

WILDLIFE CONSERVATION BOARD
STATE OF CALIFORNIA
MINUTES, MEETING OF JUNE 11, 1953

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WILDLIFE CONSERVATION BOARD
STATE OF CALIFORNIA
MINUTES, MEETING OF JUNE 11, 1953

Pursuant to the call of the Chairman the Wildlife Conservation Board met in Room 5100 of the State Capitol, Sacramento, California, on June 11, 1953. The meeting was called to order by Chairman Wm. J. Silva at 1:45 p.m.

PRESENT:	William J. Silva	Chairman
	Seth Gordon	Member of the Board
	A. Earl Washburn	Deputy Director of Finance, Acting for and in the place of James S. Dean, Director of Finance

Senator Charles Brown	Joint Interim Committee
" George J. Hatfield	" " "
" Ben Hulse	" " "
Assemblyman Thomas M. Erwin	" " "
" Lloyd W. Lowrey	" " "

Everett E. Horn	Wildlife Projects Coordinator
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ABSENT:	James S. Dean	Member of the Board
	Assemblyman Frank P. Belotti	Joint Interim Committee

OTHERS PRESENT:

Kramer Adams	Department of Fish and Game
Harry Anderson	" " " " "
Robert Paul	" " " " "
Leo Shapovalov	" " " " "
Robert Montgomery	Region II Office
R. H. Anderson	California Cattlemen's Association
Fred Cronemiller	U. S. Forest Service
George Difani	Legislative Rep. Organized Sportsmen
Phil Groff	Department of Finance
R. E. Hanley	California Farm Bureau Federation
Rudy Hickey	The Sacramento Bee
R. H. Ingram	Assembly Interim Comm. on Fish & Game
Hon. H. T. Johnson	Member of the Senate
G. W. Philpott	Sportsmen's Council of Central California
Walter S. Rountree	Department of Justice
H. C. Vincent, Jr.	Department of Finance
D. D. Watson	Real Estate Commissioner, Member
R. H. Williamson	Department of Justice

1. Approval of the Minutes

IT WAS REGULARLY MOVED AND SECONDED THAT THE READING OF THE MINUTES OF THE WILDLIFE CONSERVATION BOARD OF APRIL 16, 1953 BE DISPENSED WITH AND SAID MINUTES BE APPROVED AS WRITTEN.

PASSED UNANIMOUSLY.

2. Status of Funds

The Board was informed that the amount allocated to specific projects up to the close of the meeting of April 16, 1953 aggregated \$9,879,902, made up as follows:

a. Fish Hatchery and Stocking Projects (17)	\$4,213,023
b. Warmwater and Other Fish Projects (11)	190,020
c. Flow Maintenance and Stream Improvement Projects (17) . .	404,953
d. Screen and Ladder Projects (13)	404,603
e. State Game Farm Projects (4)	105,644
f. Other Upland Game Projects (4)	441,077
g. Waterfowl Management Projects (11)	4,009,642
h. General Projects (4)	110,940

Total (81 Projects) \$9,879,902

In addition to the specific allocations above, the following reserves have been established: (1) Mendocino National Forest Stream Improvement and Flow Maintenance Program, \$15,000; (2) Colorado River Recreational Development, \$50,000.

The total unobligated balance available for allocation is approximately \$823,595.

3. Lower San Joaquin Waterfowl Management Area, Project No. 506 (San Luis Island).

Mr. Horn briefly reviewed the expansion plan of the Los Banos refuge and reported that the trial for condemnation of the 6678 acres of land on San Luis Island has been heard and the Superior Court rendered its decision, holding that the State is authorized to condemn the property for the purpose of establishing and operating a waterfowl management area. Judgment was entered and filed on June 3, 1953. The judge awarded the defendants \$1,516,312.25 for the property.

The appraised values for the property presented to the court during the trial are as follows:

<u>State's Appraisers</u>		<u>Defendants' Appraisers</u>	
Huffman	\$885,000	Wolfsen	\$2,776,514.00
Shaffer	882,000	Erreca	1,765,256.00
Willmette	850,000	Ashworth	1,621,814.50

Mr. Horn advised that the original allocation was made on March 19, 1949, with the sum of \$512,400 to acquire lands, equipment and facilities for the Lower San Joaquin Waterfowl Management Area. \$414,800 of this amount was for land acquisition and \$97,600 for equipment, buildings, etc. Subsequently, on May 18, 1950, the Board allocated an additional \$187,000 for this project, making a grand total of \$699,400.

Thus, it would take an additional \$816,912.25 to acquire the property at the price set by the court. An additional \$100,000 would also be needed for buildings, equipment, etc.

Mr. Erwin asked Mr. Horn if other suitable acreage could be acquired in the vicinity and whether the Pacific Flyway would be seriously jeopardized if a suitable management area is not secured and adequately developed in the Lower San Joaquin Valley.

Mr. Horn replied that there might not be an acreage of suitable size immediately adjacent to the San Luis Island Tract but that no doubt one could be found in the Lower San Joaquin Valley.

Mr. Horn further stated it is his belief that the lack of such an area would eventually affect the flyway because preservation of an adequate population of waterfowl on the flyway is touch and go at the best. Waterfowl conservation is confronted with further losses of desirable habitat because more and more raw land, formerly used by these birds, is being developed for agricultural use. One solution to the problem is for State and Federal wildlife agencies to acquire and develop suitable areas, properly located throughout the State. All of the lands that both governmental agencies can get will not be adequate. Better development of private lands dedicated to waterfowl shooting would also go a long way toward solving the problem of maintaining and managing an adequate flyway population.

Senator Hatfield then asked Mr. Horn if it was his desire to have the Board acquire this or some other property, and whether Mr. Horn was recommending that the Board buy at this figure. Mr. Horn replied that he would not recommend the acquisition of this San Luis Island area at the price set by the court, even though a tract of land in the Lower San Joaquin Valley is highly desirable.

Senator Hatfield then addressed Messrs. Rountree and Williamson and asked several specific questions:

1. Is it necessary for this Board to allocate additional money if the property is purchased?
2. Does the Board have the option to allocate funds for a certain project and later transfer the funds for use on another project if the money is not used for its original purpose?
3. Is the State's liability the reasonable values of the attorneys' services and other necessary costs, such as engineering studies incurred in the preparation for the trial?

Mr. Rountree answered yes to all three of Mr. Hatfield's questions.

Mr. Rountree agreed with a remark from Senator Hatfield that the determination of reasonable values is up to the trial court. Mr. Rountree further explained that the fee contract between the property owners and their attorneys would be evidence as to the reasonable value to be placed on the attorneys' legal services.

Senator Hatfield expressed keen interest in this particular project because it is in his territory, and he referred to two telegrams which he had received on June 4, 1953, subsequent to the court's decision. Quoted below are the telegrams as read by Senator Hatfield:

"The Los Banos Chamber of Commerce will appreciate any favorable action on your part to help acquire the San Luis Island Area for recreational purposes."

"The City Council of the City of Los Banos urges the purchase of the San Luis Island primitive area. We feel that such purchase is necessary in order to preserve for the people of California a remaining portion of a once wildlife paradise."

Senator Hatfield said that while he was influenced by these telegrams he still could not vote favorable upon an estimate of roughly \$1,516,000 when the highest estimate by the State is \$885,000, or a difference of about \$700,000. He suggested action by the Board requesting the Attorney General's office to approach the attorneys for the defendants in the case to see if a compromise figure could be agreed upon based on the values of the State's appraisers plus an unknown figure to be paid for damages or reimbursements to the defendants for their attorneys' fees.

Senator Hatfield stated he was cognizant of the problem Mr. Horn and the Department is up against and in thorough sympathy with the necessity of getting additional grounds; and while he appreciated land values had changed since the original allocation was made, he still could not go for a higher figure than the State's appraisers set in order to accomplish this. He requested that the Board ascertain if a compromise figure might not be worked out.

Mr. Rountree said that the Attorney General's department had no objection to Mr. Hatfield's suggestion and already some proposals had been made along the very same line but any such approach was deferred pending the thinking of the Wildlife Conservation Board.

Assemblyman Erwin asked for the date the appraisals were made and Mr. Horn advised they represent the value as of March 17, 1953, the date the trial started.

Chairman Silva reminded the group that six or seven years had been spent looking for suitable projects. This particular one is most necessary, desirable and favorable. Values have changed but nonetheless it would be an unhappy situation to throw the project out completely. The Board should explore some other suitable locations in or near San Luis Island,

and also explore the possibilities of negotiating for this particular piece of land. Chairman Silva further reminded the Board the he, too, is familiar with land in and near the San Luis Island and knows the selling price of comparable lands, since he has an interest in a ranch of a few thousand acres within four or five miles of the San Luis Island tract. He expressed an interest in seeing land acquired at a fair price and was not agreeable to buying at the price set by the court.

Mr. Rountree suggested the Board might instruct the Attorney General's office to abandon the case, pay whatever costs go along with abandonment, and later negotiate to acquire the same lands should the owners so desire.

Assemblyman Erwin wanted to know if San Luis Island is considered a No. 1 priority project, and emphasized the fact that he was going to scrutinize everything that comes up until all No. 1 priority projects are completed.

Mr. Horn advised that San Luis Island is considered a No. 1 priority project.

Mr. Rountree reminded the group that there was a time element involved, and that there might be an automatic abandonment unless the money is paid within the 30 days. It is imperative not only to reach an agreement now but also to get approval from both the Wildlife Board and the Public Works Board for such abandonment. He said time is somewhat of the essence.

Senator Hatfield invited other members of the Board to express themselves.

Senator Hulse voiced his unwillingness under any circumstances to vote $1\frac{1}{2}$ million dollars for this project and would not spend any State money on such figures.

Mr. Gordon pointed out that the State's appraisers are experienced in their work and are under obligation to make appraisals that are fair and honest. He called attention to the fact that at least one of the defendants' appraisers is an adjacent property owner.

Assemblyman Lowrey was opposed to purchase at the figure set by the Court.

Senator Brown deviated from the serious side of the subject and said he could hardly blame Wolfsen, but the Mayor of Los Banos should be more public spirited.

Mr. Washburn, acting for Mr. Dean, stated that the Department of Finance, from a business viewpoint, would recommend abandonment of proceedings and make no further endeavor for negotiating.

MOVED BY SENATOR HATFIELD AND SECONDED BY ASSEMBLYMAN ERWIN THAT THE JOINT INTERIM COMMITTEE RECOMMEND TO THE WILDLIFE CONSERVATION BOARD AN ABANDONMENT OF THESE PROCEEDINGS, EXCEPTING THAT REQUEST BE MADE OF THE ATTORNEY GENERAL TO APPROACH THE ATTORNEYS FOR THE DEFENDANTS TO SEE IF IT MIGHT BE POSSIBLE TO ARRIVE AT

A FIGURE BASED ON THE STATE'S APPRAISERS PLUS A REASONABLE VALUE OF THE ATTORNEYS' FEES. IN THE EVENT A COMPROMISE FIGURE WAS NOT SATISFACTORY, THE PROCEEDINGS BE ABANDONED.

Senator Hulse did not think the Board should instruct the Attorney General's office to make any attempt to approach the attorneys for the defendants but to let such an approach come from the defendants. He suggested that a clear-cut abandonment be made and the defendants could come to the Attorney General's office, if they desired to negotiate, and the Attorney General's office in turn could forward such information to the Board.

Senator Hatfield stated he was willing to withdraw his motion and Senator Hulse suggested that he word it so that the defendants might feel like opening the case.

Chairman Silva thought Senator Hulse had the right approach and Assemblyman Lowrey and Erwin concurred.

Senator Brown thought it better for the approach to come from the defendants, if there was some way for the defendants to know the Board is approachable.

Mr. Gordon and Mr. Rountree discussed the 30-day period starting June 3. There is nothing to interfere with negotiations which might arise but the Board must take some kind of action before July 3. If no action is taken there will be an automatic abandonment after July 3, 1953.

Mr. Williamson stated that if the Board does not abandon within 30 days there is a possibility that such lack of action might constitute a waiver of right and the Board might be stuck with the judgment.

Assemblyman Lowrey asked what would happen if the Board abandoned the case and later on the defendants presented some figure to the court for damages? Would such action cause another court case or would it be up to the court to award damages as it saw fit?

Mr. Rountree replied that if an offer is presented that appears reasonable the Public Works Board may accept it, whatever the figure is. The only thing that the landowner is entitled to is the cost of abandonment. That is purely a matter for the court to decide.

Assemblyman Lowrey asked if the owner might not claim damages for not using his land. Mr. Gordon advised the owner had been told to go ahead and use or develop his land as he saw fit. This was done to avoid any such claims. Mr. Rountree assured that the owner would have no right to claim such damages.

Senator Hatfield formally withdrew his motion and Assemblyman Erwin withdrew his second.

Discussion followed as to the wording of the motion and Mr. Gordon suggested Senator Hatfield reword his motion but Senator Hatfield declined.

Mr. Washburn phrased a suggested motion, stating that the condemnation suit should be abandoned and should the defendants in the suit approach the Attorney General's office with offers for negotiation the Attorney General would relay that news to the Board.

IT WAS MOVED BY SENATOR HULSE AND SECONDED BY ASSEMBLYMAN LOWREY THAT THE JOINT INTERIM COMMITTEE RECOMMEND TO THE VOTING MEMBERS OF THE BOARD THAT THE WILDLIFE CONSERVATION BOARD RECOMMEND TO THE PUBLIC WORKS BOARD THAT THE SUIT, STATE VS. WESTOVER CO., ET AL, MERCED COUNTY SUPERIOR COURT NO. 20410 (SAN JOAQUIN WATERFOWL AREA, SAN LUIS ISLAND) FOR CONDEMNATION OF 6678 ACRES OF LAND, JUDGMENT ENTERED AND FILED JUNE 3, 1953, BE ABANDONED.

Chairman Silva asked for roll call and Senator Hulse stated that if the group was in disagreement he would withdraw his motion. Mr. Horn called the role:

AYES: SENATORS BROWN, HATFIELD AND HULSE
ASSEMBLYMAN LOWREY

PASS: ASSEMBLYMAN ERWIN

NOES: NONE

MOTION CARRIED.

THEREUPON, BY MOTION REGULARLY MADE, SECONDED AND UNANIMOUSLY ADOPTED BY THE MEMBERS OF THE BOARD, IT WAS AGREED THAT THE WILDLIFE CONSERVATION BOARD RECOMMEND TO THE PUBLIC WORKS BOARD THAT THE SUIT OF THE STATE VS. WESTOVER CO., ET AL, MERCED COUNTY SUPERIOR COURT NO. 20410 (SAN JOAQUIN WATERFOWL AREA, SAN LUIS ISLAND) FOR CONDEMNATION OF 6678 ACRES OF LAND, JUDGMENT ENTERED AND FILED ON JUNE 3, 1953, BE ABANDONED.

Assemblyman Erwin then introduced Mr. Rupert H. Ingram, Executive Secretary, Assembly Interim Committee on Fish and Game, Los Angeles, California.

4. Hume Lake Dam Repair

At the April 16, 1953 meeting of the Wildlife Conservation Board an opinion was requested from the Attorney General regarding the legality of spending Wildlife Preservation Funds on Federally owned and administrated facilities. This opinion has been received and concludes as follows:

"Such funds may be spent to repair this dam if the State first acquires the dam or the land upon which it is situated, or some interest therein."

Assemblyman Erwin then asked if Hume Lake Dam Repair appeared on the list as a No. 1 priority project. Mr. Horn advised that the \$5,000 already allocated for Hume Lake was for engineering studies and it was not included in the 47 referred to projects.

Senator Hatfield then turned to page 4 of the opinion rendered by the Attorney General and read:

"...that the Fund may be drawn upon (1) to purchase realty such as lands, areas, or rights in lands and waters, (2) to purchase such personalty as is necessary for or incidental to the improvement, enhancement or restoration of the lands, areas or rights thus acquired, (3) to defray costs of constructing suitable facilities thereon, and (4) to defray management and maintenance costs of a completed project. Also included as permissible expenditures were those contained in Item 245 of the Budget Act of 1947 (Stats. 1947, p. 1438). Repairs to the Hume Lake dam were not included in this."

Senator Hatfield commented that the above seemed ambiguous and wondered if the Board is correct in endeavoring to lease Avocado Lake. Senator Hatfield requested the Attorney General's opinion on leasing Avocado Lake.

Senator Brown suggested leaving the money allocated and unspent until the opinion is received, as it was not his intention to abandon Hume Lake but rather to leave it in status quo. Senator Hatfield concurred.

Mr. Gordon explained that a use permit is obtained from the Forest Service for projects on the National Forests for flow maintenance dams on such lands. Hume Lake is different in that the dam is already there.

Senator Hatfield again read from the Attorney General's opinion on page 3:

"As a result of such studies the board shall determine what areas, lands or rights in lands or waters should be acquired by the State in order to effectuate a co-ordinated and balanced program resulting in the maximum revival of wild life in the State and in the maximum recreational advantages to the people of the State. The board shall authorize the acquisition of such lands, rights in land, water, or water rights as may be necessary to carry out the purposes of this act."

Assemblyman Lowrey said that the Department as well as he had been flooded with correspondence from all walks of life regarding this Hume Lake. It apparently is an important area and more information should be gathered before the project is eliminated.

Mr. Gordon turned to Assemblyman Erwin and reminded him that in accordance with Board instructions warmwater fishing projects have been sought and as these projects develop, even though they are not on the list referred to, the Board should consider them. Mr. Gordon reminded those present that the Wildlife Board had employed a qualified person to seek out warmwater fishing projects and that progress has been satisfactory.

Assemblyman Erwin stated that if there was no money the Board cannot go on and he would not vote for anything more, and he felt strongly that there was not sufficient money unallocated to finish the 47 projects the Board had already approved.

Assemblyman Lowrey reminded the members that very often when projects are approved certain limitations cause a justifiable reason to abandon the project.

Senator Hatfield's understanding in the case of San Luis Island, was that an allocation was made for wildlife grounds in that vicinity, and Assemblyman Lowrey said he was in agreement 100 percent and he would not want money allocated for any place without the authority to move to another locality.

Senator Hatfield suggested the funds be withdrawn and negotiate with the Attorney General for a lease or easement within the Board's power to spend money.

Chairman Silva instructed Mr. Horn to get the opinion of the Attorney General on the legality of spending Board money on Hume Lake and Avocado Lake, and that no money shall be spent on Avocado Lake until the opinion is received.

Chairman Silva went on to say that he had received many telephone calls from people interested in the Hume Lake project and was asked how it was possible to build the retaining dams in the mountains. He then instructed the Board's Coordinator to get an opinion from the Attorney General as to the legality of building flow maintenance dams.

Mr. Philpott said it had been his thinking, along with other sportsmen and interested users of Hume Lake, that this project had top priority and in view of the fact that it was included in 1947 as a priority project it should be classified on top. He realized the present legal complication. Mr. Horn advised there was a time element involved in the repair of Hume Lake dam and that any work must be started soon or the lake would have to remain dry another year. He suggested the Board might consider allocating the money now if the members approve the project, with the condition that it not be spent until the Attorney General and the Department of Finance give their opinion and approval.

Senator Hatfield would not approve this and stated his desire to read and interpret the Attorney General's opinion for himself. He then asked for an opinion from the Attorney General on the legality of the Wildlife Conservation Board allocating money for any dams on Forest Service property.

5. Hot Creek Hatchery Expansion \$3,000.

The study of the feasibility of expanding Hot Creek Hatchery is underway but a sum of money is needed to carry on certain engineering studies. The Board was asked to allocate \$3,000 for this study.

MOVED BY ASSEMBLYMAN ERWIN, SECONDED BY SENATOR BROWN,
THAT THE LEGISLATIVE INTERIM COMMITTEE RECOMMEND TO
THE VOTING MEMBERS OF THE BOARD THAT \$3,000 BE ALLOCATED
FOR ENGINEERING STUDIES ON THE HOT CREEK HATCHERY EX-
PANSION PROGRAM.

PASSED UNANIMOUSLY.

IT WAS MOVED BY MR. GORDON AND SECONDED BY MR. SILVA THAT THE BOARD APPROVE THE ALLOCATION OF \$3,000 FOR ENGINEERING STUDIES ON THE HOT CREEK HATCHERY EXPANSION PROGRAM.

PASSED UNANIMOUSLY.

6. Dallas-Warner Reservoir, Stanislaus County

Type of Project: Construction of a low sub-dam in the reservoir basin immediately above the outlet gates to retain a small lake approximately 430 acres surface during periods when the Modesto Irrigation District performs periodic outlet gate maintenance.

Location: Modesto Reservoir is located about 30 miles east of Modesto on the northerly bank of the Tuolumne River. The town of Waterford is about five miles below the reservoir.

Cost: Preliminary estimates indicate costs as follows:

Reinforced concrete weir	\$2,000
Compacted earth wings, 1300 cu.yds. @ 70¢	<u>910</u>
Total:	\$2,910

Recommendations: At the present time Modesto Reservoir produces virtually no fishing. The proposed sub-dam would afford efficient fisheries management that could probably create at least from 20,000 to 50,000 angling days annually. Mr. Horn stated that since the Legislature had not appropriated additional funds for the Wildlife Conservation Board, it might not be possible for the Board to consider this project at this time.

Senator Hatfield referred to the Attorney General's opinion and said that the same thing is involved here, and Mr. Silva then instructed Mr. Horn to obtain an Attorney General's ruling.

7. Tahoe Hatchery Rearing Ponds

Senator Johnson then asked permission to bring up the matter of the proposed rearing ponds adjacent to the Tahoe Hatchery. He pointed out that the money for this project was allotted several years ago and is still available but at present there are no rearing ponds to serve the region. In 1952 an inspection trip was made and viewpoints discussed as to suitable locations but nothing definite has been done. He said the Lake Tahoe area has many good sized streams and heavy fishing pressure. He, along with other sportsmen in the area, would like to see the rearing ponds constructed.

Chairman Silva was glad to have this matter brought to the attention of the group and expressed himself as wanting the matter decided to do one thing or another. Senator Hatfield requested that the Tahoe rearing ponds be put on the agenda for the next meeting.

Senator Brown asked Senator Johnson if he would be willing to abandon the Tahoe rearing ponds if Hot Creek Hatchery could supply the fish; Senator Johnson indicated satisfaction with this suggestion but added that he would like some guarantee that the fish would be brought in. Chairman Silva then instructed Mr. Horn to include this item on the agenda for the next meeting and requested that Senator Johnson be notified as to the time, date and place of the meeting.

Mr. Gordon stated there was a lot of pressure for the American River Hatchery and quite a bit of sentiment for using the facility at Nimbus Dam and trucking the fish into the Tahoe territory. He hoped to have more information on this for the next meeting and the problem of financing would probably also be discussed. Chairman Silva said the only thing wrong with bringing the fish in from the American River Hatchery is that the dam and hatchery have not been built.

Mr. Philpott asked if everything was stymied pending the decision from the Attorney General. Chairman Silva said it was necessary to withhold action on flow maintenance dams, Hume Lake Dam, Avocado Lake and the Dallas-Warner Reservoir until an answer is received from the Attorney General.

8. Unobligated Balances and Status of Allocations as of June 11, 1953

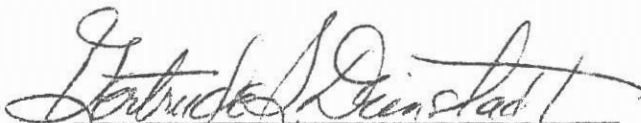
With the foregoing actions, the total unobligated balance in the Wildlife Restoration Fund is approximately \$820,595. The total current allocations to various classifications of projects are as follows:

a. Fish Hatchery and Stocking Projects (17)	\$4,216,023
b. Warmwater and other Fish Projects (11)	190,020
c. Flow Maintenance and Stream Improvement Projects (17)	404,953
d. Screen and Ladder Projects (13)	404,603
e. State Game Farm Projects (4)	105,644
f. Other Upland Game Projects (4)	441,077
g. Waterfowl Management Projects (11)	4,009,642
h. General Projects (4)	<u>110,940</u>
Total (81 Projects)	\$9,882,902

In addition to the specific allocations above, the following reserves have been established: (1) Mendocino National Forest Stream Improvement and Flow Maintenance Program, \$15,000; (2) Colorado River Recreational Development, \$50,000.

9. Date for Next Meeting

The next meeting will be held at the call of the Chair.
The meeting adjourned at 3:15 p.m.


Gertrude S. Deinstadt
Secretary