the Maximum Conditional Eligibility Determinations (MCEDs) of all projects in the WSIP to account for inflation. WSIP projects may receive up to 5% of a project’s MCED as an early funding award to pay for completion of environmental documents and permits. In 2018, the Sites Project was approved for \$40,818,884 in early funding, 5% of their original MCED. The Sites Project Authority requested an increase to its early funding award amount to \$43,739,818, which is 5% of its revised MCED.

WSIP Manager Amy Young explained that early funding is a portion of the overall MCED, not in addition to it. The Sites Project Authority is requesting an additional \$2.95 million, and have so far expended about 90% of their original early funding award.

Sites Project Authority General Manager Jerry Brown said significant progress has been made on the project since he last appeared before the Commission, and they are nearing the completion of the environmental and permitting period of the project. The project will capture and store stormwater flows from the Sacramento River during high-flow periods and save it for use in drier periods. Every investor in the Sites Project receives a share of the storage space, which includes the state’s portion for the ecosystem benefits, and access to a proportional share of diverted water. Local agencies make up the bulk of investors, followed by the state and the federal Water Infrastructure Improvements for the Nation Act. Funding sources include a Water Infrastructure Finance and Innovation Act (WIFIA) loan, a U.S. Department of Agriculture

loan, bonds, and cash. They have completed their water rights application and will seek final approval on their EIR and Environmental Impact Study (EIS) in August.

Commissioner Solorio asked why construction will take seven years. He was told they must build two large earthen embankments to dam the canyons, and they need to acquire the land. He asked who currently owns the land and was told within the footprint there are 14,000 acres that will need to be acquired, spread across 25-30 landowners.

Commissioner Makler asked if the land acquisition was tied to the water rights, and will they have land options in place at the time of the final funding hearing. He was told that the Board has not yet made a decision on when to begin the land acquisition, and did not think it was a requirement for the final award, though they intend to have made significant progress on this front. He then asked if the Sites Project Authority is a JPA, and do they have eminent domain authority. He was told yes to both.

Vice-chair Steiner asked if they are concerned with the WIFIA grant because of the debt ceiling issue. She was told that WIFIA is a loan, and the government funding tied to it is a very small component.

Commissioner Matsumoto asked if the entire state share will go to public benefits, and was told yes. She asked who is managing the federal block of water and for what purpose. She was told the U.S. Bureau of Reclamation, for improving cold water conditions for fish, for operational flexibility in the CVP, and maybe for refuge delivery. The environmental ecosystem dedication is probably one of the most groundbreaking and significant elements of the project and they have not yet completely comprehended what the value of that is going to be moving forward. This is how you make environmental water a priority, and their Board is fully supportive.

Vice-chair Steiner motioned to increase the early funding amount. Commissioner Curtin seconded. Commissioners voted 8-0 in favor. Motion passed.

### **13. Long-term Drought: Expert Panel on Desalination**

In support of Water Resilience Portfolio Action 26.3, representatives from DWR, the California Coastkeeper Alliance, the National Alliance of Water Innovation (NAWI), and the City of Santa Barbara provided perspectives on desalination.

DWR Supervising Engineer Sean Sou and Senior Engineering Geologist Toni Pezzetti presented information from the draft update of the Desalination Resource Management Strategy for the California Water Plan Update. Ms. Pezzetti said in 2020, desalination was effectively implemented at 41 locations in California to remove naturally occurring salts for potable and industrial uses, producing more than 150,000 acre-feet of water. Most sites are in Southern California. She gave an overview of the desalination process. Desalination is expensive because it has a high energy demand. There is more brackish groundwater desalinated in California than surface water. Most desalinated water used in the state is a component of urban diversified water supply portfolios. The goal of the Water Supply Strategy (WSS) is to produce 28,000 acre-feet of desalinated water per year by 2030, 84,000 acre-feet per year by 2040. The WSS's goal is

to help streamline and expedite permitting, and to identify potential mitigation sites to facilitate approval of desalination facilities. Desalination, in appropriate locations, enables water supply reliability and sustainability to address climate change and water challenges and will be an integral part of future water supply portfolios. Mr. Sou explained the program funding objectives for DWR's desalination grant program, which include grants to local agencies for the planning, design, and construction of desalination projects, and to facilitate the use of desalinated water to meet municipal water supply needs. Funding requires a 50% cost share, which can be reduced or waived for disadvantaged communities. So far, they have awarded \$122 million to local projects. DWR provides \$16 million to NAWI for desalination research.

Sean Bothwell, Executive Director of the California Coastkeeper Alliance, presented the environmental community's concern with ocean desalination projects and potential solutions to make them less impactful to marine life and more cost effective for low-income communities. Ocean desalination, given its cost, high energy use, GHG emissions, and impacts to marine life, should be considered an option of the last resort. Jurisdictions should first invest in less energy-intensive, more efficient targets. When necessary, projects should be scaled to the actual needs of the community, utilize sub-surface intakes, and site their discharge to avoid marine protected areas or causing toxic dead zones. The future will be smaller facilities with subsurface intakes, direct potable reuse, and brackish desalination.

The Commission took a one-hour lunch break.

Peter Fiske, Executive Director at NAWI, presented information from the U.S. Department of Energy's five-year, \$110 million Innovation Hub on Desalination and Water Reuse. A lot of potential for desalination in California is not on the coast but throughout the state. There is salty water in just about every region, most not as salty as seawater. Tomorrow's desalination systems need to be autonomously operated, precise, resilient, process-intensified, modular, and run on electricity. You can use other technologies besides reverse osmosis to produce clean water. We are on the edge of something very big, with respect to how reuse and desalination together can make communities more resilient.

Joshua Haggmark, Water Resources Manager for the City of Santa Barbara, presented information on the reactivation of the Charles E. Meyer Seawater Desalination Plant. The plant discharges about 3 million gallons per day of brine, and 6 million gallons of treated wastewater. The media filters pull out all the particulates from the seawater, so the only thing going through the filters is saltwater. The plant produces 3 million gallons per day, or 3,000 acre-feet per year, which is 30% of the current demand. The capital cost was \$72 million, and a Proposition 1 grant of \$10 million helped reduce that number. Their average water customer service fee is comparable to the three neighboring districts. Santa Barbara has prioritized carbon neutrality, powering the city's water system with 100% carbon-free electricity. More than 50% of the municipal electric load is used by water resources, with desal accounting for half of the electrical demand.

Commissioner Bland asked if rate payers will pay more if desalination becomes a source water supply. Mr. Haggmark said desalination has stabilized the city's water rates, and allowed them to have an inclined rate structure, with cheaper supplies dedicated to low water users. Ms.



Pezzetti said it is more expensive to maintain multiple water sources, but it is a cost suppliers must look at for reliability. Mr. Bothwell said not all water suppliers use a rate structure like Santa Barbara's. Many charge low water users for the distributed cost of all water supplies. Commissioner Bland then asked what the cost is per acre-foot of desalinated ocean water. Ms. Pezzetti said in the low \$2,000s. Mr. Haggmark said the price of SWP water varies dramatically, and desal provides a backstop as it is a fairly consistent cost. Mr. Fiske said inland desal is seeing technology packages that could deliver to the Central Valley at \$800 per acre-foot.

Commissioner Makler said it is critical when talking about the deployment of new technology that we get the pricing of the alternatives as well. He would like to learn more about the technology associated with brine treatment. How does the evolution and the scale allow for solid treatment and not experimenting with the acidification of our oceans? Mr. Fiske said Mr. Haggmark donated some brine to a startup that turned it into magnesium metal, a lightweight alloy, that sells for \$7,000 a ton. These systems can potentially produce a diversified chemical supply.

Commissioner Gallagher asked where the wastewater goes. Mr. Fiske said the problem with desalination away from the coast is that you end up with a brine concentrate. With zero-liquid discharge technology you squeeze out every last drop of water and leave behind dry salt. With certain chemical processes, these dialysis techniques can produce splits of valuable chemicals. Ms. Pezzetti said there are several brine lines in Southern California that comingle it with wastewater at the ocean.

Commissioner Matsumoto asked Ms. Pezzetti the difference between active and inactive sites and was told an inactive site is a facility not currently in use. They are there, but not producing. She then asked her about desal in the Central Valley and was told there is none at this time. Mr. Sou said there is a pilot study near Fresno where they use the brine to irrigate some plants. She then asked if pumping brackish water adds to subsidence, and was told yes, if it is coming out of a lower aquifer.

Public comment from Robert Gore, from The Gualco Group, who spoke on behalf of the Antioch Brackish Water Desalination Plant and the South Coast Water District. The Antioch plant opens in December, will deliver six million gallons per day of brackish water, and greatly improve the regional water supply and drawdown from Los Vaqueros. The Delta intakes are greatly improved. South Coast Water District's Doheny Ocean Desalination Project should launch late next year, with a five million gallon per day capacity.

#### **14. Consideration of Items for Next California Water Commission Meeting**

The next meeting of the Water Commission is currently scheduled for Wednesday, June 21, 2023, when the Commission will hear a progress report on the Willow Springs Water Bank, hold a final funding hearing for the Harvest Water Program, host the second SWP briefing of 2023, and receive updates on SGMA and groundwater trading.

#### **15. Adjourn**

The Commission adjourned at 2:07 p.m.