



Action Item: Rancho California Water District's Vail Dam

Background

The Water Infrastructure Improvements for the Nation (WIIN) Act, December 2016, contains section 4007 authorizing the Bureau of Reclamation (Reclamation) to build water storage projects in the western United States. Section 4007 authorized a new financial structure for Reclamation to support infrastructure projects, which must be approved for construction prior to January 1, 2021. Projects are divided into two primary types, Federally-led and State-led. Federally-led projects, where the United States holds title, are eligible for up to 50% Federal funding. State-led projects are groundwater or surface storage projects constructed, operated, and maintained by the State or political subdivision. The funding limit for State-led projects is 25% of the total cost of construction. The Secretary of Interior must find that the project is feasible and provides federal benefits proportionate to the federal government's cost share. For example, a project supported by 25% federal funding must have 25% of its benefits support federal interests, such as water supplies dedicated to environmental enhancement or federal wildlife refuges. For State-led projects, the State Governor must request federal support for the project via letter to the Secretary of the Interior.

California projects have an additional requirement. Section 4007(f) requires that State-led projects obtain a finding from the California Water Commission that the project is consistent with the California Water Quality, Supply, and Infrastructure Improvement Act (Proposition 1) approved by voters on November 4, 2014. This provision requires a finding of consistency with Proposition 1 generally, not with a specific chapter within the Proposition.

Summary of Issues

The authority for the Commission to make a consistency finding is not from State statute, but from section 4007(f) of the WIIN Act. The language of section 4007(f) does not require that a project be an applicant for State funding through Proposition 1. Rather, for a State-led project to apply for WIIN Act funding, the California Water Commission must make a finding that the project is "consistent" with Proposition 1.

The Commission implemented a process specifically tailored to Chapter 8 when it developed the Water Storage Investment Program (WSIP). Section 4007(f) of the WIIN Act allows a broader consideration of the entirety of Proposition 1 to find a project consistent with its statutory terms. These two evaluations may be different, based on their different purposes.

Projects that applied to and are currently active in the WSIP were found to be consistent with Proposition 1 via the Commission's resolution regarding a project's maximum conditional eligibility determination.

On April 12, 2019, the Commission received a letter from Rancho California Water District (District) in Temecula. The District owns Vail Dam and Vail Lake. The dam needs to be replaced to meet safety standards enforced by Department of Water Resources Division of Safety of Dams. The District is seeking WIIN Act funding and needs a finding of consistency with Proposition 1 from the Commission. If the Commission makes such a finding, then the District can ask Governor Newsom to request federal support. Reclamation can then begin to evaluate the project for WIIN Act funding. The District requested the opportunity to address the Commission at its May 15, 2019 meeting. At its April 17, 2019 meeting, the Commission directed staff to add an agenda item to the May meeting to discuss and potentially act on the District's request for a consistency finding.

Proposition 1 Summary

On May 15, the Commission will hear from the District regarding the Vail Dam Project's consistency with Proposition 1. This section presents information on the general intent and types of projects supported by Proposition 1.

Proposition 1 consists of 12 Chapters. Chapters 1 through 4 provide information that is applicable to all subsequent funding chapters, such as term definitions. Chapters 5 through 11 describe various funding programs and specific requirements for each. Chapter 12 contains fiscal provisions. Because there are multiple funding chapters and each funding chapter may contain requirements specific to that chapter, it would be difficult for a project to be consistent with all specific funding provisions.

In general, Proposition 1 aims to fund projects that achieve the following goals and objectives:

- Projects that address one or more of three objectives of the California Water Action Plan:
 - Reliable water supplies
 - Restoration of important species and habitat
 - More resilient and sustainable managed water infrastructure (adaptation to climate change)
- Projects that leverage private, federal, or local funding
- Projects that are consistent with State and Federal Wild and Scenic Rivers Act (projects cannot affect rivers with that designation)
- Projects that help improve water quality for beneficial use
- Projects that respond to climate change and increase regional water security

- Projects that help water infrastructure adapt to climate change, increase agency collaboration, or improve regional water self-reliance
- Projects that provide multiple benefits
- Projects that improve operation of the State Water Project, are cost effective, and provide a net improvement in ecosystem and water quality conditions
- Projects that involve the advanced treatment of waste water for water recycling or contribute to the storage, conveyance, or distribution of recycled water
- Projects that improve water supply reliability
- Projects that prevent contamination of groundwater or remove contaminants from groundwater
- Projects that reduce risk of levee failure and flooding in the Delta

Possible Commission Action

After hearing information about the project from the District and how the Vail Dam Project is consistent with Proposition 1, the Commission has full discretion to make any decision it feels is warranted. The Commission is not limited to a binary choice of consistency with Proposition 1 or not. The Commission could decide additional information is needed or that a process is needed so that any project making a similar request is treated similarly. The Commission has no set process to make a consistency finding pursuant to the WIIN Act. The requested timeline from the District to request the consistency finding from the Commission at the May meeting does not allow for the development of a set process. An issue may arise, and the Commission may need to consider adopting a process if it appears these requests will be a regular part of the Commission's business. The Commission can consider and discuss the submitted materials at the Commission meeting and may decide how to proceed. The Commission could decide to act on this project and document a similar process for any future requests. The Commission should consider timelines needed and methods available for documenting a process.

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