

WILDLIFE CONSERVATION BOARD
STATE OF CALIFORNIA
MINUTES, MEETING OF FEBRUARY 27, 1951

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Pursuant to the call of the Chairman, the Wildlife Conservation Board met in Room 115 of the State Building, Los Angeles, on February 27, 1951. The meeting was called to order by Chairman Payne at 10:15 A.M.

PRESENT: Lee F. Payne	Chairman
James S. Dean	Member
E. L. Macaulay	Member
Senator George J. Hatfield	Joint Interim Committee
Senator Charles Brown	" " "
Assemblyman Thomas M. Erwin	" " "
Assemblyman Lloyd W. Lowrey	" " "
Assemblyman Lester T. Davis	" " "
Seth Gordon	Consultant
C. R. Knight, Jr.	Field Agent

ABSENT: Senator Ben Hulse Joint Interim Committee

The following persons were present and participated in the deliberations as required:

E. A. Aronstein	Department of Natural Resources
R. E. Curtis	Bureau of Game Conservation
L. H. Cloyd	" " " "
George W. Robinson	Merced-Mariposa Cattlemen's Assn.
B. A. Wilson	Los Banos
Michael Dambrosio	Los Banos Chamber of Commerce
George D. Difani	Associated Sportsmen of California
J. E. Farnsworth	Plumas County Conservation League
Joseph Wallace	Southern Council of Conservation Clubs

1. Change of Chairman

It was regularly moved and seconded that, in accordance with the policy heretofore established by the Board, the election of Hon. Lee F. Payne (who became President of the Fish and Game Commission at its second January meeting) as Chairman of the Board, effective as of January 26, 1951, be confirmed and recorded on the official minutes.

2. Approval of Minutes of October 14, 1950, as Amended

The consultant called attention to the action of the Board on December 15, 1950, amending the minutes of the above date relative to the access bridge for the Delta (Grizzly Island) Waterfowl Management Area, Project No. 550, to make available immediately to the Fish and Game Commission the sum of \$6,000, from the \$67,500 allocated for this bridge, for preparation of engineering plans and cost estimates.

It was moved by Mr. Dean, seconded by Mr. Macaulay, that the reading of the minutes of the Wildlife Conservation Board meeting of October 14, 1950, be dispensed with and said minutes approved as amended December 15, 1950. Passed unanimously.

3. Approval of Minutes of January 25, 1951 Meeting

In response to Assemblyman Lowrey's question, it was explained that the above meeting was called spontaneously, following a conference on other matters attended by the members of the Board and the Senate members of the Joint Interim Committee.

The only business transacted at this meeting was the allocation of an additional \$15,000 to Project No. 37, Fish Springs Rearing Ponds, to permit the immediate purchase of necessary equipment without disturbing the previous total allocation of \$400,000 for construction work until after the contracts have been let. Bids are now being invited for the construction work.

It was moved by Mr. Dean, seconded by Mr. Macaulay, that the reading of the minutes of the Wildlife Conservation Board meeting of January 25, 1951, be dispensed with; that the action taken at said meeting is hereby confirmed and ratified; and that said minutes be approved as written. Passed unanimously.

4. Status of Funds as of January 25, 1951

The Board was informed that the amount allocated to specific projects up to the close of the meeting of January 25, 1951 aggregated \$8,607,066, made up as follows:

a. Fish Hatchery and Stocking Projects (18)	\$2,848,900
b. Warmwater and Other Fish Projects (6).	164,500
c. Flow Maintenance and Stream Improvement Projects (14).	450,000
d. Screen and Ladder Projects (14).	352,140
e. State Game Farm Projects (4)	106,000
f. Other Upland Game Projects (4).	443,150
g. Waterfowl Management Projects (9).	4,177,376
h. General Projects (4)	65,000

Total (73 projects) \$8,607,066

In addition to the specific allocations above, the following reserves have been established: Bixby Slough Public Fishing Area - \$100,000; Mendocino National Forest Stream Improvement and Flow Maintenance Program - \$20,000; and Colorado River Recreational Development and Operating Funds combined - \$171,641*.

*According to information furnished at the meeting by Mr. E. A. Aronstein, Departmental Accounting Officer, the Board's operating expenses for the 3-year period 47/48 F.Y. to 49/50 F.Y. were \$101,293, or \$11,043 higher than previously estimated. The reserve for Colorado River Development and Operating Funds was accordingly reduced from \$182,684 to \$171,641. Operating funds budgeted for the 50/51 F.Y. total \$48,470.

The consultant stated that there are various balances available from completed projects; also, sums allocated which for various reasons can not be used as originally planned. Due to the lapse of time necessary before the total amount of unused balances can be accurately determined, specific information concerning these sums must be submitted at a later meeting.

He told the Board that estimates from the Division of Architecture on various hatchery projects will all apparently be much in excess of the funds appropriated. This is due in part to an enormous increase in construction costs since the original estimates were made in 1947; also to the fact that the Division of Architecture requires an ample margin of safety above its estimates before attempting to let contracts.

The Fish Springs Rearing Ponds project was cited as a typical example. Originally, \$135,000 was set up for this project; this amount has since been increased to a present total allocation of \$415,000. Another example mentioned was Darrah Springs. The amount presently available for that project is \$351,000; the Division of Architecture has submitted a preliminary estimate of \$798,630. In other words, an additional appropriation of \$447,630 will be required to install a complete plant at that point to utilize the entire available water supply.

Mr. Gordon suggested that the \$30,000 set up for the Glenn-Colusa ponds could be utilized for Darrah Springs, since that plant will provide the trout for the Stony Creek area; also that various other sums can be recovered and used at Darrah, but the aggregate would still be far short of the amount estimated by the Division of Architecture.

It was suggested that the Fish and Game Commission might request Architecture to let contracts for the basic installations at Darrah Springs, and that the Board could at a later date determine how best to finance the balance.

The consultant reported that estimates have not yet been received from the Division of Architecture for the San Joaquin Hatchery (\$260,000 allocated) and the Moccasin Creek Hatchery (\$250,000 allocated), but on the basis of the experience with the Fish Springs and Darrah Springs projects it is anticipated that considerably larger sums will be necessary before these two important projects can be undertaken.

While the sum of \$100,000 set up for the Tule River Hatchery will be available for transfer to the San Joaquin Hatchery, it is feared that the Division of Architecture estimates will be much higher than the \$360,000 that could thus be made available.

Mr. Gordon stated that it is now quite clear that unless the Legislature provides more money for the Board's use much shifting of funds will become imperative if essential primary installations are to be completed, even though sizable unused balances on completed projects may later be recovered.

5. Transfer of Funds to Darrah Springs Hatchery from Upper San Joaquin Waterfowl Management Area \$447,630 (a)

The consultant informed the Board that interested individuals have suggested that, since completion of the Upper San Joaquin (Tupman) Waterfowl Management Area, in Kern County, seems to be some time in the

future, sufficient funds to complete Darrah Springs Hatchery might be temporarily borrowed from that project. Mr. Gordon stated he hesitated to make such a recommendation, since it would disturb those who are deeply interested in the Upper San Joaquin project.

Mr. Macaulay read a newspaper clipping, enclosed with a letter from Senator Sutton, reporting that construction of Darrah Springs was threatened by lack of funds. He informed the Board that Senator Sutton requested final action on this project be delayed until a hearing could be held in Sacramento, since the Senator felt the Board had commitments with the Sacramento Valley sportsmen to complete this hatchery.

General discussion was had with regard to high construction costs and the possible effect of construction restrictions on conservation projects.

Mr. Dean stated Federal agencies have placed no restrictions on conservation and public construction. The State is hindered only by restrictions on materials and reluctance of contractors to bid on jobs because of possible shortages of materials and labor. He reported recent advice from Washington, D.C., suggested the State hold all projects possible in abeyance for 6 months, in the belief that the troubled world situation would either settle down to war or improve during that period. Mr. Dean observed that, high as the present estimates seem, there is no guarantee that construction costs will not rise considerably higher.

Mr. Payne expressed the opinion that believing the world situation would be settled in 6 months was wishful thinking. He stated that if construction of Darrah Springs was delayed another 6 months the cost might rise to \$1,000,000. He added that a hatchery has been deemed necessary in that part of the Sacramento Valley for the past 12 years; that it would have been built in 1942, if the war had not interfered.

In response to questions from Mr. Payne and Senator Hatfield, Mr. Curtis stated that the estimated cost of pumping water for the Upper San Joaquin Waterfowl Area was \$20,000 per year. Mr. Payne expressed the belief that this was a marginal project, and Senator Hatfield concurred. The Senator said he believed \$20,000 would be the minimum figure. He expressed the belief that, without ruling out the Upper San Joaquin project on an ultimate basis, the Board should make some of that allocation available for Darrah Springs, since everybody wants that hatchery constructed. He asked the consultant for his opinion.

The consultant stated he did not believe the construction of Darrah Springs should be delayed; that there was no other way to obtain the necessary funds except through an additional appropriation from the Legislature.

Mr. Dean suggested that if the Board received an additional appropriation it could be used to replace the amount borrowed from the Tupman project.

Mr. Payne stated he was willing to have the \$100,000 reserved for Bixby Slough transferred to Darrah Springs. Assemblyman Lowrey said he would be happy to see the Gray Lodge (Lower Butte Creek Waterfowl Area) allocation used for trout instead; that he didn't want people from the south to feel the Board was taking funds away from them for a project in the north.

Mr. Dean stated it was not a matter of geography; that the Board wanted to do what was best for the state as a whole with the available funds.

It was moved by Assemblyman Davis, seconded by Senator Hatfield, that, since Darrah Springs Hatchery is such an important project and the Upper San Joaquin (Tupman) Waterfowl Management Area project is somewhat doubtful, the Joint Interim Committee recommend to the Board that \$447,630 of the unexpended balance of the \$533,190 previously allocated to the Fish and Game Commission by the Board on June 3, 1949 for the Upper San Joaquin Waterfowl Management Area, Project No. 551, be transferred to the Darrah Springs Hatchery, Project No. 23, with the understanding that such action does not cancel the Upper San Joaquin project.

AYES: Senators Hatfield and Brown; Assemblymen Erwin, Lowrey, and Davis

NOES: None

Passed unanimously.

Thereupon, by motion regularly made, seconded and unanimously adopted by the members of the Board, it was agreed that \$447,630 of the unexpended balance of the \$533,190 allocated to the Fish and Game Commission from the Wildlife Restoration Fund on June 3, 1949 for the Upper San Joaquin Waterfowl Management Area, Project No. 551, be transferred to the Darrah Springs Hatchery, Project No. 23, increasing the total amount allocated for said hatchery to \$798,630, with the understanding that such action does not cancel or in any way prejudice the Upper San Joaquin project.

Since estimates on the San Joaquin and Moccasin Creek Hatcheries were not yet available, the consultant suggested that action on transferring money from the Tule River Hatchery be deferred to a future meeting, and that the question of Bixby Slough could be taken up at the same time. He pointed out that the Fish and Game Commission at its next meeting should concur in the transfer of funds from Upper San Joaquin.

6. Report on CALIFORNIA'S FISH AND GAME PROGRAM

The Board was informed that just before the legislative printing load landed in the printery the State Senate had another 10,000 copies of the above report run off for distribution.

7. Background Report on the Lower Colorado River

The consultant stated that, under date of December 20, 1950, a report covering the progress of the Colorado River Study was transmitted to all the members of the Board and the Committee. He informed the Board that this report has been highly commended in many quarters, and the demand for copies has been heavy. Many persons have suggested that a limited number of copies be printed, perhaps 2,500.

Assemblyman Erwin stated that the Assembly Interim Committee on Fish and Game would be glad to have the report printed as a part of its report.

Chairman Payne said the Board was pleased to accept this offer, and thanked Mr. Erwin in behalf of the Board.

8. Colorado River Recreational Development

The consultant pointed out that in the transmittal letter accompanying the Background Report on the Lower Colorado River it had been suggested that the balances being held for operating expenses and the Colorado River project could safely be released, rather than to keep them frozen until a complete program is developed for the Colorado, some time in 1952.

To simplify record keeping, it was recommended that the Board unfreeze all of the balance being held pending a decision on the Colorado River program, except \$15,000 which might be held in reserve for possible need in connection with the completion of engineering surveys, etc., incident to the study now underway.

In response to a question from Mr. Payne, it was developed that the present balance for the Colorado River and operating funds is \$171,641.

Mr. Dean stated he had received a letter from Senator Hulse protesting the unfreezing of the balance set up for the Colorado River.

Assemblyman Erwin informed the Board that he and other assemblymen from the southern part of the state were also opposed to unfreezing this reserve. He reported that Senator Hulse and Assemblyman Butters have introduced bills to set up recreational areas along the Colorado River.

It was informally agreed to defer action on this matter to the next meeting when Senator Hulse could be present.

9. Report on Expenditures Prior to Cancellation of Owens Valley Pheasant and Quail Development Areas, Project No. 521

The consultant informed the Board that an itemized list of expenditures, totaling \$4,993.02, for supplies and equipment for this project prior to its cancellation had been prepared. He stated that purchases from Board funds consisted mainly of lumber, fencing, small tools and miscellaneous other small items, all of which could be used in connection with the development of the guzzler or drinking fountain program. Larger equipment items, such as tractors, had been purchased with Federal-Aid funds.

Because recovering the amount expended for this material and equipment would be difficult, involving a series of checks back and forth, the consultant suggested that the Fish and Game Commission be authorized to use these items for the guzzler program throughout southern California.

10. Commission Authorized to Use Elsewhere Material and Equipment Purchased for Canceled Owens Valley Project

It was moved by Assemblyman Lowrey, seconded by Assemblyman Davis, that the Joint Interim Committee recommend to the Board that the Fish and Game Commission be authorized to use, in the best way possible, material and equipment originally purchased for the Owens Valley Pheasant and Quail Development Areas, Project No. 521, which project was canceled by the Board's

action of July 12, 1950 and the unexpended balance of the allocation returned to the Wildlife Restoration Fund.

AYES: Senators Hatfield and Brown; Assemblymen Erwin, Lowrey, and Davis

NOES: None

Passed unanimously.

Thereupon, by motion regularly made, seconded and unanimously adopted by the members of the Board, it was agreed that the Fish and Game Commission be hereby authorized to use in the best way possible material and equipment, amounting to a total value of \$4,993, originally purchased for the Owens Valley Pheasant and Quail Development Areas, Project No. 521, which project was canceled by the Board's action of July 12, 1950 and the unexpended balance of the allocation therefor returned to the Wildlife Restoration Fund, in connection with the guzzler program and other game habitat improvements throughout southern California.

11. Lower San Joaquin Waterfowl Management Area, Project No. 506

The consultant reported that the members of the Board and Committee have been kept fully informed concerning the public discussions which developed in connection with the above project, including copies of a few resolutions objecting thereto and a large number approving it.

He stated that the Public Works Board, under date of January 15, 1951, adopted a formal resolution to proceed with the complete appraisals and purchase of the property, in accordance with the letter which Mr. Vincent transmitted to all members of the Board and the Committee on January 16, 1951.

It was requested that proper notation be spread upon the minutes, and the Chairman so ordered.

Mr. Lowrey requested clarification of the policy of the Board with regard to his understanding that the Board adopted a policy by formal motion that land would not be acquired by condemnation.

The consultant expressed the belief that there was no formal action to that effect, but an informal agreement had been made that actual condemnation would be resorted to only in the case of small interior parcels or where necessary to straighten up boundaries to assure a good operating unit.*

Senator Hatfield and Assemblyman Erwin agreed with the consultant. Assemblyman Erwin further stated the Board had agreed that wherever possible equitable settlements would be worked out.

Mr. Dean observed the only question is whether the Board had exhausted the possibility of other satisfactory areas in this region.

* A later examination of the minutes of the Board from the beginning failed to divulge any record of action contrary to the above paragraph.

Mr. Gordon replied that a great deal of time had been spent in that region to find all the alternates possible, and that the present area seemed to be the best available. The owner offered his land to the Board and it was accepted.

Mr. Dean replied that he understood that, but now the owner is violently opposed.

Assemblyman Lowrey pointed out that when the Wildlife Conservation Act was being considered in the Assembly he agreed to vote for the bill provided an amendment was included to the effect that the right of eminent domain would not be permitted. He stated the amendment was accepted.

Senator Hatfield replied it was true that the Assembly amended the Senate bill to the effect that the power of eminent domain could not be used by the Fish and Game Commission. The bill then went to free conference committee where it was agreed that any acquisition of real property should be done by the Public Works Board. The right of eminent domain was denied to the Commission, but given to the Public Works Board. The bill, in that form, was approved by both houses and the Governor.

Assemblyman Lowrey stated that if the Wildlife Board presents a project to the Public Works Board that body feels obligated to proceed regardless.

Mr. Dean replied that the Public Works Board acts simply as a purchasing agent in these cases, and does not feel it should exercise any initiative. That agency's machinery calls for eminent domain and it cannot be avoided, although amicable settlements are usually made.

Mr. Lowrey stated apparently there is no way for the seller to know the price until the appraisal is made, and then if the appraised price does not meet with his satisfaction he does not have a chance to withdraw his land from sale -- it is condemned. Mr. Lowrey said this is not a fair, democratic way to proceed. He added that the seller, a constituent in his district, withdrew his offer of willing sale subsequent to the time the Board voted on the Lower San Joaquin project. He enlisted Mr. Lowrey's aid, and they spent an entire day trying to find the proper department to contact to declare he no longer had a willing sale.

Mr. Payne stated it would be necessary to follow the same procedure to overturn a project as to accept it; i.e., (1) that the advisory committee recommend the action to the Board; (2) that the Board formally authorize it; and (3) that the Commission accept it.

Mr. Lowrey moved that no acquisition be made in which there is not a willing sale. Said motion lost for want of a second.

Assemblyman Davis asked Mr. Dean if any of the property owners involved have suffered financial loss because of eminent domain proceedings.

Mr. Dean replied that they sometimes feel the appraisals are lower than their own estimates of value. He explained that under the present tax laws any property purchase puts the seller's money in jeopardy. He is taxed on the profits he makes in the sale and, as he cannot condemn, must find within a 2-year period a willing sale of a comparable property. Mr. Dean declared this question arises every time the State buys property for public purposes.

Mr. Lowrey asked who would pay the costs in case of court action. Mr. Dean replied that the State, in this case the Wildlife Board, would pay the costs with money allocated for the project, but not the seller's attorney or appraiser. If it isn't settled by amicable judication, the State pays whatever the court decides.

Assemblyman Lowrey then expressed the belief that some of the Board's funds might be tied up in litigation instead of on fish and game. Mr. Dean said that hazard is involved in every property purchase, but that about 95% of the Public Works Board's cases are settled by stipulation rather than decree.

12. Lower Butte Creek Waterfowl Management Area (Gray Lodge Expansion)

The Board was informed that following completion of preliminary appraisals it was determined that sufficient money is now available to purchase the lands needed to develop a proper management unit to be operated in conjunction with the present Gray Lodge Refuge. The Board's action of July 12, 1950 increased the appropriation to \$610,661, so that the lands offered, plus some small interior holdings needed to fill out the project, might be purchased. The consultant reported it was understood that the Public Works Board is proceeding to complete this acquisition promptly.

Mr. Dean expressed the opinion that there would be little difference between the appraised price and the asking price of the sellers. He added that, while the majority of the landowners involved are willing to sell if they get a price they consider fair, it is probable that a couple of duck clubs may have to be condemned because they do not want to sell.

13. Allocation for Delta (Grizzly Island) Waterfowl Project Levee
Repairs - Project No. 550, Solano County \$25,000 (g)

The consultant stated that, pursuant to the request of the Fish and Game Commission, it was recommended that the sum of \$25,000 be made available to the Commission to raise the height of levees along Montezuma Slough to a safe level. The additional investment is essential in order to protect the property.

The Bureau of Game Conservation reported that a total of approximately 3 miles of levee needs to be raised to bring it up to a safety maximum of 12 feet above mean low lowest water. Mr. Cloyd submitted a report containing photographs of low spots along the levee which clearly depicted the serious situation.

It was moved by Assemblyman Erwin, seconded by Assemblyman Davis, that the Joint Interim Committee recommend to the Board that an additional \$25,000 be allocated to the Fish and Game Commission for levee repairs on the Delta Waterfowl Management Area, Project No. 550, out of the unexpended balance of the \$533,190 allocated to the Upper San Joaquin Waterfowl Management Area, Project No. 551, on June 3, 1949, with the understanding that such action does not cancel the Upper San Joaquin project.

AYES: Senator Brown; Assemblymen Erwin, Lowrey, and Davis

NOES: None

Passed unanimously.

(Senator Hatfield was out of the room
when the above action was taken.)

Thereupon, by motion regularly made, seconded and unani-
mously adopted by the members of the Board, it was agreed
that, pursuant to the request of the Fish and Game Com-
mission, \$25,000 be allocated to the Fish and Game Com-
mission for levee repairs on the Delta Waterfowl Management
Area, Project No. 550, by transferring said sum from the
unexpended balance of the \$533,190 allocated to the Upper
San Joaquin Waterfowl Management Area, Project No. 551,
on June 3, 1949, with the understanding that such action
does not cancel or in any way prejudice the Upper San
Joaquin project; and that the Fish and Game Commission is
hereby authorized to proceed with the purchase of neces-
sary equipment, materials, and required construction work.

14. Increase in Allocation for Mendocino National Forest Flow
Maintenance and Stream Improvement Program - Project No. 12,
Colusa and Glenn Counties \$5,000 (c)

The consultant drew the Board's attention to a request from the
Fish and Game Commission, received after the agenda was prepared,
that an additional \$5,000 be provided for this project so that
the Commission could complete a contract with the University of
California for the required experimental work, amounting to
\$9,000, and also purchase necessary small items of equipment
amounting to about \$1,000.

He stated that the Board on May 18, 1950 allocated \$5,000 to this
project and reserved \$20,000 additional (subject to specific
approval by the Board at a later date) for use if the experimental
plantings, at the end of the first growing season, proved successful.

Mr. Gordon suggested that an additional \$5,000 of the \$20,000 held
in reserve for this project be made available to the Commission.

It was moved by Assemblyman Lowrey, seconded by Assembly-
man Davis, that the Joint Interim Committee recommend to
the Board that an additional \$5,000 be allocated to the
Fish and Game Commission from the Wildlife Restoration
Fund for experimental work on the Mendocino National
Forest Stream Improvement and Flow Maintenance Program,
Project No. 12, out of the \$20,000 reserved for this
project under date of May 18, 1950, to permit immediate
purchase of necessary small items of equipment and com-
pletion of a contract with the University of California
for the work.

AYES: Senator Brown; Assemblymen Erwin, Lowrey,
and Davis

NOES: None

Passed unanimously.

(Senator Hatfield was out of the room
when the above action was taken.)

Thereupon, by motion regularly made, seconded and unanimously adopted by the members of the Board, it was agreed that an additional \$5,000 be allocated to the Fish and Game Commission from the Wildlife Restoration Fund for experimental work on the Mendocino National Forest Stream Improvement and Flow Maintenance Program, Project No. 12, out of the \$20,000 reserved for this project under date of May 18, 1950 (increasing the total amount allocated for this project to \$10,000, and reducing the reserve to \$15,000), to permit immediate purchase of necessary small items of equipment and completion of a contract with the University of California for the work.

15. Preliminary Report on Buena Vista Lagoon Waterfowl Refuge - Project No. 510, San Diego County, between Oceanside and Carlsbad

In accordance with the request of Assemblyman Erwin at the meeting of October 14, 1950, the members of the Board and the Joint Interim Committee were furnished typewritten copies of a report on the above project prepared by Mr. Curtis. Mr. Gordon advised that, due to the status of funds, no specific recommendation could be made at the present time.

In connection with the above, he called attention to the fact that there are several additional secondary waterfowl projects (or fish and waterfowl combined) which should be submitted to the Board for consideration at a later date, provided additional funds become available. Among them are: Restoration of Biscar Reservoir, Lassen County, owned by the Division of Fish and Game; an area on the Pit River, near Alturas, Modoc County; Lake Earl, Del Norte County; Big Lagoon, Humboldt County; and several others of like nature.

Mr. Curtis in his report informed the Board that the proposed Buena Vista Waterfowl Refuge had not been formally presented for consideration since it meets only one of the three objectives established for waterfowl projects and is definitely a third priority project. While it is undoubtedly a very important resting and watering place for waterfowl and other migrants along the coastline, and is certainly worth perpetuating, it would not directly benefit the hunter or control crop depredation. He concluded that, if the Board is provided with funds sufficient to permit investment in projects rated as second and third priority, this lagoon will merit consideration both as a means of conserving waterfowl and as a source of recreation and enjoyment for the general public. The cost of the project was estimated to be \$20,020.

In reply to Assemblyman Erwin's question, Mr. Curtis stated that he had contacted Mr. Robert Overell, of the Buena Vista Lagoon Protective Association, who stated that while the Association might be willing to donate the 87 acres it owned it would be better to place a minimum price of \$10 per acre on it. Another person contacted, a real estate man who is one of the principal landowners, estimated the value of the remaining lands required for the proposed project.

Mr. Gordon informed the Board that Assemblymen Niehouse and Erwin had introduced a bill (AB 1665) providing an appropriation for the acquisition of this lagoon by the State Division of Beaches and Parks.

It was informally agreed, therefore, that further consideration of the Buena Vista Lagoon project be deferred pending disposition of AB 1665.

16. Change of Name from Whittier to San Gabriel Hatchery - Project No. 40

At the request of the Fish and Game Commission formal record is hereby made that the Whittier Hatchery will in the future be known as the San Gabriel Hatchery, in keeping with the Commission's policy of using geographical rather than community identifications.

17. Status of Coachella Valley Public Fishing Areas - Project No. 74

The Board was also informed for the record that by an overwhelming vote of the people a local Recreation District was established to assume the house-keeping responsibilities incident to the warmwater fishing areas to be developed under this project. The consultant advised that the necessary steps to proceed with the work are being followed up by the Division of Fish and Game.

He recalled to mind the Board's action of July 12, 1950, directing that this project be canceled unless the local people took adequate steps to assure proper operation of the project upon its completion.

18. Coastal Angling Access Report

Mimeographed copies of the above report were presented to the members of the Board and the Joint Interim Committee. Mr. Gordon stated the proposed Coastal Angling Access Program, Project No. 1011, as set forth in the report prepared by Mr. Knight, involves 121 public access points along the coast, from the Mexican Border to the Oregon Stateline. The preliminary estimated cost is around \$400,000. Due to their scattered nature, the expenses incident to acquisition will of necessity be rather high for the limited acreages involved.

The consultant pointed out that this program is not designed to interfere in any way with the development of additional public beaches and parks by the several counties and the State. Instead it is intended to supplement that program, and particularly to provide 121 badly needed public access points along the coast, primarily for fishing and other permissible recreational uses.

Mr. Gordon acknowledged that action on the proposed program must be deferred pending the appropriation of additional funds for the Board's use. However, it was suggested that in the meantime the Fish and Game Commission could study the plan and advise the Board whether it would be willing to undertake, in cooperation with counties and other agencies, the management of such a program, provided the Board supplies the funds for acquisition.

The consultant expressed the belief that the demand for the report would fully justify printing about 5,000 copies, since the program will benefit all of the 15 coastal counties.

Senator Hatfield expressed the opinion that the fishermen of the state would evidence much interest in this report. He declared the Senate would be glad to arrange to have it printed. Chairman Payne thanked Senator Hatfield in behalf of the Board.

Since the photographs and maps which Mr. Knight had collected in connection with the program will be incorporated in the printed report, it was decided to forego viewing them at the meeting. It was informally agreed to defer discussion and consideration of the program until the members have had an opportunity to review the report.

19. Resolutions Regarding Hon. Ralph E. Swing

The following resolutions were presented by Senator Hatfield, as Chairman of the Senate Interim Committee, and were unanimously adopted by the members of the Board and the Joint Interim Committee.

WHEREAS, The Honorable RALPH E. SWING of San Bernardino County, throughout his many years as a State Senator, has taken a most active part in the furtherance of California's programs to conserve and perpetuate the wildlife and other natural resources of the State for the use and enjoyment of our people; and

WHEREAS, Senator Swing was one of those primarily responsible for the drafting and enactment of the Wildlife Conservation Act of 1947 (Chap. 1325, Stats. 1947), setting forth the objectives to be attained in an effort to aid the Fish and Game Commission to establish a long-range expanded fish and game program and increased recreational facilities throughout this State, which Act also created this Board and the Joint Interim Committee; and

WHEREAS, Senator Swing was likewise one of those chiefly responsible for persuading the Legislature to appropriate \$9,000,000 from the Pari-Mutuel Fund for the use of this Board; and

WHEREAS, Through his wealth of knowledge and experience gained from many years as a lawyer, legislator, and sportsman, Senator Swing in his capacity as a member of the Joint Interim Committee, rendered invaluable counsel and guidance in the formulation and development of our operating procedures, policies, and programs; and

WHEREAS, Senator Swing has seen fit to retire from the State Senate (January 25, 1951) and thereby automatically to sever his official connection with the Board and its functions;

NOW, THEREFORE, BE IT RESOLVED, That we, the members of the Wildlife Conservation Board and the Joint Interim Committee, hereby convey to Senator Swing our sincere gratitude for his outstanding contributions to the cause of conservation, and express the fervent hope that, in his civilian capacity, he may for many years continue to assist the State of California with its conservation and recreational programs; and be it further

RESOLVED, That these resolutions be made a part of the permanent record of the proceedings of this body, and a copy thereof be delivered to the Honorable RALPH E. SWING.

20. Resolutions Regarding Hon. Harvey E. Hastain

Mr. Macaulay presented the following resolutions, which also were unanimously adopted by the members of the Board and the Joint Interim Committee.

WHEREAS, The Honorable HARVEY E. HASTAIN, on January 25, 1951, completed another year of service as Chairman of the Wildlife Conservation Board and the Joint Interim Committee; and

WHEREAS, This gracious and able public servant conducted all Board meetings in a dignified and capable manner, regardless of the controversial issues involved; and

WHEREAS, He extended courteous cooperation to all concerned with the many problems involved in the establishment of the Board's program to further develop and expand the wildlife resources and recreational opportunities of the State of California for the enjoyment of all its people;

NOW, THEREFORE, BE IT RESOLVED, That we, the members of the Wildlife Conservation Board and the Joint Interim Committee, hereby express our grateful appreciation to our former Chairman for his guidance during the past year; and be it further

RESOLVED, That these resolutions be made a part of the permanent record of the proceedings of this body, and a copy thereof be delivered to the Honorable HARVEY E. HASTAIN.

21. Consideration of Future Plans Deferred - Legal Questions Raised

The consultant suggested that the Board agree upon future plans, including a recommended schedule of additional appropriations for consideration by the Legislature. He recommended such action now in order that plans may be made to complete projects already authorized, that programs only partially financed may be expanded, and that financing for numerous other important pending fish and game projects may be considered.

Attention was directed to resolutions from all of the principal groups of the Organized Sportsmen, the Central Valley Chamber of Commerce, and others, recommending that the work of the Board be continued and that additional funds be appropriated for this purpose.

Senator Hatfield stated that he and Senator Brown have introduced a bill to make \$1,000,000 per year available to the Board for the next three years under the terms of the Wildlife Conservation Act, and requested the Board's views.

Mr. Payne expressed doubt that the Board was in position to consider this item. He explained that Senators Hatfield and Brown (after a conference of the Fish and Game Commissioners and several Senators in the Governor's office on January 25, 1951) had requested an opinion from the Attorney General as to the constitutionality of the Wildlife Conservation Act, and that the Board was faced with a question of legality which must be decided as soon as possible. He said the Attorney General in a phone call yesterday had advised him to close the books.

In support of his conviction that the Attorney General would rule the Act unconstitutional, the Chairman cited Attorney General's Opinion No. 50/215, just received the previous day (requested by Assemblyman Erwin with regard to a Senate bill on reorganization of the Division of Fish and Game), which holds that the Legislature cannot delegate administration of fish and game to any body other than the Fish and Game Commission. Mr. Payne expressed the belief that AG No. 50/215 would be the controlling opinion in the pending ruling on the Wildlife Act, because the Attorney General could not rule otherwise without reversing 50/215.

Senator Hatfield observed that this was contrary to the opinion of the Legislative Counsel.

Mr. Payne pointed out that the Governor, on January 25, 1951, stated unequivocally that he would veto any bill that the Attorney General ruled unconstitutional.

Senator Brown asked the Chairman if he had a copy of the opinion issued at the time the Wildlife Conservation Act was passed, stating he had never seen it and wondered if the earlier opinion was contrary to the one now being issued.

Mr. Payne replied that, while he had never seen it, the Governor told him there was an opinion in his files on the subject. He did not believe there would be two conflicting opinions.

Assemblyman Lowrey asked whether it would solve the legal question involved if the bill to appropriate \$3,000,000 more were altered so that the Board, in the form of an interim committee, would work directly with the Fish and Game Commission.

Mr. Payne replied that might save it, but it is a question of what the authors of the bill want to do. Senator Hatfield stated they would have to study the matter.

The Chairman said the Act itself is in jeopardy because, if the authors after studying the opinion were in disagreement with it and had reason to believe the courts would not sustain it, a court test could probably not be completed before the Legislature adjourned.

Assemblyman Davis stated the people of the State have confidence in what the Board has done and is trying to do; that under the functioning of the Wildlife Conservation Board the prestige of the Fish and Game Commission in California has built up tremendously in the past two years. It was his opinion that if the Board's work were discontinued because of the ruling on the Act, and no additional funds provided, it would be a terrific setback to the program now underway. Mr. Davis further contended that if the Act under which the Board is operating is illegal it should be corrected; that it would be a mistake not to find some avenue to continue the Board's work in accordance with the law.

Mr. Payne replied that Senator Hatfield had indicated the legislators would have to be convinced that the Attorney General is correct in his opinion. If not, it would come to a court test. If they assume he is correct they will try to find a legal way to accomplish the Board's functions.

Mr. Dean stated as Director of Finance he had an interest in the legality of previous expenditures; he thought they could be confirmed legally. As Chairman of the Public Works Board he was concerned as to whether the Wildlife Board's actions have any standing in court; whether the Board can throw all this back to the Fish and Game Commission; whether the funds previously allocated could be appropriated directly to the Fish and Game Commission. He stated the State may be confronted with suits to recover over \$8,000,000.

Mr. Dean further said he could understand why the Attorney General might rule that the Legislature cannot tamper with the organization or administrative functions of the Division of Fish and Game, but when the Legislature appropriates \$9,000,000 from the General Fund with an agency to allocate it to Fish and Game, a gift as it were, he expressed doubt that the Attorney General could rule such procedure unconstitutional. He added that General Fund appropriations for special fund agencies, such as Fish and Game, have always been opposed except under this type of arrangement.

Mr. Payne announced receipt of the following teletype from Ralph Scott, Deputy Attorney General, San Francisco:

"Opinion 51/25 released. Holds that presumption of constitutionality attaches to Wildlife Act but that if judicially challenged the Act would be declared unconstitutional in so far as it delegates to the Board the powers and duties of the Commission; that expenditures made by the Board were in effect those of the Commission as the Commission approved

the same; that legislators may attend Board meetings, express views, gather information, make recommendations but may not vote. Copy should be in Los Angeles office."

He stated the heart of the opinion was in the phrase "that if judicially challenged the Act would be declared unconstitutional in so far as it delegates to the Board the powers and duties of the Commission."

Mr. Dean said he did not agree with that, not from legal knowledge, but as a matter of common sense. Mr. Payne replied that it may take a court decision to decide.

Mr. Gordon stated it was his understanding when he accepted the job of consultant that all legal questions had been disposed of; that the Board was merely a capital investment agency, representing the Legislature, and had nothing to do with the administrative or other functions of the Fish and Game Commission, and that the Commission would have to accept the allocations before they would properly be in position to proceed with projects. He further said he had asked Deputy Attorney General Scott whether the Board could compel the Commission to accept allocations for approved projects, and the Deputy thought the Board could insist upon acceptance, but advised that such action might have the effect of throwing the matter into the courts.

Assemblyman Lowrey commented that when the report on CALIFORNIA'S FISH AND GAME PROGRAM was submitted he at first refused to sign it "because in the Foreword it was recommended that supervision of the construction of these projects be under the jurisdiction of this Board." He was advised this was not legal; that the Board would be entering the executive field. Therefore, in signing the Foreword he specified he would go along with part of it. He expressed the belief that "unconsciously we have drifted over to the other part of it."

Mr. Payne said he did not believe the Board could discuss this matter until the opinion on the Wildlife Conservation Act was received. Mr. Dean concurred, stating it would be necessary to get some advice.

Senator Hatfield called attention to the portion of the teletype stating that "expenditures made by the Board were in effect those of the Commission as the Commission approved the same."

Mr. Payne stated that was correct. It was his belief that the opinion does not affect money previously allocated but would control future acts. He was of the opinion that it was legal to proceed on all matters approved by the Fish and Game Commission; that a provision of the Political Code with regard to illegal action performed in good faith covered contingencies of this kind.

Assemblyman Davis stated he wanted to see a legal way worked out to continue the wildlife program; that he didn't want to see the props jerked out from under the Board. He declared that this is a serious matter; that practically every group in the state has submitted resolutions requesting that the Board's work be continued and additional funds appropriated. He warned the members that the Fish and Game program would be set back about 20 years in public confidence if the Board did not act carefully.

It was moved by Assemblyman Davis, seconded by Senator Hatfield, that the Joint Interim Committee recommend to the Board that if and when the Attorney General's opinion is received, indicating that in his judgment the Wildlife Conservation Act is unconstitutional, the Board request his advice as to legal ways to continue the wildlife program initiated by the Board under the provisions of the Act.

AYES: Senators Hatfield and Brown; Assemblymen Erwin, Lowrey, and Davis

NOES: None

Passed unanimously.

The members of the Wildlife Conservation Board, by motion regularly made, seconded, and unanimously adopted, concurred in the above recommendation.

Senator Hatfield stated that, in accordance with the Legislature's customary procedure when conflicting opinions are received, the Legislative Counsel would be requested to analyze the Attorney General's opinion.

22. Extension of Consultant's Contract Deferred

Mr. Gordon requested an expression from the members of the Board and the Joint Interim Committee as to whether they wanted him to continue. He stated he had received other offers and wished to advise those concerned whether he would be available.

The Chairman expressed doubt that the Board could at this time take action to extend the consultant's contract in view of the legal questions arising out of the Attorney General's opinion.

Mr. Dean expressed his willingness to commit himself, stating that he would vote to continue Mr. Gordon's services as long as the Board exists. He did not believe the fact that the Attorney General ruled the Wildlife Conservation Act unconstitutional settled the matter.

Senator Hatfield stated he believed it highly desirable to continue the consultant's services. When Mr. Aronstein suggested that the Controller be consulted as to whether he would honor claims, Senator Hatfield replied that might be a good way to determine the legality of the matter before the Supreme Court.

Assemblyman Lowrey suggested that, since the question of legality has arisen, the consultant should take care of himself. He felt the consultant should feel perfectly free to negotiate with regard to the other offers made to him; that the Fish and Game Commission can carry out the program, since they are going to have to do it anyway.

Senator Brown said, while he was a new member and had not given the matter much study, in view of the numerous unfinished projects he thought the consultant's services should be retained.

Mr. Dean stated he could not believe the Board was out of existence because of the opinion mentioned, and that it would be necessary for the Board to act

upon numerous matters before the necessary court decision could be obtained. He concurred with the suggestion that the Controller be consulted.

Assemblyman Davis asked whether the Board could continue the consultant's services until legal advice was received, provided it is lawful to continue his pay.

Mr. Payne said it could be considered if the Board members were not liable. Mr. Dean said the Controller is the only one to question it, and Senator Hatfield concurred, stating that based on the Attorney General's opinion no personal liability is attached to the members of the Board.

Mr. Payne pointed out that if there was no monetary liability an ethical one remained.

Mr. Davis stated according to his observations the name Seth Gordon is as popular with the sportsmen as Winchester and Remington; that if there is some way for the Board to continue his services it should be done.

Mr. Difani (speaking for the Organized Sportsmen) stated that the sportsmen of the state feel that a good job was done in assembling a program and selling it to the public; that a lot of loose ends have been brought together. He expressed the belief that the sportsmen generally approve of the program and of the retention of the consultant, at least in an advisory capacity, to coordinate the program and carry it through. He further stated that the sportsmen are going to work with the Legislature to get additional money appropriated, since it is evident that the fish and game program cannot be continued with license fees alone.

Mr. Gordon thanked the group for their expressions and for the fine relationship that has existed, and stated he did not want them to feel that he was walking out on a rather difficult situation; that he would continue to follow up the work of the Board on a "gentlemen's agreement" basis until some kind of a decision could be reached.

23. Unobligated Balances and Status of Allocations as of February 27, 1951

With the foregoing actions the total unobligated balance, including operating funds, is approximately \$171,641, to be held intact pending further decisions concerning the needs along the Colorado.

The total current allocations to various projects after the foregoing actions were as follows:

a. Fish Hatchery and Stocking Projects (18)	\$3,296,530
b. Warmwater and Other Fish Projects (6).	164,500
c. Flow Maintenance and Stream Improvement Projects (14).	455,000
d. Screen and Ladder Projects (14).	352,140
e. State Game Farm Projects (4)	106,000
f. Other Upland Game Projects (4)	443,150
g. Waterfowl Management Projects (9).	3,729,746
h. General Projects (4)	65,000
Total (73 projects)	\$8,612,066

In addition to the specific allocations above, the following reserves have been established, totaling \$286,641: Bixby Slough Public Fishing Area - \$100,000; Mendocino National Forest Stream Improvement and Flow Maintenance Program - \$15,000; and Colorado River Recreational Development and Operating Funds - \$171,641.

24. Date for Next Board Meeting

It was regularly moved and seconded that the next meeting of the Board be held upon the call of the Chair, preferably in Sacramento during the month of March. Passed unanimously.

There being no further business the meeting adjourned at 12:50 P.M.