



## **Meeting Minutes**

Meeting of the California Water Commission

Wednesday, February 21, 2024

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, Moulène, 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**

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 would comment, as described in the Commission's California Native American Tribal Leadership Comment Policy. No Tribal leaders or representatives requested to comment.

### **5. Approval of January 17, 2024, Meeting Minutes**

Commissioner Steiner motioned to approve the January 17, 2024, meeting minutes.

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

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

Executive Officer Joe Yun reminded the Commission that there will be no Commission meetings in March and June. Executive Officer Yun welcomed new Commissioner Kate Moulène.

### **7. Commission Member Report**

Commissioner Makler reported that he attended a Bay Area Council meeting in his capacity as a CalPine executive and that California Natural Resources Agency Deputy Secretary Nancy Vogel also attended. Commissioner Makler added that he needed to leave the meeting at 2:00 p.m. Commissioner Curtin noted that he would have to leave the meeting during the lunch break.

## **8. Public Testimony**

No public comment was provided on this item.

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

Commission Legal Counsel Holly Stout provided introductory remarks and noted that the process is pursuant to the revised procedures for Resolutions of Necessity (RON) approved by the Commission at the May 17, 2023, meeting.

Department of Water Resources (DWR) Attorney Rachel Taylor provided contextual information regarding the Big Notch Project (BNP), including the project location, design, and functions. Ms. Taylor then reminded the Commission of DWR's eminent domain authority, noting that California Code of Civil Procedure requires DWR to obtain RON approval from the Commission. Ms. Taylor also stated that DWR is seeking future rights authority for the property listed on the agenda. She then briefly discussed the RON's findings and noted specific details of the property for which DWR is seeking the RON. Ms. Taylor added that the owner of the property, Pacific Gas & Electric Company (PG&E) requested that DWR seek a RON for the property and added that DWR did not receive a notice of intent to appear from PG&E.

Commissioner Bland asked for clarification regarding the assessor parcel number for the property. Ms. Taylor stated that when the transaction occurred, it was not filed with the county and therefore an assessor parcel number was never assigned.

Commissioner Steiner motioned to adopt the RON for the property. Commissioner Matsumoto seconded. Commissioners voted 9-0 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 in WSIP. Ms. Young reminded the Commission that, at the last meeting, Commissioners expressed interest in receiving more detailed information on projects via the quarterly reports. As a result, Ms. Young said that staff will be adding more information to the quarterly report template and provided a few examples of items that will be added.

Commissioner Makler asked if staff could add the next date that projects will be presenting to the Commission to the slideshow. Commissioner Makler also asked staff to ask Los Vaqueros what their future development budget might be and what is their source of funding. Regarding Willow Springs, he asked if the Commission could receive a notice when the project intends to present to the Antelope Valley-East Kern Water Agency (AVEK) board. Commissioner Makler also asked if Willow Springs is negotiating primarily with DWR and what other agencies they are negotiating with. Ms. Young answered that they are negotiating with DWR and the California Department of Fish and Wildlife (CDFW). Commissioner Makler asked if DWR is the lead agency on the draft Environmental Impact Report (EIR) for that project. Ms. Young confirmed this and added that the projects are meant to adopt the EIRs once they are final. Commissioner Makler asked if staff could ask the Chino Basin project what their anticipated spending amount is and

what are their sources of funding. Commissioner Makler asked who the lead agency for the Sites Reservoir project is. Ms. Young confirmed that Sites is a public entity and therefore the lead agency. Commissioner Makler noted he has the same question for the Pacheco project as he did for Chino Basin and Los Vaqueros. He asked if the Commission could receive construction photos from the Harvest Water project, and said he would like to know how many people the project has employed.

Commissioner Matsumoto asked for clarification regarding the Kern Fan project's timeline and if they will be presenting to the Commission at the April meeting. Ms. Young confirmed that Kern Fan will be presenting in April and noted that staff will be asking Kern Fan for more information regarding the changes to the project's timeline.

#### **11. Water Storage Investment Program: Exercise of Commission Discretion and Options for Outcomes**

WSIP Program Manager Amy Young summarized the discussion the Commission held at the January Commission meeting and noted that the focus of this discussion would be on how the Commission could exercise its discretion if they determine that a project is no longer eligible. Ms. Young detailed three options: Option one, the inflationary adjustment option, was used by the Commission last time a project dropped out of the WSIP program and would be the simplest and fastest to implement. Option two would include a second solicitation of projects previously found feasible, would require a rule-making process and would take much longer to implement. Option three would be to seek entirely new projects and would require statutory and regulatory changes and would therefore take the longest amount of time to complete.

Commissioner Curtin asked if any of the projects were close to being determined as ineligible. Ms. Young confirmed that there are not.

Commissioner Matsumoto asked if the Commission would have time to decide which option to pursue if such a scenario were to occur. Ms. Young confirmed that staff would bring a recommendation to the Commission for their consideration.

Commissioner Makler asked for clarification regarding the Commission's discretion should they opt to pursue an inflation adjustment. Ms. Young stated that the Commission does have the discretion to determine the amount of the inflation adjustment. Commissioner Makler asked if the inflation adjustment amount would be impacted by the public benefits, and if the Commission is therefore limited in how they exercise their discretion. Ms. Young said that inflation takes into account the project costs and the public benefit, so as inflation increases for construction costs, it also increases the value of the public benefit. Commissioner Makler asked if public benefits provided by the projects are static. Ms. Young confirmed that public benefits are static and cannot be revisited. Commissioner Makler asked if the Commission would have to distribute funds ratably or if the Commission would have broader discretion to distribute funds to projects. Commission Legal Counsel Holly Stout confirmed that currently the process is to distribute funds ratably, however, depending on the project, the Commission could have discretion to distribute funds differently.

Commissioner Moulène asked for clarification and if the Commission would be required to fund projects even if those projects may not succeed. Counsel Stout noted, from a fairness perspective, it would make sense to distribute funds ratably. Counsel Stout added that the situation may be different in the future, in which case other factors could be considered.

Commissioner Swanson noted that a small amount of funding has been provided to the projects to fund some of the initial administrative and consulting costs.

Commissioner Bland asked if there was any rationale that would preclude a project applicant from looking for private sector funding. Ms. Young stated that she was not aware of any.

Public comment from Ms. Osha Meserve, with the Stop Pacheco Dam Coalition, who stated that the Pacheco project has significant problems, including environmental and permitting challenges as well as geotechnical and safety issues. Ms. Meserve said she believes the dates provided by the project proponent are overly optimistic and in terms of funding, the project proponent said that one-third of project costs would be shared by project partners, but to date, the project does not have any partners. Ms. Meserve noted that her group believes the Pacheco project should not receive the full funding amount and encouraged the Commission to continue discussions on these topics.

## **12. Strategic Plan Development: Workplan**

Assistant Executive Officer Laura Jensen presented the proposed process for the development of the Commission's next Strategic Plan.

Commissioner Makler asked if the Commission could make time to revisit earlier studies. He also asked if staff could coordinate with DWR and the California Natural Resources Agency (CNRA) on potential agenda items where the Commission could act as the public forum. Commissioner Makler also suggested engaging with graduate programs and allowing them to present research to the Commission and the public on water and climate policy. He also noted that he would like to revisit the Sustainable Groundwater Management Act (SGMA) program and topics including water desalination and water reuse.

Commissioner Curtin noted that the role the Commission plays is somewhat limited. He asked for clarification on goal five of the previous Strategic Plan regarding whether there is a need to reactivate the Commission's role of advocating for federal funding for flood risk reduction. Commissioner Curtin commented on the changing climate and suggested that the Commission could explore climate change's effect on water systems and what water infrastructure might look like in the future.

Ms. Jensen confirmed that the Commission does have narrowly defined statutory responsibilities which include advising the Director of DWR, noting that the Director offered suggestions at the previous meeting. On the topic of flood, Ms. Jensen said that the

Commission used to play a larger role in advocating for federal funding for flood risk reduction and plans to discuss flood advocacy with DWR at a later Commission meeting.

Commissioner Matsumoto expressed interest in the Commission pursuing topics such as California's changing hydrology, the Human Right to Water, and getting more information from DWR regarding their efforts to prevent population decline in salmon.

The Commission took a one-hour lunch break. Commissioner Curtin and Commissioner Swanson left the meeting.

**13. State Water Project Briefing: Overview of the 2024 State Water Project Strategic Plan**

Assistant Deputy Director for the State Water Project (SWP) John Yarbrough provided an update on upcoming SWP briefings to the Commission in 2024, which will include presentations on subsidence, Delta Conveyance, and the Feather River.

Commissioner Solorio asked if Mr. Yarbrough had any suggestions regarding SWP sites that the Commission could visit, within the constraints of the current state budget. Mr. Yarbrough offered to work with Executive Officer Yun to identify a SWP facility for the Commission to visit.

Commissioner Makler asked if DWR has finalized all of the SWP contracts that are up for renewal. Mr. Yarbrough answered that SWP is operating on new contracts and are recovering costs using a new methodology. Commissioner Makler asked if concerns regarding the renewal of the contracts and rising interest rates were addressed by the new contracts. Mr. Yarbrough confirmed that those concerns were addressed.

Mr. Yarbrough presented the SWP Strategic Plan to the Commission, noting that it will support DWR's Strategic Plan. Mr. Yarbrough highlighted the vision statement, core values, goals, and initiatives. He briefly commented on the history and purpose of updating the plan, noting some key advancements including the integration of risk management. Mr. Yarbrough then walked through the goals of the plan, detailing the ways in which the SWP goals will support the goals in DWR's Strategic Plan. Mr. Yarbrough also described how upcoming SWP briefings will support each of the proposed goals.

Water Operations Manager Molly White updated the Commission on the state's current hydrology, including recent precipitation and snowpack conditions. Ms. White informed the Commission of Lake Oroville's water storage conditions and flood space. Lastly, Ms. White updated the Commission on the status of the SWP's planning and operations, noting that they are at fifteen percent allocation to the State Water Contractors.

Commissioner Gallagher asked Mr. Yarbrough if they intend to brief the Commission on the upcoming SWP activities in more detail at a later date. Mr. Yarbrough confirmed that most of the SWP activities will be covered in briefings, and that there could be additional briefings to cover topics that are not currently scheduled.

Commissioner Makler asked Ms. White what average to date means. Ms. White said that it means the average compared to this time in the season. Commissioner Makler noted the importance of the inclusion of adaptation and resilience in the strategic plan. Commissioner Makler emphasized the ability of DWR to use the Commission as a public forum, and welcomed any ideas DWR may have to engage with stakeholders.

Commissioner Steiner asked if there is optimism regarding maintaining a larger snowpack this year. Ms. White said that the typical snow melt period is between April and July, and that DWR is always looking for opportunities to capture as much snow melt as possible. She noted that last year the project was able to reach one hundred percent allocation, in part due to the large amount of snow melt that was captured in Lake Oroville.

Commissioner Matsumoto asked if there was an opportunity to revisit the US Army Corps of Engineers (USACE) flood management rules and possibly transition to more dynamic management. Ms. White answered that the water control manual for Lake Oroville is currently being updated by the USACE. Commissioner Matsumoto asked if the Army Corps is considering factors other than flood control. Ms. White confirmed that they are considering other factors such as the environment and water supply.

Commissioner Bland asked if SWP facilities are at risk of seasonal shift, where the influx of water could damage the natural habitat or the infrastructure of the facility. Ms. White answered that DWR does work with field offices to manage water movement and plan for outages and infrastructure maintenance.

Commissioner Steiner asked if the SWP has noticed a need to do more extensive repairs to infrastructure as a result of recent flooding. Ms. White answered that they have taken efforts in the past to help with localized flooding, in addition to coordinating their winter operations with the Los Angeles Department of Water and Power.

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

The Commission will not meet in March. The next meeting is currently scheduled for Wednesday, April 17, 2024, when the Commission will receive a status update on the Water Storage Investment Program and updates from two projects in the program – Kern Fan and Pacheco Reservoir; discuss key topics for the Commission’s strategic plan update; and receive a legislative update.

#### **15. Adjourn**

The Commission adjourned at 1:23 p.m.