

California Bay-Delta Public Advisory Committee
Environmental Justice Subcommittee
Meeting Summary
March 21, 2003
Bonderson Building, 901 P St.
Sacramento, CA
1:00 p.m. - 4:00 p.m.

I. Welcome / Introductions

- Ken McGhee, EJ Coordinator, welcomed the group and introduced himself. Ken announced that the CALFED Bay-Delta Watershed Subcommittee meeting was occurring simultaneously at another location, and speculated that some people from the EJ Subcommittee might be attending that meeting instead. It was suggested that the EJ Subcommittee return to meeting on the second Friday of each month to avoid future conflicts. (A partial list of attendees is included at the end of this summary.)
- After subcommittee members introduced themselves, Ken reviewed the agenda and encouraged public comment at anytime during the meeting. Ken suggested that the agenda be adjusted so that additional presenters could speak and have time for discussion. The scheduled fifteen-minute break was eliminated and time allotted for working groups update was reduced. Ken requested that subcommittee members review the minutes of last meeting and submit missing comments to him.

II. Presentations / Discussions

Public Trust Doctrine. Michael Warburton

- Michael Warburton began the session with a presentation on the Public Trust Doctrine. He referred to and provided committee members with a set of outlines on the subject that had been previously compiled for a November 2002 presentation to the Advisory Committee for the State Water Plan.
- Michael highlighted the main components of the Public Trust Doctrine (PTD), which provides the framework and guidelines for public action in times of transition in water use and allocation. Under the California Constitution, Statutes and common law the people of California own the waters of the state. Since statehood, a public trust has been recognized giving many state agencies affirmative duties to ensure that trust resources are used in a manner consistent with the purposes of the trust. Trust obligations are owed to all members of the public, both present and future generations, regardless of race, economic or political status, and are prior to and superior to other property rights. Historically, economically disadvantaged or racially isolated communities have depended more upon public rights of access to trust resources than wealthier areas.
- Michael shared his concern that CALFED actions to relieve the impacts of water shortages through water transfers ignore this obligation to the public trust. He suggested that environmental justice communities have an enhanced stake in the

public process since they depend disproportionately on the protection of public rights to maintain their present social and economic positions.

- As an example, Michael offered the following: Two years ago, the Hawaii Supreme Court ruled in favor of the Public Trust when private developers tried to purchase water rights from a defunct sugar plantation in Oahu. The high court recognized Public Trust as central to future planning of water resources. Michael feels the Hawaii decision is not as narrow as some might claim, and points to similar trends in commitment to public values that are supported by California's history.
- Michael finished his presentation expressing great concern over the Bureau of Reclamation's potential Westlands settlement. He questioned the "reasonable and beneficial use" of applying public water to irrigate contaminated soils, and challenged the concept of paying significant cash settlements to private interests.
- One subcommittee member suggested that the PTD applies to all natural resources, not just water. When these resources are privatized to the extent where they are denied to the general public, inconsistencies with the PTD proliferate.
- One participant asked how the PTD addresses moving resources from one area to another. Michael responded that the PTD provides a framework for public disclosure and public action.
- Martha Guzman, EJSC Co-Chair, asked the group to consider who should determine the "best use" of water issue. In Imperial County, a publicly elected board makes such decisions. Martha commented that there have been successful court cases protecting the "environmental" public trust in Hawaii and New Mexico, but there are few "human" public trust court cases.
- The idea of developing a checklist for the Department of Water Resources to use that evaluates water transfer impacts on EJ communities was discussed. It was recommended that a working group be formed to develop such a checklist.
- One committee member pointed out that some rights (mineral) supersede the PTD. He also stated that what may be important to the public trust in the northern California is likely different from that of southern California. This potential for conflict can be detrimental to beneficial water management and could result in situations like those at Mono Lake.
- Ken urged subcommittee members to remember these comments in future EJSC meetings to be held in Southern California.

SWRCB Proposition 50 Grants. Diana Robles

- Diana Robles of the State Water Resources Control Board spoke next about three communities that have received Proposition 50 Grant money for three aquifer reclamation water supply projects.
- She explained that military and hazardous waste disposal from external sources has affected the aquifers in the City of Colton, the City of Rialto, and West San Bernardino County. Perchlorate contamination resulted in the closing of numerous water wells in these communities. Water supply had been decreasing on a daily basis.

- Demographic information led the Division of Financial Assistance’s Office of Water Recycling to the conclusion that these communities should be identified as environmental justice communities. On this basis, the Division requested a waiver to the previously adopted 25% construction funding criteria, to allow up to 40% construction funding.
- During the first phases of these projects, wells were equipped with an ionic exchange treatment system to remove the perchlorate. The reclaimed water is then re-distributed to customers served by the water districts.
- Diana stated that the Division was concerned that these communities would not want to be labeled as “environmental justice” communities, that such a label might be detrimental. The Division found that to the contrary, the communities favored being so identified because they were able to secure funding, remedy the problem, and flourish.
- Diana requested that the EJSC assist in developing a policy or criteria checklist for making an “environmental justice” determination.
- One subcommittee member suggested that concern over labeling “environmental justice” communities might be more of an issue for politicians than for community members.
- The same participant was also concerned about whether trace perchlorate levels in the water could accumulate and cause damage. He asked how the perchlorate was extracted from the water. Diana responded that the Division does not fund projects that do not meet strict water quality standards. She stated that there are many contaminants in drinking water that are not regulated, but perchlorate is. She explained that caps on the wells collect the perchlorate and they are disposed of off-site. She was not aware of any cumulative impacts associated with trace levels of perchlorate.

Proposition 50. Alisha Dean, Martha Guzman

- Alisha Dean provided the group with suggested edits for Prop 50. The edits outlined essential funding principles and suggested revisions to proposition language. She and Martha Guzman have been working with legislators and community activists to develop additional text to be included in SB 21.
- Alisha highlighted key funding principles of Prop 50. They include:
 - Creation of an open and competitive grant funding process
 - Partnerships with community based organizations should be rewarded and in certain programs, required
 - Establishment of project funding criteria that prioritizes environmental justice issues and communities
 - Minimization of administrative overhead

- Ensure that stakeholders meetings are open and accessible to the public. Including meeting minutes that are freely available on the Web in a timely manner
 - Include Environmental Justice stakeholders in the various stakeholder processes
 - Ensure that information that is developed with public dollars is made available to the public by publishing it on the Web
 - Economically disadvantaged communities may be awarded up to 25% of a grant in advance of actual expenditure in accordance with Proposition 40 Implementation, Division 20.4 Chapter 3, Article 6, subdivision (f) of Section 30916.
- EJSC members reviewed the handout material and provided comments. Members were reminded that italicized bullets contained suggested language to the bill.
 - It was reported that the Watershed subcommittee of the CALFED Bay-Delta Authority had reviewed and supported the SB 21 recommendations.
 - One participant asked about the process for supporting these recommendations. Martha responded that she and Alisha would continue to amend SB 21 and lobby for the inclusion of the suggested text. Martha recommended that participants urge their representatives to do the same.
 - A subcommittee member inquired if the bill dictates involvement with community groups and appropriates funds for such involvement. Martha responded that the bill does require outreach to community groups, with 15% of most grant funds to be paid directly to community groups.
 - Committee members asked if the term “economically disadvantaged communities” had been defined. Martha responded that the term had not been defined. Participants suggested that census data augmented by survey information would be the most accurate way of profiling a community to determine if they are the fall under the economically disadvantaged designation.
 - A participant asked if the Watershed Subcommittee was an advisory group involved in the grant selection process. Eugenia Laycheck responded that it is not the role of any CALFED subcommittee to approve or reject grant proposals.

Mercury Strategy for the Bay-Delta Ecosystem. Donna Podger

- Donna Podger, CALFED, gave an update on the Mercury Strategy for the Bay-Delta Ecosystem study and announced upcoming public presentations.
- CALFED Bay Delta Program is hosting two public presentations on the draft document “Mercury Strategy for the Bay-Delta Ecosystem: A unifying Framework for Science, adaptive Management, and Ecological Restoration.” This document outlines a strategy for integrated mercury investigations linked to restoration and adaptive management of the San Francisco Bay-Delta ecosystem.
- The goal of the mercury strategy is to provide a single framework for the integrated investigations that develop a scientific foundation for ecosystem restoration,

environmental planning, and the assessment and eventual reduction of mercury-related risks in the Bay-Delta ecosystem.

- A team of independent, internationally renowned scientists (James G. Wiener, Cynthia C. Gilmour, and David P. Krabbenhoft) developed the strategy with input obtained in two public workshops. The draft document is available for comment until March 28th.
- The lead author of the document, Dr. James G. Wiener, of University of Wisconsin-La Crosse, will make the presentations. The EJSC is hosting the first of the two public presentations on the evening of March 26th in the Resources Building Auditorium. It was recommended that as many EJSC members attend this meeting as possible. A second public presentation will occur the afternoon of April 9th in a meeting hosted by the CALFED Ecosystem Restoration Program.
- Donna briefly reviewed the six core components of the strategy:
 1. Quantification and evaluation of mercury and methylmercury sources.
 2. Remediation of source areas.
 3. Quantification of effects of ecosystem restoration on methyl mercury exposure.
 4. Monitoring of mercury in fish, health-risk assessment, and risk consumption.
 5. Assessment of ecological risk
 6. Identification and testing of potential management approaches for reducing methylmercury contamination.
- Donna offered to make copies of the study available to subcommittee members.

Contract Reimbursement Funding. Nina Gordon

- Nina Gordon of the California State Parks Department spoke next to the group about grant programs administered through the Office of Grants and Local Services, including Proposition 40, Proposition 12, and other annual programs.
- The Office of Grants and Local Services (Office) develops and administers grant programs that provide funds to state and local agencies and other organizations for park, recreation, and resource related projects.
- It is a competitive grant process, and Nina provided EJSC members with a graphic outlining the process as she detailed specific points.
- Paramount in the proposal review process is on going interaction between the Office and project proponents. Nina stressed that her office makes every effort to assist applicants in developing solid proposals that significantly improve the “recreational” needs of a community. Applicants are encouraged to work with the community’s definition of “recreation” rather than impose a predetermined one.
- To facilitate this interaction, the Office holds Technical Workshops, conducts site visits, and often allows applicants extra time to submit additional information if their proposal is first deemed incomplete.
- When providing funds to an approved project, the Office allows a 10% advance of funds upfront, and then releases 25% for non-construction costs, such as completing

environmental review. Occasionally, the Office has advanced up to 80% of the funds (for land purchases if the property is in escrow, or when the applicant provides a Notice to Proceed). The last 20% is reserved for post project delivery activities. The Office allows up to eight years from the date of the grant award for the project to be completed.

- Nina pointed out attributes of successful grant proposals:
 - Provides employment during all phases of project.
 - Maximizes a variety of outreach methods.
 - Collaborates with numerous partners.
 - Maximizes use of alternative modes of transportation.
 - Addresses fully and honestly barriers to project implementation.
- The Office will occasionally waive the local fund matching requirement of a project, but never the community participation requirements.
- Proposals that earn the highest priority are those in neighborhoods where unemployment rates are high, the numbers of children participating in the Free and Reduced Lunches program are high, and the number of parks or open space is low.
- Many committee members commended the Parks Department for its progressive approach in assisting EJ communities. One participant spoke from experience and praised the Office for its technical assistance.
- One person asked Nina how the Office justifies the advances on grant money. Nina stated it is a policy issue that the Office decides on a case by case basis. Different bond acts allow varying levels of advances, and Nina added that the Office chose to interpret their guidelines in this fashion.
- Committee members suggested that other State granting entities should be encouraged to follow the example of the Office of Grants and Local Services when dedicating grant funds to local projects.

Breuner Marsh Mitigation. Whitney Dotson

- Whitney Dotson of Neighborhood House of North Richmond addressed the group on an environmental justice issue that is occurring in his community.
- In Richmond historical shipbuilding activities (no longer active) severed the shoreline from the community. The Specific Plan for the North Richmond Shoreline was developed 15 years ago with little input from the minority communities in the area, which are predominantly African-American, Latino, and Asian.
- Approximately 230 acres of open space in the community has recently been targeted for development. A broad coalition including the Sierra Club, East Bay Regional Parks District, and numerous neighborhood groups has been formed to prevent this last large parcel of open space adjacent to the Richmond Shoreline from being developed.

- The coalition has identified potential negative impacts related to aesthetics, clean air, noise, circulation, and biological habitat resulting from the proposed development.
- The Bay Trail has been proposed to run along the Richmond Shoreline through this 230-acre parcel. The developer and those in favor of the project feel this natural component satisfies the “environmental issues” regarding loss of habitat and open space preservation. While the project’s opponents support the inclusion and construction of the Bay Trail, they feel strongly that it is not enough to replace the value of habitat lost to large-scale development.
- The coalition felt the draft environmental impact report did not adequately address negative impacts nor did it offer suitable mitigation measures. Many people submitted comments, and strong negative sentiments from the community were expressed when the City’s Environmental Assessment Panel certified the Final EIR. The coalition appealed the certification and the FEIR was decertified. It is now being recirculated throughout the community for review.
- The coalition feels that in order to prevent future developments from proceeding in the area, the North Richmond Specific Plan needs to be updated to incorporate the values and opinions of local minority communities. The Sierra Club has also indicated that there is proper cause for litigation if project plans are allowed to proceed. Ultimately, the coalition would like the land to be preserved as permanent open space.
- One committee member asked what the developer is estimating the value of the land to be at. Between 30 and 40 million dollars was the latest estimate.
- A CALFED employee at the meeting recognized the great biological value of this shoreline property, yet expressed concern when assessing the reality of funding possibilities for purchasing the land. He also asked the subcommittee to consider what effect restoration of the land might have upon the human inhabitants of the area—if it becomes a protected area, what type of access would be afforded?
- Subcommittee members agreed to keep in touch with the North Richmond coalition, perhaps develop a position supporting their cause, and consider holding a future EJSC meeting in this neighborhood.

III. Working Group Update

- Ken offered a quick update on the progress of the Working Group created last meeting to serve as a steering committee for the EJSC. The Group met and developed a priority list for the EJSC to adopt, which was provided to committee members. Ken stressed that the list was a draft of ideas only, and were not listed in order of priority or preference. The draft list of priorities include:
 1. Mercury contamination
 2. Prop 50 funding

3. PSP (Program Solicitation Proposals) for all CALFED Prog Elements to address, include, and support EJ
 4. Training within CALFED and partner agencies
 5. Capacity building among EJ groups and communities
 6. Create “standard” EJ/EJSC presentation
 7. Active EJSC engagement in ALL CALFED subcommittees
 8. EJSC meetings in ,among, and with AFFECTED COMMUNITES
 9. Special attention to CALFED storage, water transfers, watershed, and drinking water subcommittees
 10. Work with CALFED Southern Dialogue
 11. Tribal outreach
 12. Mapping (by watershed and with GIS)
 13. FUNDING, FUNDING, FUNDING.
- Ken asked members to review the list and be prepared to make changes so that its final version could be adopted at the next meeting. It will be placed as an action item on that agenda.

IV. Calendar and Public Comment

- The idea of having the EJSC serve as a “clearinghouse” was reiterated and discussed. Although there is a need for EJ coordinators in other agencies, most are not ready yet for that and look to the EJSC for guidance.
- The dates and locations of future EJSC meetings were discussed. Many subcommittee members had already left, thus a definite date for the next meeting was not reached. Most in attendance agreed with the motion to return to meeting on the second Friday of each month so as not to conflict with other CALFED subcommittee meetings. This would make April 11th the date for the next meeting.
- The idea of doing an EJSC “Road Show” was expanded upon. Possible remote meeting locations included: Bayview/Hunter’s Point, North Richmond, Chico area, southern California, and Imperial Valley.
- The issue of water transfers and their impacts on rural EJ communities was brought up again as the meeting came to a close. Debate was sparked and it was suggested that a meeting in one of the affected communities should occur soon.

The meeting was adjourned at 4:30p.m.

Meeting Participants

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