

TULARE COUNTY WATER COMMISSION

Minutes Monday October 13, 2014

1. Call to Order

The meeting was called to order at 3:05pm.

2. Public Comment Period

Carol Clum of Three Rivers provided the Commissioners with two handouts. One was an article on the California drought and the other discussed water shortages. Please see attachment for comments.

3. Approval of July 14, 2014 minutes.

Motion made by Commissioner Schafer, second by Commissioner Larsen. Commissioner De Anda abstained. Motion approved.

4. Approval of August 11, 2014 minutes.

Minutes will be tabled until the November Water Commission meeting.

5. Approval of September 8, 2014 minutes.

Commissioner Larsen made a correction to the September 8th minutes on the second page. In the fifth paragraph, second sentence, he intended to say recharge is not defined for beneficial use. He provided the change to staff, Julieta Martinez.

With that correction a motion was made by Commissioner Schafer, seconded by Commissioner Larsen. Motion approved.

6. Sustainable Groundwater Management Act (Discussion and Action Item)

Commissioner Larsen stated that it is clear there needs to be some clean up language in various areas in the legislation where things aren't detailed enough. He knows there will be a lot of efforts both in looking at some clean up legislation as well as some local efforts to get a foot in the door in terms of how the regulation and rulemaking is put together by the state as they try to implement these items. He is aware that the Department of Water Resources is in the process of looking at forming a department to handle this legislation and to put someone new in charge of this department recognizing the amount of work that it is going to take to implement this legislation.

Commissioner Kapheim shared his thoughts that the boundaries in Bulletin 118 were never intended for the management of groundwater. DWR may have to implement changes. In the case of Alta Irrigation District, a new sub basin may need to be created because the east side of the Kings River was never a part of the 118 boundary. They have obtained the services of a geologist to investigate the possibility. There is an initial meeting of all the parties in the new sub basin next week to discuss the changes and how they will be managed. There is a possible time frame of December 2016 to create new sub basins.

Chairman Ishida feels that the County will have to find where all domestic wells are located because they could end up being part of this program.

Commissioner Schafer stated that nearly every public body that meets has an agenda item for discussion, and has had considerable comment, on the groundwater legislation., From what he hears and reads the legislation, we're exclusively considering groundwater, safe yield of the groundwater basin, and has come to the conclusion at several public agencies that have surface water rights, it will be incumbent upon them to be a groundwater sustainability agency (GSA) which would then result in a number of areas in a basin being covered by a GSA. So the question arises, is the County prepared to represent those areas that are not in a public district. There also needs to be an overall agency, an MOU, a groundwater joint powers agreement, or some blanket over all the GSA's including those areas that are not in a public district. Is the County prepared to participate and represent those areas including unincorporated cities that are within the

County but not within a public district? Many people have come to the conclusion that they almost have to become a GSA to protect their surface water rights. This is one of the items that the commission needs to struggle with as the County may need to become involved.

Chairman Ishida responded on behalf of the County by stating that the County is not prepared but will do what needs to be done. As soon as we figure out what needs to be done, we will start on that path.

Commissioner Schafer commented that we have two years to put together the GSAs to represent the entire basin.

Chairman Ishida stated that he only has two years left so we better get it done.

7. California Water Bond (Action Item)

Denise England provided the Commission with the proposed resolution that was drafted in support of the Water Bond. She asked for any comments/suggestions. It would go to the Board of Supervisors the last meeting in October.

Commissioner Schafer read it in detail and gave his approval. He made a motion for the Commission to move to recommend to the Board of Supervisors that they support the Water Quality Supply Infrastructure Improvement Act of 2014

Commissioner De Anda asked to edit a paragraph before approval. Where proposed measures are listed, she suggested we consider adding drinking water and wastewater in those categories.

Commissioner Kapheim seconded the motion with the addition of Commissioner De Anda's adjustment. Motion approved.

8. Upper San Joaquin River Basin Storage Investigation (Discussion and Action Item)

Commissioners received a copy of the letter the County received from the Department of the Interior. There are two upcoming workshops. One is tomorrow in Sacramento and the other is on Thursday from 6-8 pm in Fresno. She also had a cd of the EIR and did not know if the Commission had comments they wanted to send regarding the EIR.

Commissioner Boyer asked if there is a way to make comments before reading the actual draft. He asked if anyone had read it yet.

Chairman Ishida shared that they may make comments at that meeting.

9. Waters of the US (Discussion and Action Item)

Denise England stated that this matter was discussed at last month's Water Commission meeting. There is a letter from Rural County Representatives of California (RCRC) making comments on the definition of the Waters of the US and looking for some feedback.

Chairman Ishida stated that the Commission should make a recommendation to the Board of Supervisors to support the letter from RCRC.

Commissioner Schafer asked if Tulare County is a member of RCRC which they are. They just extended the time for comments. Certainly, he supports everything that is stated in this letter from his knowledge of the Clean Water Act and the current publication in the federal register months ago. He asked Chairman Ishida what action he wanted to take specifically.

Commissioner Ishida asked for a recommendation to support the letter and its contents.

Commissioner Schafer stated that this is an ongoing issue. He mentioned that Section 404 is just two very scant paragraphs. All of the rules and regulations are from the Army Corps of Engineer and Environmental Protection Agency promulgating in their interpretation of the Clean Water Act. Nothing in the rules is in the legislation. He is in favor of anything that diminishes the Army Corps of Engineers and EPA's power and

more jurisdiction over water regardless if navigable or not. He supports what has been written and would like to see the rule-making stopped. He believes there is congressional action moving to have the rule-making completely eliminated.

Chairman Ishida believes this is driven by the administration. This issue is receiving negative response from local governments and state governments. Administration is pushing the agencies. Maybe the Commission can compose a letter and suggest the Board of Supervisor keep taking a stand against this change as well.

Commissioner Larsen seconded Commissioner Schafer's statement with clarity that the Commission is approving what is written in the RCRC letter and opposing the new rule-making. It is already causing challenges in maintaining the channels in the area with the Water of the US and this basically designates a mud puddle as Water of the US. There is a lot of additional challenges that will occur should the rule-making pass.

Commissioner Boyer wanted to clarify his understanding of the Waters of the US. He stated that it is being expanded for canals and other water ways and asked if that is a correct statement.

Chairman Ishida said it goes further than that including stock water ponds, irrigation ditches, and anywhere where there may be standing water.

Commissioner Kapheim stated that they have had issues with this definition. When the County did Road 80 they just conceded that everything was jurisdictional. They had to go in and reverse that because it was not jurisdictional. That's how confusing it is. There needs to be boundaries and people need to know what the regulations. People need to understand how these things are implemented.

Commissioner Larsen said that what is happening is that those that are pushing this rule-making say that it will be effective in clearing up the concerns that were expressed by Commissioner Kapheim. The reality is that in their effort to clear up the definitions they have inched towards more jurisdiction. Discussion followed.

Commissioner Schafer stated determining waterways as Waters of the US. That triggers Section 401 which requires that you get a permit from the State Regional Water Quality Control Board (RWQCB). It compounds your regulatory requirements if you working in a navigable stream. The real issue is the definition of navigable waters. If you look at the basic definition in the original act and see how expanded it has become, you realize that the goal of the EPA and the Army Corps of Engineers is to control all waters, no matter if they are navigable or not, under the Clean Water Act. In his opinion, that was not the intent of the legislation. It is alleged that the current definitions in the federal register clarify definitions of navigable and exempted certain canals, ditches, and so forth. It still is not clear by any means. Whatever we can do to obtain better clarification of what is Waters of the US as interpreted by EPA would be good.

Commissioner Larsen stated that it goes beyond permits. Even to be able to work in a channel to do clean-up work. If it is jurisdictional your hands become tied and permitting is necessary. Because of a lot of this, Kaweah Delta has had to drastically reduce their water and channel maintenance and/or slow down the process because of the permit restrictions leaving open a lot of potential flood issues. It has a broad impact and the concern is that this creates even more.

Commissioner Schafer provided an example. Originally all man-made canals were exempt. Then EPA and the Army Corps added that if a man-made canal returned a discharge to Waters of the US, then it was Waters of the US. In other words, if a diversion from a channel that contains Waters of the US never returns to navigable waters, then that is ok. He personally would like to challenge that the Kaweah River, Tule River, Kern River, and all intermediate creeks are not Waters of the US. They are inland water ways and do not connect to navigable waters.

Chairman Ishida asked if the Commission was in agreement to send a letter commenting on Waters of the US.

Motion made by Commissioner Schafer, second by Commissioner Larsen. Motion approved.

10. Existing Subcommittees and Potential Need for New Subcommittees (Discussion and Action Item)

Denise England noted that several Commissioners no longer on Water Commission are listed on different subcommittees. One example is the nitrate subcommittee, Commissioner Firestone and Keller are no longer on the Commission. It is expected that Commissioner Keller will re-new his term but at this time he is not a Commissioner on roster. In July, Commissioner Schafer mentioned that this subcommittee may no longer be necessary due to the work that has gone forward under the Irrigated Lands Regulatory Program (ILRP) adopted by the RWQCB. He indicated that everything that we could achieve is being done under the ILRP. There is no advantage of additional work or other work. If acceptable, he would move to dissolve the nitrate sub-committee.

Motion to abandon the sub-committee was made by Commissioner Schafer, second by Commissioner Kapheim. Motion approved.

Commissioner Boyer asked for updates from time to time on the ILRP on what is occurring in that program.

Commissioner Schafer stated that it could be placed on the agenda when there are updates to share.

Commissioner Kapheim asked if there should be a Groundwater Management subcommittee. It seems a subcommittee should exist to coordinate efforts for all basins

Denise England shared that there wasn't an actual groundwater subcommittee created. If the Commission desires, there could be a subcommittee for both the Well Ordinance and Groundwater. It is an action item and that could be created today.

Commissioner Kapheim stated that two subcommittees may not be necessary but there does need to be one for groundwater. He made a motion create a committee for groundwater. Second by Commission Schafer. Motion approved.

Denise England clarified and asked if it was one subcommittee for both the well ordinance and groundwater.

Commissioner Kapehim suggested the committee start with those areas.

Commissioner Schafer stated the term on the groundwater well ordinance will be a very short term. He recommended meeting with staff on the well ordinance to go through the ordinance and discuss components.

Chairman Ishida stated that Environmental Health will give a presentation on the Well Ordinance at the next meeting. Discussion followed.

Chairman Ishida asked that the Commission turn their attention back to Sustainable Groundwater subcommittee. He asked Commissioner Schafer and Larsen if they were interested in participating. Commissioner Kapheim volunteered as well.

Commissioner Schafer suggested Commissioner Brogan be included.

Denise England reminded them that there must be four Commissioners or less to form the subcommittee.

Commissioner Larsen would like to have an agricultural interest involved in the subcommittee.

Chairman Ishida suggested bringing people outside the Commission to attend the meetings.

Commissioner De Anda asked if these meetings will be open to the public. She was advised they are, she may participate, but not vote on decisions.

Motion to form the subcommittee with the participation of Commissioner Larsen, Kapheim, Schafer, and Brogan was made by Commissioner Kapheim. Second by Commissioner Schafer. Motion approved.

Chairman Ishida asked to consider a subcommittee for the groundwater well ordinance.

Commissioner Larsen stated that it is a different type of issue that would probably need to have a separate committee working on that.

Chairman Ishida shared that it would be more along the lines of our interpretation.

Michael Hickey, RMA, said we would look at things such as how the information in the application get transferred to the well log, how does the well log get transferred to the state, how to make sure the data is consistent, how do you make the data available, etc.

Commissioner Boyer commented that this seems like a lot more than a well ordinance itself.

Commissioner De Anda asked for clarity. She received the general provisions of the ordinance to look at and asked if individual Commissioners provide feedback to staff. She asked about the timeline of the revisions before it goes to the Board of Supervisors.

Nilsa Gonzalez, Environmental Health, shared that they are looking to get feedback from the Water Commission and take that to the Board of Supervisors at the beginning of 2015 for a formal approval.

Denise England clarified that it is an ordinance update and would go through the public hearing process. Discussion followed.

On the DAC subcommittee, Denise England stated there are three Commissioners no longer on the Commission. She was not sure if the Commissioners wanted to table it for the next meeting and consider appointment new Commissioners to that subcommittee.

Chairman Ishida believes the charge of the committee would be the Disadvantaged Communities Water Study.

Commissioner De Anda suggested a follow up of the Tulare Lake Basin as well.

Chairman Ishida stated that Commissioner Kapheim, Boyer, De Anda, and Keller would serve on the subcommittee.

Motion made by Commissioner Kapheim, second by Commissioner Schafer. Motion approved.

11. Subcommittee Reports (Discussion Item)

None at this time.

12. Staff Reports

Drought Update.

Denise England shared after the September meeting the Governor declared a disaster for those residents that are out of water due to private well failure. The County has been working closely with Cal OES as well as the local nonprofits to come up with a plan to provide potable water to those homes without water. There is opportunity for nonprofits to receive 100 percent reimbursement for those activities the County commissions them to do on their behalf to respond to the drought disasters. Discussion followed.

Denise England also shared a new website that was put together for the Tulare Lake Basin Disadvantaged Communities Water Study. It is called the Tulare Lake Basin Water Alliance. It can be accessed at tularelakebasin.com.

13. Commissioners Comments

Commissioner Kapheim shared it may be appropriate to do presentation or update next month on surface water projects.

Chairman Ishida stated he was approached by Supervisor Doug Verboon from Kings County. On holding a joint meeting between the Tulare County Water Commission and the Kings County Water Commission.

14. Next meeting – Monday, November 10, 2014, 3:00 p.m. – Board of Supervisors Chambers

15. Adjourn

The meeting was adjourned at 4:13pm.