

**MEETING OF THE CALIFORNIA EARTHQUAKE AUTHORITY
GOVERNING BOARD, EXERCISING THE POWERS OF THE CALIFORNIA
CATASTROPHE RESPONSE COUNCIL
MINUTES**

**Wednesday, August 7, 2019
1:00 p.m.**

Location: California Department of Food and Agriculture
Auditorium, Room 131
1220 N Street
Sacramento, California

Members of the Governing Board in attendance:

Mark Ghilarducci, designee of Governor Gavin Newsom, Board Chair
Kasey O'Connor, designee of State Treasurer Fiona Ma
Michael Martinez, designee of Insurance Commissioner Ricardo Lara

Members of the CEA Staff in attendance:

Glenn Pomeroy, Chief Executive Officer
Tom Hanzel, Chief Financial Officer
Shannon McEuen, Governing Board Liaison
Tracy Palombo, Reinsurance and Risk Transfer Director
Tom Welsh, General Counsel

Public comment:

Michael Aguirre, Aguirre & Severson LLP
Maria Severson, Aguirre & Severson LLP
Steven Greenhut, R Street Institute

1. Call to order and member roll call

Chair Mark Ghilarducci called the meeting to order at 1:04 p.m. A quorum was achieved.

2. Executive Report

Glenn Pomeroy, CEA Chief Executive Officer, welcomed everyone and stated the non-voting members expressed their regret that they were unable to be in attendance.

Mr. Pomeroy provided a high-level introduction of Assembly Bill (AB) 1054, and the creation of the California Wildfire Fund (CWF). He provided an overview, with a slide presentation, of the CWF governance structure, interim governance structure, makeup, and initial administrative steps to be taken in today's meeting. He stated the California Catastrophe Response Council (CCRC) will soon be established and will be made up of nine voting members including the Governor, Insurance Commissioner, Treasurer and secretary for Natural Resources. The other five members have yet to be appointed. Once the CCRC is established, one of its duties will be to appoint a California Wildfire Fund Administrator.

Mr. Pomeroy stated, in the interim, the CEA Governing Board has been mandated by statute to assume the authorities and duties of the future CCRC, to exercise oversight of the CWF Administrator and the steps being taken to set up the CWF.

3. California Wildfire Fund Setup and Capitalization

Tom Welsh, CEA General Counsel, stated this meeting will follow prudent procedures to ensure that the statutory deadlines set out by the Legislature will be met. The infrastructure for the CWF addressed in this agenda item must be put into place within a short period of time in order to receive the initial capitalization of the CWF, which has two components – a short-term loan from the Surplus Money Investment Fund (SMIF) and capital contributions from the utilities, which are due to be received approximately September 10th.

Tom Hanzel, CEA Chief Financial Officer, reviewed the background, findings, and recommendations for the following resolutions to establish the administrative infrastructure for the CWF, which were included in the meeting packet:

a. Custodial Banking and Demand Deposit Accounts

Mr. Hanzel described the need for the establishment of a custodial trust account at a national bank to hold all assets in the CWF.

Public Comment

Michael Aguirre, Aguirre & Severson LLP, stated he is an attorney representing utility customers in a federal court lawsuit challenging the

legality of AB 1054 and the CWF. He stated this meeting has no force and effect because the notice did not stipulate the use of designees. He stated, if the designees have been told how to vote prior to the meeting, that is in violation of the open meeting law, but, even if they were not told how to vote prior to the meeting, designees have no legal authority to exercise discretionary decision-making power.

Mr. Aguirre stated utility customer funds and the money in the SMIF account are public funds. The Board has no legal authority to allocate or transfer public funds. He asked that the meeting be terminated.

Maria Severson, Aguirre & Severson LLP, stated this meeting should not go forward because it is proceeding in violation of the Bagley-Keene Act. She stated she sent a formal objection to Mr. Welsh and expect it to be printed as part of these proceedings. She agreed with Mr. Aguirre that the notice failed to state that the Board would not be attending in their original capacities. She stated her concern about the \$2 billion transfer from the SMIF, which are public funds that suddenly will be called non-public funds; yet ratepayers, utility customers, and taxpayers will be forced to fund and pay back that \$2 billion.

MOTION: Ms. O'Connor moved to approve, adopt, and ratify agreement between CEA, as Interim Administrator of an on behalf of the California Wildfire Fund, and U.S. Bank, National Association (USB) for Custodial Banking and Demand Deposit Accounts. Mr. Martinez seconded. Motion carried unanimously.

b. Asset-Management Services

Mr. Hanzel described the need to engage asset managers to invest funds in the CWF.

Public Comment

Mr. Aguirre questioned the transfer of funds in the SMIF account that belong to taxpayers to private individuals so that they can manage the money and then turn it over to the utilities. He asked how that is possible.

Mr. Aguirre stated the Governor has done away with General Order 95, which sets out the basic safety rules promulgated by the California Public Utilities Commission (CPUC) and adopted the Federal Energy Regulatory Commission (FERC) standard. The Board is asking utility customers to automatically pay before the CPUC has determined if it will transfer funds. He asked the Board to pause to request a written legal opinion with legal

authorities from Mr. Welsh if what the Board is being asked to do is proper under the law and under the state constitution.

MOTION: Mr. Martinez moved to approve agreements by CEA, as Interim Administrator of an on behalf of the California Wildfire Fund, for Asset Management Services from:

- Eaton Vance Management
- PFM Asset Management
- RBC Global Asset Management
- Smith Graham & Co.

Ms. O'Connor seconded. Motion carried unanimously.

c. Investment Consulting

Mr. Hanzel described the need to engage an investment advisor to assist the Administrator of the CWF in investing assets of the CWF.

Public Comment

Mr. Aguirre stated the members of the Board are using their designees so they can deny they participated in this meeting. He stated Governor Newsom took \$208,000 from PG&E, a convicted felon that borrowed \$5 billion and then went into bankruptcy. He stated the Governor and the legislators, who PG&E paid off, are basically giving PG&E the keys to the state treasury.

Ms. Severson stated the meeting notice indicates that the CEA Governing Board will sit in its capacity to exercise the powers of the CCRC. Three designees are present but the CCRC is a nine-member council that is not permitted to be active until a quorum is established. There should at least be a full representative board before any action is taken. No action should be taken today. She suggested slowing the process down, allowing the Governor to appoint the nine council members, and then establish a quorum in a formal meeting.

Questions and Discussion

Ms. O'Connor asked General Counsel to respond to stakeholder comments regarding why the Board is able to vote today.

Mr. Welsh stated AB 1054 creates the CCRC but states the CCRC cannot operate until a majority of the nine members are appointed. He stated AB 1054 deals with the interim period of time by saying that, until the CCRC

can act, all powers vested in the CCRC under the legislation are given to the CEA Governing Board.

Mr. Welsh stated the CEA statute, 10089.7(a), clearly specifies that this Board, made up of the Governor, the Treasurer, and the Insurance Commissioner, has the authority expressly in statute to appoint designees to act as the members. It is in that capacity that the Board is meeting today.

MOTION: Ms. O'Connor moved to approve, adopt, and ratify agreement by CEA, as Interim Administrator of an on behalf of the California Wildfire Fund, for Investment Consulting services to be performed by Raymond James & Associates. Mr. Martinez seconded. Motion carried unanimously.

d. Additional Asset Managers

Mr. Hanzel explained the need to procure additional asset managers to invest future funds deposited into the CWF.

Public Comment

Mr. Aguirre stated the Governor told the public that each side was going to put in half of the \$21 billion fund and no one was going to make any money off of it. He stated page 3 of 9 of the Staff Report, which was included in the meeting packet, now states the public will put in \$10.5 billion while the utilities will put in \$2.68 billion.

Mr. Aguirre stated the bill sets aside \$5 billion for infrastructure improvement, but \$21 billion is planned to be set aside for wildfire claims that have not been filed for wildfires that have not occurred.

Mr. Aguirre referred to page 4 of the Staff Report where it states that \$4.82 billion will come from PG&E after it confirms a plan of reorganization. He asked when that will occur, what it means, and what the authority is. He stated a conspiracy to violate the law is a felony and what the Board is doing is a fraud.

Questions and Discussion

Mr. Martinez asked to table this agenda item, engage in a Request for Proposals (RFP) process to increase the pool of asset managers, and to inform the Board of specific asset managers identified at a later date, consistent with the oversight role of the Board and the CCRC.

Ms. O'Connor agreed. She stated her appreciation that there is one minority-owned asset management firm but asked staff to ensure a diverse pool of other minority-owned or women-owned asset management firms.

Mr. Welsh stated that has historically been part of CEA practices with respect to the Earthquake Authority so that will continue on behalf of the Wildfire Fund.

e. Investment Policies

Mr. Hanzel discussed the need to adopt written Investment Policies for the CWF to guide and control CWF investments.

Public Comment

Mr. Aguirre stated the investment banker Bank of America Merrill Lynch wrote to the Governor's key person on AB 1054 and said the way this is structured makes for an attractive investment structure. He stated utilities can use their insurance to pay for wildfire claims. They do not even have to show that they were not negligent. They are not responsible, then, for paying. He asked where the claim is, who will claim this money, and what the purpose of doing this is.

Mr. Aguirre stated what will happen is utility customers will be taxed, a fund created, and that fund will be completely disconnected from the issue, which is how to prevent wildfires in the future. He asked the Board not to approve this. Investment advisors and managers are not needed to put it in treasuries, a risk-free rate of return; the state treasurer can do that. Risk-free rate of return takes no active management and does not require hiring individuals who will make money for doing no real value-added work.

MOTION: Ms. O'Connor moved to approve and adopt proposed California Wildfire Fund Investment Policies. Mr. Martinez seconded. Motion carried unanimously.

f. Cost Allocation Methodology

Mr. Hanzel explained the need to develop a cost allocation methodology to ensure that the costs of administering the CWF are paid by the CWF, not by the California Earthquake Authority.

Public Comment

No public comment.

MOTION: Mr. Martinez moved to authorize CEA staff to develop, document, and implement a cost allocation methodology to allocate all administration expenses arising from or related to the California Wildfire Fund for payment by the California Wildfire Fund. Ms. O'Connor seconded. Motion carried unanimously.

4. California Wildfire Fund Risk Transfer

Tracy Palombo, CEA Reinsurance and Risk Transfer Director, stated the CWF is "on risk" for the current wildfire season. She reviewed the background, findings, and recommendations for the following resolutions, which were included in the meeting packet:

a. Risk Transfer Intermediary

Ms. Palombo explained the need for the Administrator to engage the services of a reinsurance intermediary to advise on potential risk transfer options to de-risk the CWF.

Public Comment

Mr. Aguirre encouraged the Board to consider the big picture and what they are being asked to do. This fund will only cover wildfires that occur after July 12, 2019. No covered wildfires have been identified to date. The CWF will not act as an insurance fund. There is no claim procedure. The funds will be spread to investment advisors and managers and fees will be charged to dwindle down the fund. It has little to do with wildfires and much to do with opportunistic investment bankers seizing upon the situation, misleading the Governor, and exploiting this problem. He suggested asking a reinsurance person to present how their services are worth the money.

Steven Greenhut, R Street Institute, asked if the reinsurance advisor and intermediary have been identified.

Mr. Welsh stated three internationally recognized reinsurance intermediary firms have been identified and invited into the procurement process – Guy Carpenter, AON, and Willis.

MOTION: Ms. O'Connor moved to authorize CEA, as Interim Administrator of the California Wildfire Fund, to contract for reinsurance intermediary and advisory services. Mr. Martinez seconded. Motion carried unanimously.

b. Risk Transfer Guidelines

Ms. Palombo explained the need to adopt Risk Transfer Guidelines to guide the consideration and procurement of risk transfer agreements.

Public Comment

Mr. Aguirre provided a brief history of General Order 95. He stated the risk of wildfire costs has been transferred to the state of California and utility customers. The Board is being asked to manage a risk that PG&E and PUC could not and insurance companies do not want. He asked the Board to step back and think more deeply about risk.

MOTION: Mr. Martinez moved to approve and adopt Risk Transfer Guidelines for the California Wildfire Fund. Ms. O'Connor seconded. Motion carried unanimously.

c. Risk Transfer Contracts

Ms. Palombo explained the need for authorizing to procure risk transfer to protect the CWF during the ongoing 2019 wildfire season.

Public Comment

Mr. Aguirre read excerpts from a brief from the Governor's Office, Department of Finance, Treasurer, and CPUC to his complaint in federal court asking for an extension of time to allow defendants time to research and address the issues in the complaint. He asked, if they require more time to respond, why they are forcing the Board to rush forward. He stated his concern that what motivates this effort is not wildfires but campaign money because this effort helps to keep the utilities healthy financially and utility companies are some of the biggest campaign contributors.

MOTION: Mr. Martinez moved to authorize CEA, as Interim Administrator of the California Wildfire Fund, to purchase insurance, reinsurance, and other forms of risk transfer to protect the California Wildfire Fund and increase the durability and claim-paying capacity of the California Wildfire Fund. Ms. O'Connor seconded. Motion carried unanimously.

5. Plan of Operations.

Mr. Pomeroy stated the statute directs that the CCRC shall direct the Administrator to prepare and present for approval a plan of operation related to the operations, management, and administration of the CWF on

an annual basis. The statute also directs that this plan be delivered to the appropriate policy committees.

Mr. Pomeroy stated he put this item on the agenda to let both the interim board and the legislative committees know that that responsibility is noted and staff will begin working on it.

6. Public comment on items that do not appear on this agenda and public requests that those matters be placed on a future agenda.

Mr. Aguirre thanked the Board for allowing him to make his case.

Ms. Severson stated the best way to reduce risk is to make the utilities shore up their systems and put their money into infrastructure. She encouraged the Board not to take the ratepayers' and taxpayers' money and put it in to paying claims but to put money toward ensuring that utilities operate safely by cleaning up vegetation and removing dangers.

7. Adjournment.

There being no further business, the meeting was adjourned at 2:14 p.m.