

MOKELUMNE RIVER FORUM

MEETING No. 20

DRAFT MEETING SUMMARY

MEETING DATE: August 17, 2006

LOCATION: San Joaquin Farm Bureau
3290 North Ad Art Road
Stockton, CA 95215

ATTENDEES: Mike Harty
Tom Francis – East Bay Municipal Utility District
Mike Floyd – Department of Water Resources
Eric Hong – Department of Water Resources
Rob Schuler – Amador County Dept. Public Works (Retired)
Hank Willy – Jackson Valley Irrigation District
Mel Lytle – San Joaquin County Public Works
Tom Gau – San Joaquin County Public Works
Frank Beeler – City of Lodi
Dave Andres – Calaveras County Water District
Jim Abercrombie – Amador Water Agency
Lena Tam – East Bay Municipal Utility District
Rob Alcott – East Bay Municipal Utility District
Dennis Diemer – East Bay Municipal Utility District
Tom Orvis – San Joaquin Farm Bureau
John Skinner – East Bay Municipal Utility District
Ed Steffani – North San Joaquin Water Conservation Dist.
Fred Weybret – North San Joaquin Water Conservation Dist.
Kevin Kauffman – Stockton East Water District
Bob Granberg – City of Stockton
Gary Goffe – Calaveras Public Utility District

ACTION ITEMS AND AGREEMENTS

1. Mike Harty will work with the Forum Subcommittee (Jim Abercrombie of Amador Water Agency (AWA), Mel Lytle of San Joaquin County (SJCO), Lena Tam of East Bay Municipal Utility District (EBMUD), and John Skinner of EBMUD) to draft a resolution for potential use in lieu of the draft Assurance Document.
2. The draft resolution will be circulated following review by the subcommittee with a goal of discussion at the September Forum meeting.

3. Mel Lytle of SJCO and Jim Abercrombie of AWA will each provide an update of the Integrated Regional Water Management Plans (IRWMPs) they are working on at the September Forum meeting. They will focus on “inter-regional” projects that are common to their initiatives.
4. John Skinner of EBMUD will provide the project matrix prepared during initial Forum discussion to Mike Harty, who will circulate it to the wider Forum membership.
5. Further action or discussion regarding preparation of a Water Availability Study (WAS) will be postponed until issues related to the future role of the Forum, including the proposed resolution, are clarified.
6. Kevin Kauffman will provide Mike Harty a copy of agreements previously negotiated by the Stockton East Water District (SEWD) that address area of origin water rights. Mike will distribute the agreements to Forum members for review.
8. Bob Granberg of the City of Stockton agreed to provide Breakfast at the September Forum meeting.
9. The next meeting of the Forum will be held at the San Joaquin Farm Bureau’s (SJFB) Stockton office from 9:00 am – 12:00 noon on September 21, 2006.

PRELIMINARY MATTERS

June Meeting Summary

An electronic version of the June 15 draft meeting summary was distributed via email in mid-July 2006. Kevin Kauffman requested the only correction. Mike will note the correction in the final June minutes.

Agenda

The primary agenda topic was a review of efforts to reach agreement on a final version of a Forum assurances document and decisions about next steps.. This item included alternatives to an assurance document and different options for the future role of the Forum.

AGENDA TOPIC: UPDATES FROM FORUM MEMBERS

Mike Harty suggested postponing the update discussion until the end of the meeting, subject to any specific information requests. Lena Tam of EBMUD asked Kevin Kauffman of SEWD to provide some detail regarding a series of SEWD water rights

applications that had been noticed by the State Water Resources Control Board (SWRCB).

Stockton East Water District (SEWD) – Kevin Kauffman summarized SEWD’s applications as follows: The State Board requested consolidation and the re-notice of the previously filed eleven water right application on the Stanislaus River. SEWD consolidated this re-notice with notices for their filings on Littlejohns Creek and the Calaveras River and their tributaries previously filed by SEWD. The combined total of all flows listed in the applications is 1,215,000 acre-feet including direct diversion and diversion to storage. The applications cover flood flows, not area of origin water, and capturing that total volume is unlikely.

The applications seek to divert water from the Calaveras and Stanislaus Rivers and from various local creeks and sloughs in the vicinity of the Farmington Flood Control reservoir located between the Calaveras and Stanislaus Rivers. The Stanislaus application should not generate any new protests since it is simply a restatement of previous applications and protest settlements should remain in effect.

SEWD has hired a consultant (Bookman Edmondson) and BE will be working on a project descriptions to be used in the environmental documents that detail how the water would be put to use. They expect to be able to share more information on that effort as it proceeds forward (perhaps within the next six months or so).

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<p style="text-align: center;">AGENDA TOPIC: STATUS OF THE DRAFT ASSURANCES DOCUMENT AND FUTURE OF FORUM</p>

Mike began with a summary of developments since the June Forum meeting related to the draft assurances document. Two sets of issues have emerged: (1) objections to public

agencies limiting their use of information, and (2) conflicting interests related to area of origin water rights.

On the information issues, the draft Assurances document was an attempt to promote full disclosure of information needed to complete a WAS and identify potential mutual benefit projects. At the same time, public agencies (most Forum members) operate under state laws that promote disclosure of information to the public. Imposing limitations on future use of information discussed in the Forum raised a series of concerns, including the need to make best use of public dollars and avoid duplicative studies. At the same time, the Forum is based on collaboration and there are strong interests in preventing the adversarial use of information discussed within the Forum, including before the State Board.

As for area of origin water, there are obvious competing interests within the Forum regarding area of origin water, particularly given uncertainty about how the State Board might proceed in a particular future context. A number of agencies and their counsel are concerned about unduly limiting their future ability to make arguments at the State Board in light of the current state of the law. This is particularly true if such limitations are not linked to a specific project (and potential benefits).

Mike reminded the members of principles in the MOU establishing the Mokelumne Forum, including:

- MOU Paragraph 3 – Parties agree to cooperation, to open communication and to consensus building
- MOU Paragraph 5 – Parties agree to work toward finding mutually beneficial solutions that resolve conflict
- MOU Paragraph 6 – Parties agree to regional consensus-based planning

Mike suggested that in light of the issues that have arisen in connection with the Assurances Document, Forum members may wish to consider alternatives to the current Forum structure and role. He identified three basic options for consideration:

- Conduct future, project-specific discussions only within a settlement format to ensure confidentiality can be protected;
- Proceed with the Forum on the basis that everything is “Public Information” and without the detailed assurances in the current draft document;
- Adopt a “hybrid” Forum option (i.e., part protest resolution setting where confidential discussions could be held, part open / less “detailed” setting where less critical info (and/or “public info”) is shared)

Discussion by Mel Lytle of SJCO and Jim Abercrombie of AWA

Mel Lytle of SJCO and Jim Abercrombie of AWA elaborated on the concerns of their agencies (and others) regarding the Assurance document.

Mel provided details about the review process that occurred following the June Forum meeting involving multiple agencies located within San Joaquin County (and their respective legal counsel). San Joaquin County's Advisory Water Commission (AWC) members expressed serious concerns about the draft, with particular emphasis on how information might be limited, including:

- It would be hard for SJCO to consistently discern how to act in a “public manner,” as required by law, with “Forum Information” that was subject to restrictions on disclosure.
- It would be hard to accept that information shared in the Forum was not already subject to public disclosure under state law.
- SJCO might end up paying twice, wasting public funds, for what was essentially the same study (i.e., one performed on behalf of the Forum for its use and a separate one performed by SJCO for its own use should a water right proceeding be needed).
- The SWRCB could be confused by the concept of “Forum Information” if that term were used in its proceedings.
- A single agency could veto use of Forum Information, thereby imposing potentially significant additional costs and delays on other agencies.

As for area of origin assurances, SJCO's view (and that of the AWC) was that statements/promises made in paragraph 9 of the assurance document were actually more appropriate in a protest resolution document.

Mel also advised that San Joaquin County agencies operating within the Delta expressed strong objections to the assurance document and would advise San Joaquin County Supervisors not to support its adoption. Mel indicated that he could only speak for SJCO, not on behalf of every agency that lies within San Joaquin County. He concluded that while his agency was committed to a consensus based process, they could not support the assurance document as drafted in light of these recent discussions.

Jim Abercrombie of AWA next discussed the concerns of his and other uphill agencies. He indicated that while he had been optimistic early in the Forum process (the signing of the MOU), that optimism had diminished as resistance to acknowledging area of origin rights appeared. His agency and other up-country agencies are adamant about the need to both protect information and have some acknowledgement of county of origin water rights in place *before* working on cooperative documents and/or projects. The “downhill” water agencies want to use county of origin water but are resisting any assurances that the same water will be available when the uphill counties need it. The uphill counties are concerned that without such assurances they are at risk if they provide any information about future demands not already in the public domain—their downhill “partners” could use this information against them before the State Board.

Follow-up discussion by Forum Participants

Kevin Kauffman of SEWD noted that his agency had tackled area of origin issues in agreements that they had crafted with various agencies and organizations regarding flows

from the Stanislaus River. He indicated that those agreements could be provided to AWA as an example of how to impart protections that might have value. Kevin will forward the documents to Mike Harty for Mike's distribution to the group via email. As for assurances generally, these can be provided when specific projects are developed. Apart from these challenges, Forum members believe one [or more] potential projects are out there and need to find ways to realize their potential.

Fred Weybret pointed out that, with respect to county of origin rights, the downhill agencies are being asked to provide assurances that could undermine their opportunity to argue for water before the State Board, and that there is no project benefit within view as a tradeoff.

Mike noted two perspectives on information: most is already public, but [perhaps] some is not. He asked whether the Forum could move forward by working with bracketed information: instead of an agency providing a "solid number" indicating their current need and/or future water need, they instead would offer a "soft number" indicating what they may be willing to provide for use in a project scheme. Similarly, others could come with a "soft number" indicating what they "want" from a water supply perspective for a particular project scheme. This bracketed approach, which would assume variability in any estimates, is one option that might support investigation of multi-beneficiary projects with an acceptable level of risk to individual Forum participants.

There was a suggestion that the Forum could shift its focus from building a foundation of assurances to exploring a specific project, with the MORE Water Project being an option. It might be possible for intervenors to meet in settlement discussions with SJCO on the MORE Water/Duck Creek Project. Mike advised against focusing on a single existing project, and proposed that the group consider discussion of two or more projects concurrently, with Forum members bringing "soft numbers" to the table.

If open discussions using bracketed estimates cannot provide a sufficient level of information, Mike reiterated that settlement discussions might be the best option for putting more reliable numbers on the table. without the threat of that information being brought forward in an adversarial water rights proceeding.

Mike also raised a question about what incentives would be needed for Forum members to continue participating: what level of information and discussion would be valuable?

Dennis Diemer of EBMUD noted that the group perhaps was closer than it thinks in terms of being able to work through the issues. SEWD's sample agreements could illuminate a path to resolve AWA's water rights concerns. Similarly, there appeared to be options, aside from an assurance document, for sharing information. The challenge is to identify an acceptable level of risk associated with disclosure. The discussions clearly have identified some fatal flaws with the assurances document approach, and the challenge now is to find alternatives.

Mike summed up the discussion by noting the following:

- There is no obvious sentiment in the group to abandon the Forum at this time
- Those present appear to agree with Kevin Kauffman that there is a potential project (or more than one) that make it worth the effort involved in finding solutions
- Some form of “assurances” appears to be appropriate and agreeable to the parties, although it may be more of a statement of principles around working together and avoiding adversarial use of information (perhaps a non-binding “resolution” that governing bodies would adopt)
- There does not appear to be any legal barrier to public agencies making a non-binding statement of support for principles in order to demonstrate good faith
- If parties aren’t willing to express such support it is important to examine the future value of the Forum
- There appears to be no benefit at this stage in moving forward with a Water Availability Study (WAS), and Mike asked participants to consider whether the WAS should be tabled for now until the group addresses the “assurance” issues.

Following a short meeting break, Mike made this proposal:

- Rather than continue to seek an assurances document based on the current model (which appears to be fatally flawed in the view of a number of key constituencies), the Forum should pursue agreement on a resolution for potential adoption by agency boards. The resolution would focus on a set of core principles: support for the Forum goals, acknowledgment of public agency interests related to information, and a commitment to avoid using Forum information in an adversarial manner. The resolution would be explicitly non-binding and without legal significance.
- AWA will review the agreements provided by SEWD and consider how appropriate assurances about area of origin might be achieved.
- The Forum should shift to a project focus, working with clear information limitations. Forum members should bring specific project suggestions forward for discussion so long as they meet the basic criterion of providing benefits for multiple parties, i.e., no single beneficiary projects.

There appeared to be tentative agreement in the room, but several members indicated they would need time to evaluate their options before committing to this approach.

Eric Hong of DWR noted that his agency would be much more comfortable were the Forum to take the resolution approach (vs. the assurance document approach).

John Skinner of EBMUD expressed skepticism about discussing possible water supply/conjunctive use projects given the lack of success in the past. Mike emphasized

the importance of not recreating past failures, particularly agencies offering only projects with a single beneficiary: themselves (or their region). The standard for the Forum should be that multi-agency benefits must be clearly articulated by the agencies that offer a project for Forum evaluation.

As an action item, John Skinner agreed to provide Mike with the previous project matrix (developed as part of early Forum discussions). Many of the projects in this matrix are too narrowly focused on a single beneficiary. The project matrix will be provided to the Forum as a reminder of past discussions and potential departure point.

NEXT FORUM MEETING: KEY AGENDA DISCUSSION ITEMS

Mel Lytle and Jim Abercrombie suggested that instead of a project discussion at next month's meeting they could update the Forum about their respective IRWMP efforts, with particular focus on projects that are "inter-regional." Those efforts have identified projects that may benefit more than just their respective IRWMP regions (i.e., members of the Forum are located in both IRWMP regions). Such a discussion could better define which projects should then form the following-month's Forum agenda, consistent with the multi-agency benefits principle.

As an action item, and as per earlier discussions, Mike Harty will craft a draft resolution for the subcommittee and then the full Forum to review. The resolution will focus on principles. It will not be as detailed or as "legal sounding" as the assurance document. The resolution will be emailed to Forum members for discussion at the September meeting. Assuming approval is reached, member agencies would be asked to have their respective boards adopt the resolution.

While participants generally supported the resolution approach, Bob Granberg of the City of Stockton commented that a resolution would be much more attractive with some action-item component. He views a "promise" document as hard to move onto an agenda since it would lack a certain weight needed to justify commission consideration. Other members acknowledged this challenge.

CLOSING

Mike Harty asked if there was any need to revisit the tabled updates item. Forum participants indicated no need to revisit the topic.

The August 17, 2006 Mokelumne River Forum Meeting was adjourned at approximately 12:00 noon.

NEXT FORUM MEETING

The next meeting of the Forum is scheduled for Thursday, September 21, 2006 at 9:00 a.m. at the SJFB's meeting facilities in Stockton.

Bob Granberg of the City of Stockton agreed to provide breakfast at the next Forum meeting.

NOTE: The initial draft of these meeting minutes was prepared by Tom Francis of EBMUD. Mike Harty reviewed and edited the draft. Please send comments or questions to Mike.

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