California Fish and Wildlife Strategic Vision Project

BRCC February 6, 2012 Meeting Notes: Suggested Recommendations from BRCC Member Rick Frank

Revised February 8, 2012

This document contains notes from the February 6, 2012 California Fish and Wildlife Strategic Vision (CFWSV) Blue Ribbon Citizen Commission (BRCC) meeting, which have been added to a memo BRCC Member Rick Frank presented to his fellow BRCC members with potential recommendations for consideration. Important notations about this document:

- Suggested text highlighted in yellow like this is the text of the recommendation, while the non-highlighted text will become part of the description.
- **Meeting notes from the February 6 BRCC meeting are in dark green text (like this).**

Meeting notes: BRCC members want to discuss these recommendations conceptually and then determine how they may relate to some of the "NO" recommendations in the potential recommendations document dated February 4, 2012 (meeting notes from the February 3 BRCC and CFWSV Stakeholder Advisory Group [SAG] meeting).

Based on the written materials staff has provided for our review, the work of the Stakeholders' Advisory Group and public comment the B.R.C.C. has received to date, I offer the following, conceptual recommendations for reforms to the Department of Fish & Game/Fish & Game Commission. (The following recommendations are presented in summary form only; far more detail is warranted, and my hope is that these proposals will benefit from comments and recommendations of my B.R.C.C. colleagues and other interested parties.)

- **Name changes:** I recommend that the titles of both the California Department of Fish & Game and the California Fish & Game Commission be changed to more accurately reflect the scope of both entities' jurisdiction in the 21st century. I suggest that they be re-named the California Department of Fish & Wildlife and the California Fish & Wildlife Commission, respectively.

Meeting notes: Rick Frank stated that the current names do not reflect the existing mandates and responsibilities of DFG and F&GC. He does not see the need to refer this back to the SAG or DFG for additional discussion; sees a need for re-branding. He's not wedded to the specific proposed names.

BRCC member questions and reflections: Seems that maybe there are multiple recommendations nested within this potential recommendation? Is there an issue with including "fish" separate from "wildlife" since we don't identify other individual groups of species? The mission needs to reflect both consumptive and non-consumptive activities and uses. Should the names of DFG and F&GC be similar or different? Ask because there is a later recommendation that addresses the role of F&GC versus DFG, with the suggestion that F&GC return to its "roots" of hunting and fishing (which then may not require a name change for F&GC).

A SAG member commented that the recommendation with the request to the director was not to squelch the name change discussion; was more a reflection of the desire for the director to provide more information before SAG members have a more in-depth conversation (especially about costs, since some folks are very concerned about the potential costs of a name change).

Potential motion: Recommendation that a name change for DFG and possibly F&GC is necessary to update and modernize the names to reflect their true missions/mandates Details about potential costs and specific name recommendations to follow in the next phase of the CFWSV Project.

- **Changes in Membership and Qualifications of Fish & Game Commissioners:** Currently, the five members of the Fish & Game Commission are required by law to have no particular professional backgrounds or qualifications. Drawing upon the successful experience of other state agencies whose decision-makers are required to reflect diverse and specific areas of expertise, I recommend statutory changes that expand the Commission from five to seven members, and require that individual commissioners reflect particular, diverse professional qualifications. The following breakdown is offered for illustrative purposes:
    - One member with substantial experience in the commercial fishing industry/commercial fisheries;
    - One member with expertise in the sports-fishing industry or sports-fishing recreational groups;
    - One member representing California hunting interests;
    - One member possessing considerable expertise in terrestrial biology and related scientific disciplines;
    - One member possessing considerable expertise in marine biology and related scientific disciplines;
    - One member with substantial experience in the conservation community, and possessing expertise in marine and/or land conservation issues; and
    - One member representing the general public.

Meeting notes: If membership is expanded it would allow a broader representation of various types of expertise (see list above for potential subject areas, to illustrate only). Such a change would be a significant improvement over the status quo. The State of Washington implemented a strict credential process for commissioners (all gubernatorial appointees) and a conversation with one of the members indicates that he believes there has not been any downside to the change. Perhaps add an appointee from the assembly and another from senate, especially if this is a constitutional amendment (will require support from legislature). Criteria may need more discussion, but perhaps advance the idea that a change in membership qualifications is needed.

Potential motion: Support for an expansion in the number of and an enumeration of the areas of expertise of… (see yellow highlighted text above).

- **Realignment of the Powers and Duties of the Department and Commission:** Originally, the mission of both the department and commission was to implement, administer and enforce the state's laws governing hunting and fishing. In more recent years, the mission of both entities has expanded dramatically, to include many other functions. The respective powers and duties of the department and commission should be modified to reflect this modern reality, and to allocate between the two current legal responsibilities in a manner that is effective and efficient. Specifically, it is proposed that the authority of the commission should prospectively be focused on the setting of hunting and fishing seasons, bag and catch limits, and related functions. Other regulatory and land management responsibilities, including the administration of and listing decisions under the California Endangered Species Act, oversight of California's marine protected areas, and administration of the Oil Spill Prevention Act, should be centralized in the department.

Meeting notes: F&GC responsibilities were far narrower at its inception. Don't agree with the statement made about "mission creep" in someone's comments; over time the new mandates were expressly directed to DFG and F&GC, a conscious recalibration of respective powers and duties. Conceptually want to make the suggestion that F&GC have principal responsibility for hunting and fishing regulations while DFG have principal responsibility for broader wildlife management activities. Desire to narrow the scope of F&GC responsibilities. DFG has greater technical capacity for wildlife management.

A BRCC member asked whether, if the BRCC accepts the recommendation for broadening the membership and selection criteria for F&GC members, would the BRCC still make this recommendation? BRCC member Frank indicated that the two recommendations (membership/criteria and division of responsibilities) are not interdependent; they can be considered separately. He added that while we still want/need public input and participation in Endangered Species Act listings, it does not require F&GC. He suggested looking to NOAA Fisheries and the U.S. Fish and Wildlife Service as examples where such decisions are made by professional wildlife management agencies, not an appointed body.

- **Reform and Simplification of Department Funding Programs:** The proliferation of special funds within the department/commission structure creates significant administrative burdens and limits the effective use of available resources. (See, for example, Legislative Analyst's Office, *A Review of the Department of Fish and Game* (1991).) There are now literally scores of special funds imposing significant limitations on the department's ability to manage its fiscal resources effectively. Many of these funds are longstanding, single-focus programs that are outdated and often contrary to sound, state of the art, ecosystem based management practices. To remedy these problems, the number of special funds should be substantially reduced through elimination of particular accounts, consolidation of accounts, or both. In this way, for example, special funds meant for management of game species and hunting and fishing programs could be consolidated into one fund, thereby protecting the integrity of the funds, affording a measure of flexibility, and achieving substantial administrative efficiencies.

Meeting notes: This is a fiscally-based recommendation to give DFG greater control over its own destiny. Understand desire to make funding and budget decisions more transparent. However, special funds create a lack of agility and flexibility to deploy resources where needed as resource management needs change.

- **Encourage Department Partnerships with the Non-Profit Community:** In recent years, General Fund support for the department and commission has been reduced and revenues derived from hunting and fishing license fees have steadily declined. Concurrently, the legislature and courts have imposed significant new mandates upon the department, many of them unfunded. To address this growing fiscal crisis, increased reliance upon and collaborations with the non-profit community should be encouraged. (This has occurred, and foundation funding has been secured, for some discrete department and commission programs, such as those carried out under the Marine Life Protection Act.) The department should be encouraged to pursue such mutually-beneficial partnerships in the future, and state law should be amended to facilitate such collaborations. (The California Department of Parks & Recreation, which is facing budgetary crises similar to those of the department and commission, provides a good model: 2011 legislation [AB 42] was enacted to facilitate DPR-non-profit partnerships, and the California State Parks Foundation has been a strong policy and fiscal partner of DPR.)

Meeting notes: The challenges DFG is facing could be assisted with greater effort to engage in partnerships. Where needed, DFG should seek authorization to engage in partnerships with the not-for-profit community, similar to California State Parks. BRCC Member Frank indicated that he is not suggesting private sector

partnerships in this recommendation; he is cognizant of the concern raised about some partnerships in that they might give favored status to certain partners.

- **Perform a Comprehensive Review and Updating of the Fish & Game Code and Related Laws:** California statutes affecting the department and commission have evolved over 140 years. During that period, new and sometimes inconsistent legal mandates have been imposed via legislation. Testimony received by the BRCC reveals that a comprehensive review of state statutes, constitutional provisions and regulations concerning the department and commission has been undertaken. That review, which should be of a technical, nonpartisan nature, should be initiated without further delay. The independent California Law Revision Commission is an ideal body to undertake the constitutional and statutory review, and to then to make recommendations for curative amendments to the California State Legislature for consideration and enactment. After that process is completed, the department and Secretary for Natural Resources should undertake a conforming review process of California's regulations implementing those constitutional and statutory mandates.

Meeting notes: Statutes and regulations have become more complex as mandates have expanded over the last 100-140 years. Need a technical review and potentially legislative changes to ensure consistency. Need a bifurcated process where we start with a review of the statutes by the California Law Revision Commission and then, as appropriate, turn to the regulatory review process via DFG and F&GC. A BRCC member indicated favoring the BRCC forward a recommendation similar to the one from SAG members with this change to a two-step process (review statutes via CLRC and regulations via F&GC/DFG).

I welcome the comments of my colleagues and interested parties regarding these conceptual recommendations.

Richard Frank, B.R.C.C. Member

February 2, 2012

SAG member comments: All of these potential recommendations need significantly more discussion about what is being recommended and the potential implications. SAG members have had some preliminary discussions about these topics, but members did not believe they were ready for "prime time" in this phase. For example, the duties and distribution of responsibilities between DFG and F&GC needs significant discussion about the implications for California's resources. Tied to that, the suggested qualifications should reflect the mission of F&GC; the current suggestion does not reflect the diversity of issues F&GC is currently mandated to address. Conflicts of interest need to be considered if suggesting specific representation. With regard to reform and simplification of funding programs, the lack of transparency has driven development of special funds, even though they are not always effective or efficient. Until there is greater transparency in the functions of DFG and F&GC, there will not be stakeholder support for eliminating special funds. There are groups who want to be able to help pay for DFG activities; perhaps a policy for how to donate monies without creating a special fund? The recommendation for non-profit partnerships is consistent with the partnership recommendations supported by SAG members, but need to have sufficient firewalls to ensure no special treatment or access. The California Law Revision Commission recommendation did have strong support with SAG members; need to explore what prevented it from moving forward on Friday (may be a simple word change). However, looking at the regulations first may help identify where there are problems with the statutes.

BRCC member: I'm hearing from BRCC members that it is not our job to parse out the details of these recommendations. Expect that if these recommendations are advanced to the executive committee, and the executive committee wants to adopt them, it would be in good faith for the executive committee to parse through what needs to take place to implement them. Do the details need to be in place before advancing the concept, or would they be too controversial/difficult and thus would negate the recommendation? A SAG member suggested that for some of the recommendations it is inappropriate to put forward without the details since they are both controversial and difficult to implement.

SAG member comments: Realignment of F&GC and DFG powers was raised by a member of the SAG and put off to another day due to the significance of the suggestion. How is it possible to have more transparency if the [Endangered Species Act] listing process is moved from a public F&GC review process to an internal DFG process? This would be a big issue with respect to public participation. Regarding the member qualifications question – SAG members were not ready to put specific recommendations in potential legislation. The current recommendation by SAG members identified a "soft place to land" while still grappling with the issue.

A BRCC member asked a question of SAG members about whether there are any advantages to realignment? There is a perception that F&GC would be focused on its historic role of hunting and fishing. Responses: Not sure that if you take away what they have been doing in more recent years due to additional mandates will fix anything. While we may not always like the final F&GC decisions, but at least have a public process for transparency's sake. By putting decisions into the hands of DFG, may not have at least this minimal level of transparency and definitely concerned about from where the money will come for this additional work for F&GC staff.

A SAG member supports the BRCC providing direction to the SAG regarding priority discussion topics in the next phase. "Give us an opportunity to deal with the details."

Additional SAG member comments: The recommendation for a comprehensive statutory review is consistent with SAG recommendations; one concern is that there may need to be interaction between the legislature and the regulatory agencies during the review to ensure a more robust outcome. Level of support for the realignment of powers may change from day-to-day; look at NOAA Fisheries and the council process for how it has changed over the last decade as an example of perhaps how to better integrate DFG and F&GC. Important to have a venue for public to provide input and need to ensure that happens here. Suggestion that commissioner qualifications really need to be evaluated after you look at the missions and realignment. Financing – have also asked the question about how the heck DFG can function with the large number of special funds! Some of those funds have evolved over time due to development of fees (to ensure meeting the requirement for nexus of fee and expenditures); before lumping funds need to be sure there is good accountability of how funds are being expended (DFG not able to do that now to my satisfaction). Encourage partnerships – would not dismiss partnerships with for-profits as some of them are willing and desiring to provide support.

These new recommendations hit the concepts and are aligned with some of the ideas discussed in only a preliminary fashion by the SAG. Would appreciate additional BRCC input on the other plethora of ideas waiting on the sidelines for consideration. Also suggest it is important to include local agencies with the "not-for-profit" language.

Partnerships has been one of the highest priority topics for the SAG discussions. In addition to not-for-profits don't want to leave out private landowners who can and are important partners in resource stewardship.

Name change appropriate – fish and wildlife are not controversial words, and not likely to offend any constituency. Agree in concept to the qualifications; however, the individuals need to have policy experience to do the job currently required of F&GC. Believe that if you adopt the qualifications recommendation, then you do not need the realignment of powers and duties recommendation. F&GC is not dominated by any particular constituency and, if anything, is under-representative of the hunting and fishing communities. Partnerships can be an important tool but need to have strict conditions to ensure that the partners do not have undue influence. No one group should be able to provide millions of dollars and buy influence. DFG and partners must be willing to open up (financial) books to scrutiny, otherwise not good public policy. Back to name change, CalFire is not just about fighting fires – also conservation and fire prevention, so broader mandate that the name does not necessarily reflect. Membership of SAG is broad-based, so when you receive agreement it is a significant achievement due to the diversity. Do not see same level of representation on the BRCC – smart, articulate people, but don't see the same level of discussion and deliberation among BRCC members as we've had in the SAG discussions.

Appreciate you taking a step back and looking at the bigger picture. SAG members have given a lot of time and attention to the theme of partnerships. Broad level of support for DFG to have stable funding moving forward…will take time and still need to identify the specifics, but important general agreement on the concept.

Public comment: Name change and re-branding supported but not cheap. Has been done in other states and supported. However, not as high a priority as other issues and don't have money to make the change now. Criteria for commissioners - do not want to see any politicians on the commission, perhaps have a procedural advisor who advises only, but is not a member. Don't want to see governor appointing anyone – it's a football. Should be hunting, fishing, environmentalists, etc. Support abalone stamp, duck stamps, etc. Why can't I buy an elk tag and hunt in California; I can do that in Colorado. As long as they are managed and sustained, why not allow hunting? Don't want to see individual groups being able to give money to DFG and F&GC in order to prevent political agendas from dominating; need to have money come from general fund or other neutral source. Comprehensive review of statutes and regulations needs to occur. Need better communication with other agency staff (i.e., park rangers) to help the public understand what they can and cannot do in particular areas.

F&GC qualifications: Supportive of some type of qualification standard. Suggest eliminate "outdoor recreation" and not elevate any one particular interest group.

Heard many reasons today for why the BRCC should back off on specific recommendations and allow further deliberation among SAG members, but suggest that you do not need to apologize for your views and opinions. Now would be a good time to start letting those view be known.

Concerns with the separation of duties – some of the specifics where it requires regulations to change what people can take or not take. DFG tends to have a black curtain where it is difficult to determine when and how decisions are being made or provide the public with chance to provide input. F&GC at least provides a venue where public can not only observe but also participate in the dialogue. Agree that there is not enough money to go around, but special funds need to have transparency which would be lost if combine accounts. Don't change name if there is a cost associated with it, since there is no money right now. Review of statutes and regulations needs to happen together.

BRCC member discussion: The devil is in the details as we already discussed. Some of these ideas are conceptually supported but may need more thoughtful discussion when it comes time to incorporate details.

For example, there was agreement for encouraging meaningful partnership to leverage outside resources, but this brought up concerns of firewalls, objectivity, influence, and staff time, but that should not stop the BRCC from advancing the recommendations. Suggest advancing the recommendations at a high level, and ask for additional support from the SAG, but advancing these recommendations gives the BRCC the opportunity to keep the ball moving forward. The name change is in order, but won't provide a specific title; F&GC membership criteria is needed, but specific criteria not being recommended now; etc.

Should go forward with the recommendations and, in broad strokes, alert the executive committee to what the BRCC is thinking, and encourage and invite the participation of SAG members to consider, develop further, refine, and improve upon the conceptual recommendations.

- **Motion: <u>Name changes:</u> that the titles of both the California Department of Fish & Game and the California Fish & Game Commission be changed to more accurately reflect the scope of both entities' jurisdiction in the 21st century; <u>Changes in Membership and Qualifications of Fish & Game Commissioners:</u> Drawing upon the successful experience of other state agencies whose decision-makers are required to reflect diverse and specific areas of expertise, recommend statutory changes that expand the California Fish and Game Commission from five to seven members, and require that individual commissioners reflect particular, diverse professional qualifications; <u>Realignment of the Powers and Duties of the Department and Commission:</u> It is proposed that the authority of the commission should prospectively be focused on the setting of hunting and fishing seasons, bag and catch limits, and related functions. Other regulatory and land management responsibilities, including the administration of and listing decisions under the California Endangered Species Act, oversight of California's marine protected areas, and administration of the Oil Spill Prevention Act, should be centralized in the department; <u>Reform and Simplification of Department Funding Programs:</u> The number of special funds should be substantially reduced through elimination of particular accounts, consolidation of accounts, or both. In this way, for example, special funds meant for management of game species and hunting and fishing programs could be consolidated into one fund, thereby protecting the integrity of the funds, affording a measure of flexibility, and achieving substantial administrative efficiencies; <u>Encourage Department Partnerships with the Non-Profit Community:</u> To address the growing fiscal crisis, increased reliance upon and collaborations with the non-profit community should be encouraged. The Department should be encouraged to pursue such mutually-beneficial partnerships in the future, and state law should be amended to facilitate such collaborations. <u>Perform a Comprehensive Review and Updating of the Fish & Game Code and Related Laws:</u> A comprehensive review of state statutes, constitutional provisions and regulations concerning the department and commission has been suggested. That review, which should be of a technical, nonpartisan nature, should be initiated without further delay. The independent California Law Revision Commission is an ideal body to undertake the constitutional and statutory review, and to then make recommendations for curative amendments to the California State Legislature for consideration and enactment. After that process is completed, the department and Secretary for Natural Resources should undertake a conforming review process of California's regulations implementing those constitutional and statutory mandates.**

With regard to the motion, the format is intended to provide information to SAG members present and not present, and the executive committee, and provide some context rather than just the action sentence which sent in isolation may not be helpful.

BRCC follow up – Some consternation among SAG members about why revision of regulations wasn't advanced, as it would fit under review and updating of codes and laws; could that be layered in? Reason

framed as it is because the California law Revision Commission lacks authority to propose changes to state regulations; start with statutes and constitutional provisions that set out the authority as the regulations are designed to implement that authority. Amending regulations concurrently or in advance of the statutory and constitutional review does not work. Issue will stay on the table and in the hands of the SAG.

Compelling public comment on the issue of realignment of the power and duties, particularly that F&GC is mandated to work in a transparent public venue, and would lose some of that transparency if duties landed on DFG, also a heavy lift and disruptive. On a federal level, the Endangered Species Act is administered by the U.S. Fish and Wildlife Service and NOAA; both are executive branch agencies. There are provisions in statute to ensure the listing process with public hearings are conducted as part of that process, regardless of where the responsibility lays, either commission or department. Wherever t lands, needs to be a transparent process, needs to have public input. Should not lose transparency.

Motion: First Rick Frank, second Dave Graber, carried (4-0).

The list of recommendations that advances to the executive committee is not comprehensive and the BRCC will be leaning on the SAG for details. Additional recommendations on enforcement, oil spill prevention and response, likely science, and regulations still to be considered.