

State of California  
California Water Commission

California Code of Regulations, Title 23. Waters  
Division 7. California Water Commission  
Chapter 1. Special Application for Early Funding

Initial Statement of Reasons

Background and Authority

The Water Storage Investment Program implements Proposition 1, Chapter 8, that provided \$2.7 billion for public benefits of water storage projects. To implement this chapter, The Commission adopted program regulations, as required in Chapter 8, then proceeded with a solicitation and application review. The language in Water Code section 79755(a) prevents the Commission from making final awards until the applicant has finalized environmental documentation, completed permits, obtained 100 percent of the non-public cost share, and has executed contracts with applicable State agencies for the administration of public benefits. However, while section 79755(a) prevents a final award until the project is construction ready, section 79755(c) allows for early funding of projects to assist with work related to completion of environmental documentation and permits. Program regulations implemented the early funding provision by requiring applicants to request early funding in their initial applications. Four of the eight applicants that completed the review process requested early funding in their applications. In July 2018, the Commission made maximum conditional eligibility determinations (MCEDs) for eight projects providing enough information and assurances that projects could proceed to complete the statutory requirements. The Commission also made three early funding awards. Early funding is a portion of a project's MCED that applicants may spend prior to final award. These proposed regulations do not modify the amount of funding a project may potentially receive if the project completes the requirements in Section 79755(a).

Problem Statement

COVID-19 is a respiratory disease caused by a novel coronavirus and transmitted person-to-person contact and community spread. The COVID-19 outbreak has been characterized as a pandemic by the World Health Organization and determined by the federal Centers for Disease Control and Prevention (CDC) to be a serious public health risk. Federal, state, local, and tribal public health guidance regarding the COVID-19 emergency is evolving rapidly and requires action by government entities to reduce the spread and public health impact of the virus. One notable side effect of these efforts is the impact on the California economy.

On March 4, 2020, Governor Gavin Newsom declared a State of Emergency to exist in California as a result of the threat of COVID-1. The Governor issued Executive Order N-

33-20 on March 19, 2020, ordering all individuals living in the state of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors. This “stay home order” has resulted in approximately 4.5 million people receiving unemployment benefits through July 30, 2020, and a related economic downturn to the California economy. The Legislative Analyst estimated on April 15, 2020, that lower revenues to California as a result of changes in the economy will amount to “tens of billions of dollars across a multiyear period.” These reduced revenues impact the ability of public agencies to operate and their credit worthiness as an operating partner. The ongoing nature of the pandemic continues to impact public agencies’ ability to fully engage the economy.

Water storage plays a key role in California, where the quantity, timing, and location of water demand frequently do not match the natural water supply availability. Water storage is fundamental to managing variability in water supply for human and environmental purposes and is a critical tool for providing water management flexibility in California. New surface water or groundwater storage capacity can provide improvements to the operations of the state water system and a robust set of benefits, including water supply reliability for municipal and industrial uses, agriculture, and ecosystem purposes. Increased surface storage can also provide water to improve flow regimes and lower water temperatures to increase fish survival in rivers and the Sacramento-San Joaquin Delta (Delta), as defined in Water Code section 85058. Increased surface storage also provides flood storage space, water quality improvements, hydropower generation, and recreation opportunities. Increased groundwater storage can provide groundwater recharge, reduce overdraft, and minimize or stabilize land subsidence. It may also capture flood flows and improve water quality. When conjunctively managed (i.e., managed in a planned and coordinated manner), surface and groundwater storage projects can provide synergistic benefits for all or many of these desired outcomes.

Improving water supply reliability depends on the ability to capture and store water during peak flows and wet years. Water storage serves as a “water savings account” that allows water to be captured and stored until needed and can allow for more efficient water use when integrated with other water management tools, such as conservation and recycling. For example, water conserved through water use efficiency practices, such as reduced irrigation losses, could be stored in water storage facilities and “saved” for use at another time or for another purpose.

Recent information from WSIP applicants indicates that funding for environmental permitting and documentation may be in jeopardy because of the economic downturn associated with the COVID-19 pandemic. Applicants to the WSIP are required to complete this documentation before they may receive any funds for construction for the proposed projects. When applicants applied to the program in 2018, several did not apply for funding for completion of environmental documentation because the financial situation of their particular public agency made funding from the State unnecessary. However, the current economic impacts of the COVID-19 pandemic have made it necessary for those projects to approach the Commission for funding to complete the

environmental documentation. These projects are important to the long-term water resilience of California communities and ecosystems.

### Purpose of Regulation

The purpose of the proposed regulations is to provide an opportunity for those projects that did not receive early funding during the 2018 evaluation of applications to request early funding from the Commission.

### Summary of specific purpose of and rationale for adoption

This section provides a summary of the specific purpose of each proposed amendment and the rationale for staff's determination of why the proposed adoptions are reasonably necessary to carry out the purpose of the provisions of law they are implementing and to address the problem as described above.

Section 6010(f) will make one additional application for early funding available to project applicants that have not already received early funding through the Water Storage Investment Program and sets forth the process to request early funding by the applicants. Applicants must notify the Commission of the intent to request additional early funding at least fifteen (15) days in advance, the applicant must present the request to the Commission, and provide any materials the applicant will present to the Commission at least 14 days in advance of the Commission meeting to ensure an open and public process is associated with the request. This is a change from the emergency regulations that provided that written materials to be presented to the Commission would be provided at least ten (10) days in advance of the Commission meeting. This section is necessary to ensure affected applicants know the process to present a request for early funding outside of the original application period.

Section 6010(g) states what actions the Commission will take when an applicant fulfills the requirements of section 6010(f). Commission staff will provide an update about the applicant's project to the Commission, including a status overview and update of any information submitted by the applicant. This provision is necessary to ensure the Commission is completely informed about the project before committing additional funds to the project.

Section 6010(h) explains how the Commission will make its decision. The Commission will make its decision of whether to award early funding on the same basis contained in existing section 6010 (a) – (e) that applied to projects that applied for early funding at the same time the application was submitted in August 2017. The Commission may consider the current status of the project, including progress made since the maximum conditional eligibility determination. If the Commission decides to allow funding for completion of environmental documentation, the applicants would use existing regulatory provisions to complete funding agreements. This provision is necessary to ensure all parties are aware of the factors the Commission will consider when making its decision.

### Benefits of the Proposed Regulation

The regulation will ensure water storage project proponents in the Water Storage Investment Program maintain long-term viability by giving the applicants an opportunity to obtain financing for environmental documentation.

### Documents Relied Upon

Commission staff relied upon the letter from the applicants, dated May 11, 2020.

### Description of Reasonable Alternatives

#### Alternative 1 - No regulations

The Commission could opt to not adopt regulations and let the current emergency regulations expire on June 30, 2021. If all of the applicants impacted by the regulations apply for early funding before the expiration of the regulations, this could be a reasonable alternative. However, there is no guarantee that all applicants will be able to complete the requirements under the emergency regulations. (Government Code section 11340.5)

### Economic Impact Assessment

In accordance with Government Code section 11346.3, staff has determined that the proposed regulatory action would not eliminate existing businesses within the State of California and would not affect the creation of new businesses or the expansion of existing businesses currently doing business in California. The proposed regulatory action would not eliminate jobs within the State of California and would not affect the creation of jobs within California.

Small businesses would not be subject to the proposed regulations because the proponents of the Water Storage Investment Program water projects are not small businesses.

The following findings support the proposed regulations:

- The proposed regulation will not result in a significant or permanent change in the number of jobs within the state.
- No creation or elimination of businesses within the state would occur as a result of this proposed regulation.
- The proposed regulation would not affect the competitive advantages or disadvantages of businesses within the state.
- The proposed regulation would not significantly affect investment in the state.
- Incentives for innovation in business products, materials, or processes would not be affected.

The objective of the proposed regulations is to provide an opportunity for existing projects in the Water Storage Investment Program who did not originally receive early funding to request early funding to address the economic hardship confronting the applicants caused by the COVID-19 pandemic.

There are no significant adverse impacts directly affecting businesses. Direct costs related to the proposed regulation fall on proponents that are public agencies.

#### Duplication of Conflicts with Federal Regulations.

Government Code section 11346.2(b)(6) requires the Commission to describe its efforts to avoid unnecessary duplication or conflicts with federal regulations that address the same issues. No federal regulations address the same issues as the Commission's proposed regulations, so the proposed amendments do not conflict with nor duplicate any federal regulations.

#### Environmental Impact Assessment

The purpose of the regulations is to implement a process to make early funding available for applicants to complete environmental documentation and permits for proposed water storage projects. These activities will not have an impact on the state's environment. Specific environmental impacts resulting from evaluated projects will be subject to permitting and will be analyzed by each project's lead agency in accordance with applicable law.