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U.S. BUREAU OF RECLAMATION SCOPING MEETING

April 26, 2012

6:00 p.m. - 8:00 p.m.

Reported by: Stephanie Williams, CSR No. 13482

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COMMENTS BY DELAINE W. SHANE FROM THE METROPOLITAN
WATER DISTRICT:

DELAINE SHANE: Delaine Shane from the
Metropolitan Water District.

First, I can't say I know everything about the
BOs, but are you seeing any sorts of construction
activities proposed?

SUE FRY: As we initiate this process, where
we're starting is with the operational components of the
2008, 2009 RPAs, the biological opinion and associated
RPA. So that's where we're starting. And as you know,
through any NEPA process we need to receive the public
input and see where that takes us as far as
alternatives. So we aren't prejudging whether there
will be or won't be any structural components.

DELAINE SHANE: Okay. So at this time you
don't know?

SUE FRY: Yes. Our starting point is with
operational components only.

DELAINE SHANE: Okay. And the other question I
have relates to the court-dated requirements for final
EIS. Are we talking about one or two environmental
impact statements then?

SUE FRY: So how we are doing this now and to

1 try to be as effective and efficient as possible is we
2 are initiating this process with one EIS that would
3 cover both. But those dates make us realize that we may
4 have to split them. Split into two at some point to
5 meet that December 2013 deadline for Fish & Wildlife
6 Service. So as we start, we are starting with one EIS,
7 but as we get down the road, we may see that we need to
8 split into two.

9 DELAINE SHANE: Or you could supplement?

10 SUE FRY: Yes, exactly. Right. We could
11 supplement. That's right, we could finish and
12 supplement.

13 DELAINE SHANE: Thank you.

14 SUE FRY: So it's early in the process and we
15 are still trying to figure it all out. A lot of
16 unknowns in what we're doing right now.

17 DELAINE SHANE: Thank you.

18
19 COMMENTS BY MELISSA CUSHMAN FROM BEST, BEST & KRIEGER ON
20 BEHALF OF STATE WATER CONTRACTORS:

21
22 MELISSA CUSHMAN: My name is Melissa Cushman
23 from Best, Best & Krieger. I am here speaking on behalf
24 of our clients at State Water Contractors tonight. And
25 I do have a couple of questions that I might save for

1 the end. But there are some things I mainly want to
2 hit.

3 One is just to explain who the State
4 Contractors are a little. They are a group that
5 represents the common interests of 27 member public
6 agencies that hold a contract with the California
7 Department of Water Resources to receive State Water
8 Project water. And those member agencies then supply
9 that water to approximately 25 million Californians and
10 several hundred thousand acres of farmland. So
11 obviously the State Water Contractors have a huge
12 concern with what may happen with State Water Project
13 water.

14 And while the CVP is to some degree the focus
15 because of -- it's federal and State Water Project is
16 state, the OCAP, which may or may not exist anymore, but
17 I'll keep using that word for a little while.

18 SUE FRY: We like to say Long-Term Ops.

19 MELISSA CUSHMAN: Okay. Let me write that
20 down. Long-Term Ops.

21 SUE FRY: That's the buzzword.

22 MELISSA CUSHMAN: You know, the two projects
23 are operated together. And if a measure applies to one
24 project, it's either going to apply to the other or the
25 two will have to be operated in sync to make up for the

1 change to the other one. And so obviously this affects
2 us every bit as much it does the Central Valley Project
3 water users.

4 And thank you for allowing us this opportunity
5 to come and meet you guys and to discuss these various,
6 you know, kind of environmental issues, including
7 alternatives and mitigation measures, our particular
8 interest here.

9 There are other aspects that we'll need to
10 review as well that we'll be commenting on. And we will
11 be providing a follow-up letter by the May 29th date.
12 Because, obviously, even if we're not limited to three
13 minutes tonight, we're a little more limited in
14 specifics than we will be in the future in a longer
15 letter. And, you know, hopefully we will also have the
16 ability to comment in the future as well and continue to
17 work together.

18 But in the end, basically, essentially, the
19 State Water Project and the users of that water are
20 interested in there being sufficient water supplies for
21 the tens of millions of users out by the Delta who are
22 relying on that water. And the adequate protection of
23 listed species is, of course, also a consideration.
24 That, you know, both of those be considered as part of
25 this process.

1 And we do appreciate that the Federal Register
2 Notice listed us as potential cooperating agencies. We
3 haven't received an official request yet, so we would
4 like to go ahead and officially request ourselves. We
5 would like to participate as a cooperating agency. And
6 we understand that the Reclamation Handbook says that an
7 MOU is required when it's a non-federal agency acting as
8 a cooperating agency.

9 And we're happy to work with you to develop an
10 MOU and would be happy to, in fact, have a sit-down
11 meeting in June or July. We were trying to look at
12 dates beforehand, but it looked like the earliest times
13 we could get most of the people who need to be at the
14 table. But we would be happy to meet with you guys
15 personally in a way to maybe better explain the letter
16 that we're going to submit or, you know, nail down the
17 MOU or whatever is required in order to get that process
18 going.

19 Our primary reason for being here tonight is
20 really so that the Bureau understands at the very outset
21 of the process what our concerns are and hopefully, you
22 know, we could head a lot of them off at the pass. Or,
23 you know, work together throughout the process in order
24 to address them. Particularly about the alternatives
25 and mitigation measures that are actually going to be

1 imposed on the project. Because in the end, that's what
2 our clients have to deal with.

3 It's the State Water Contractors' position that
4 a very robust development in consideration of a variety
5 of different types of alternatives is necessary. We're
6 very happy to see in these slides that it looks like
7 that's what you guys are planning to do.

8 We were a little concerned by the notice when
9 it mentioned that, you know, the RPA actions and listed
10 those out in the no-project alternatives. And those
11 were kind of the only ones mentioned, so we got a little
12 nervous about that because we really think it's
13 important to look at a wide variety of different
14 measures and probably a combination of different
15 measures to see the best way so that the species can be
16 protected, plus the water cost kept to a minimum and to
17 see what's most effective. Because some of the problems
18 that -- you know, as you're aware, that the Court found
19 was that certain of the measures didn't appear would
20 actually be effective in protecting the species.

21 And if something isn't effective in protecting
22 the species and have an environmental impact, it's just
23 not meeting the -- you know, the needs of the ESA or
24 NEPA or the Court's order. And I think everyone would
25 agree that's not the type of thing that should be

1 focused on here, if at all possible. What should be
2 focused on is what is sufficiently protective of the
3 species and allows for sufficient amounts of water
4 supplies be available to the people who use Delta water.

5 For this reason, we have some potential
6 alternatives that we will be suggesting throughout this
7 process. Right now they're at somewhat of a
8 developmental phase. The possibilities are, you know,
9 there would be OMR restrictions --

10 THE REPORTER: I'm sorry?

11 MELISSA CUSHMAN: OMR, old and middle river
12 flow restrictions, that were part of the previous RPAs.
13 And one of the suggestions will probably be to look at
14 intermediary flow restrictions. So either to have
15 extremes and then some in the middle, to see what the
16 benefit of the species is to various flow regimes to be
17 able to compare the water costs and the benefits to see,
18 you know, where that gets us.

19 Another possibility would be turbidity-linked
20 measures. I know some of the evidence that was put
21 forth in the trial court was that turbidity has a large
22 effect on certain of the species, particularly the Delta
23 smelt, and whether an alternative that is more geared
24 towards turbidity rather than flow regimes might be
25 equally protective or more protective, but have lower

1 water costs because it would be more responsive to the,
2 you know, exact situation of what's going on and what
3 has the most effect on the species, particularly the
4 Delta smelt in this case. That's something that we
5 think, you know, is a good possibility to be explored.

6 The head of old river barrier as far as the
7 salmon go, is another possibility that, you know, we
8 think at least should be looked at, obviously all these
9 things kind of have to be looked at together and various
10 options considered. But we do have a lot more specifics
11 and other possibilities as well, but I didn't have the
12 ability to get them kind of to the point where they can
13 be shared, other than generalities tonight. But there
14 will be some in our letter, we promise.

15 There's also mitigation measures. There's
16 various alternatives that can be looked at, but, you
17 know, obviously mitigation can be put on top of certain
18 alternatives. So even if a measure by itself wouldn't
19 be quite sufficient to protect the species, it's
20 possible that mitigation measures, in addition to that,
21 would be.

22 And a lot of the mitigation measures will
23 probably have nothing to do with flow regimes or the
24 operation of the projects themselves, but have the
25 possibility of incorporating almost unrelated actions

1 that could actually benefit the fish more than a
2 particular flow regime could. Potentially. Such as
3 controlling predators, controlling invasive food source.
4 I'm sorry, competitors and predators. Reducing toxic
5 chemical concentrations, restoring wetlands; that, of
6 course, was part of the previous BiOp. Also, regulating
7 smaller water diversions.

8 Measures like that may be able to be imposed
9 that can have a less significant impact on water
10 supplies, but hopefully be very beneficial. And we're
11 hoping that's something to be looked at as part of this
12 process.

13 And analyzing various types of alternatives, as
14 well as these mitigation measures, may be able to show
15 that particular measures will have a big benefit to the
16 species or maybe a little benefit to the species or
17 maybe no benefit at all. So we think it's very
18 important that a comparison of efficacy and the impacts
19 can be done of some of the different alternatives. And
20 in that way, we can come to kind of a preferred
21 alternative that really is the best for everyone.

22 Another important consideration in the NEPA
23 process is the big concern of our clients is the fact
24 that implementing, especially the flow-control measures,
25 the X2 action, which is part of the previous BiOp as

1 well -- one BiOp as well, and some of the other actions
2 in the RPAs, won't just reduce the available water
3 supply.

4 It's not like the environmental impact ends
5 there. Evidence was put forth in the trial court and
6 the judge issued findings that water supply restrictions
7 have a domino effect. Basically, they end up causing a
8 lot of other types of environmental impacts, some of
9 which lead to other environmental impacts. And these
10 include things like increasing demand on local water
11 supplies, especially groundwater, particularly in the
12 Central Valley, which is already in severe overdraft.
13 And severe overdraft leads to subsidence and other
14 environmental, you know, disasters sometimes.

15 Water quality impacts can happen because the
16 Delta water is, as you know, very high-quality and it's
17 used for blending with a lot of the local resources and
18 other surface water resources, including even Colorado
19 River water and other ones like that. And this blending
20 makes it able to be high enough quality that it can be
21 used for a much wider number of beneficial uses. And
22 once the high-quality water is cut back, suddenly
23 there's a problem where you have -- you can't do
24 groundwater recharge in certain areas because the water
25 isn't high enough quality to be able to meet the

1 requirements of some of the regional water quality
2 boards.

3 There also may be to be a limited ability to
4 respond to emergencies, especially wildfires in certain
5 circumstances. Agricultural land being taken out of
6 production, I think that was the one that the Court
7 ended up focusing on. There's fallowing, loss of
8 topsoil, due to erosion, air quality impacts that can
9 result from fallowing. There's also environmental
10 justice and socioeconomic impacts, also had a lot of
11 testimony in the court about those.

12 Basically the farmers took a huge economic hit
13 when they don't have enough water to make crops -- to
14 plant crops. There's a loss of other farm-related jobs.
15 And this is affecting oftentimes some of the forest
16 areas of the state that sometimes have a significant
17 minority concentration.

18 Also, water supplies reductions result in
19 visual impacts, both urban decay resulting from economic
20 problems, as well as just how unattractive fallowed land
21 and dead crops are. So these are just kind of an
22 example of the different things that we have concerns
23 about. The environmental impacts that aren't just in
24 the Delta. Obviously, we know the EIS will be looking
25 at the exact impacts in the Delta, what will the impact

1 there be? But the outside of Delta water users also
2 have a huge, huge impact to them, both direct and
3 indirect environmental impacts from changing the amount
4 of water that's available in particular types of years.

5 So that was a lot of just general concepts and
6 concerns that the State Contractors have. And we
7 realize that wasn't really detailed to do very much at
8 this point, but hopefully the letter will be somewhat
9 more helpful in that regard and have a lot more
10 specifics, particularly as to alternatives and
11 mitigation measures. Also, some more specifics about
12 the areas where the water is being delivered outside of
13 the Delta. Because our -- you know, the member agencies
14 of our client are in those locations, they're very
15 familiar with some of these environmental impacts and
16 are very willing to help you guys, you know, tell you
17 what the impacts will be, help measure them and various
18 things like that. You know, be part of this process and
19 let you know what some of those are.

20 So we'll be submitting a comment letter, prior
21 to May 29th, with a lot more specifics and we do look
22 forward to working with you guys as part of this
23 process. Thank you so much for letting us come here and
24 participate in this tonight.

25 SUE FRY: Did you want to make any more

1 comments?

2 STEVEN MARTIN: Oh, no.

3 SUE FRY: Okay.

4 MELISSA CUSHMAN: I do have a couple of
5 questions though.

6 One is, have you identified a baseline?

7 SUE FRY: Well, we have not, actually.

8 MELISSA CUSHMAN: We have suggestions, of
9 course, that will be in our letter as well. That's a
10 little more detailed than one can be in three minutes.

11 SUE FRY: And, again, as I said earlier, we're
12 beginning, we don't have -- we haven't made prejudgments
13 about how things are going to turn out. We're just
14 doing the scoping so we can get off on the right foot.
15 So we would appreciate anything in your letter.

16 MELISSA CUSHMAN: Oh, the letter will be long,
17 don't worry.

18 SUE FRY: As you're talking, I'm like, This is
19 going to be like a hundred-page letter.

20 MELISSA CUSHMAN: Not quite that long, on the
21 first one anyway.

22 SUE FRY: Any other questions?

23 MELISSA CUSHMAN: The replacement for OCAP, you
24 said was Long-Term Opes?

25 SUE FRY: Yes, Long-Term Ops. OCAP is -- I

1 will get a little on my soapbox. Because OCAP is
2 Operational Criteria and Plan -- Operations Criteria and
3 Plan. And what OCAP actually is is a document that is
4 put together in a -- maybe every five, ten years, that
5 talks about the actual operational criteria. So it
6 would be like the State Board requirements, navigation
7 requirements in the river, things like that that are
8 very specific. And there are water rights issues and
9 contracting requirements that are actually documented in
10 a report. And so the last OCAP I think was in -- in '4
11 or '8? It was '04, wasn't it? The last OCAP was
12 actually done in 2004.

13 MELISSA CUSHMAN: I have it sitting in my
14 office.

15 SUE FRY: You do?

16 So the biological opinions and this EIS are not
17 on that 2004 document, they're on the actual annual
18 Long-Term coordinated operation of the State Water
19 Project and Central Valley Project. So your earlier
20 comment was about that coordinated thing. We get that,
21 we can't separate the two, that's why we are here,
22 because we need to be in your service area too and get
23 your comments because it is coordinated. And the EIS is
24 going to look at the whole enchilada, so to speak.

25 Well, if you guys don't have any other

1 questions, I guess we're done.

2 MELISSA CUSHMAN: What's the next step after
3 scoping?

4 SUE FRY: We do the scoping report. We
5 consolidate all the comments that we get and we're going
6 do a lot of reading and try to figure out, Okay. What
7 do we do now? And we'll start developing the --

8 PATTI IDOLF: Purpose and need.

9 SUE FRY: -- purpose and need.

10 THE REPORTER: I'm sorry?

11 PATTI IDOLF: Purpose and need.

12 SUE FRY: And --

13 JANIS PINERO: Baseline alternatives.

14 SUE FRY: And screening criteria. All the
15 typical things that you would do in the NEPA process.
16 And we'll be engaging with NMFS and Fish and Wildlife
17 Services in that process to in turn make sure that we're
18 all working in lockstep so that we have a really great
19 preferred alternative when we have a draft document.

20 So you may typically know you do scoping and a
21 lot of times you don't see the agency again until out
22 here at the draft when you do another public meeting.
23 We are considering, because there's so much information
24 and so much that could be confusing to people with all
25 the BBCP work that's going on and every other project

1 that's happening that we are thinking we'll do some
2 workshops intermediary between scoping and the draft
3 release. That we do some workshops in here to let you
4 know what we're doing say with alternatives or as we
5 develop screening criteria. We haven't figured this all
6 out yet, but there are going to be times where I think
7 we need to come back and inform people as to where we
8 are in this process and the decisions that we will be
9 making.

10 MELISSA CUSHMAN: Where would the workshops
11 likely be held? In Sacramento?

12 PATTI IDOLF: We'll come back to this area.

13 SUE FRY: It's important that we're in all of
14 the Central Valley Project and State Water Project
15 service areas. And that's why we're here. We will make
16 sure we get to you.

17 MS. BUCHHOLZ: Can I ask how you heard about
18 tonight's meeting?

19 MELISSA CUSHMAN: Federal Register.

20 STEVEN MARTIN: Federal Register.

21 MS. BUCHHOLZ: And we might be asking that of
22 all the questioners, because we're trying many different
23 ways to notify. The Register certainly is our standard
24 and, obviously, required, legal way. But we wonder if
25 people actually do see these little advertisements. We

1 took actual real advertisements, not just legal notices
2 in the paper. And we're not finding people are looking
3 for them.

4 STEVEN MARTIN: That might have alerted the
5 media.

6 PATTI IDLOF: Well, we have a press release to
7 the media.

8 SUE FRY: Was there an article?

9 STEVEN MARTIN: I can't remember.

10 SUE FRY: We do have -- our public affairs
11 office has a list of all the media outlets --

12 STEVEN MARTIN: There it was something in
13 addition to the Register. Maybe it was the press
14 release.

15 SUE FRY: It was probably the press release.
16 Because we have a list of media outlets that the press
17 release goes to and then we have another list of
18 individuals and groups, entities that get our press
19 releases too. And I actually looked at that list last
20 night and I believe there was some Best, Best & Krieger
21 folks on that.

22 MELISSA CUSHMAN: That may be what alerted
23 people to look at the Federal Register.

24 SUE FRY: Because we sent out at the same time
25 as the Register.

1 LOUIS MOORE: There were over 300 on those.

2 JANICE PINERO: Did you guys see the
3 announcement in the L.A. Times? No? Because that's
4 very expensive and we're wondering if we should --

5 DELAINE SHANE: That's very expensive.

6 MS. BUCHHOLZ: Well, at least you saw it in the
7 Federal Register.

8 SUE FRY: Yes, that's great.

9 Well, we appreciate you guys coming tonight.
10 Thank you very much.

11 (Proceedings concluded at 8:00 p.m.)

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CERTIFICATION

OF

CERTIFIED SHORTHAND REPORTER

I, STEPHANIE WILLIAMS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further declare that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

In witness whereof, I have this date subscribed my name _____.

Dated: May 6, 2012

Certificate Number 13482