



Water Storage Investment Program: Adjustment of Maximum Conditional Eligibility Determinations (Action Item)

Introduction

This item is a continuation of the discussion the Commission has had over the past several months regarding potential ways of supporting existing Water Storage Investment Program (WSIP) projects utilizing some of the Maximum Conditional Eligibility Determination (MCED) amount that was returned by Temperance Flat Reservoir Authority (TFRA) when it formally withdrew from the WSIP in October 2020 and returned its MCED of \$171,330,000 to the Commission.

In November 2020, Commission staff presented multiple options that could be used to utilize the Temperance Flat Reservoir Project's MCED amount. In December 2020, Commission staff presented a staff proposal consisting of a combination of three of the options:

- 1) Adjust Willow Springs Water Bank Conjunctive Use Project and Kern Fan Groundwater Storage Project MCEDs from their current level to the amount originally requested by the applicant. This would use \$46,006,686.
- 2) Adjust all seven WSIP project MCEDs using a 2.5% inflation adjustment. This would use \$61,406,962.
- 3) Hold the remaining \$63,916,372 and begin a new project screening process. The \$63,916,372 could be applied to new projects if the Commission opts to conduct rulemaking and open a second solicitation.

The Commission voted to open a screening process for potential new projects (see Agenda Item 11) but did not approve any MCED adjustments.

The Commission directed staff to return next month with more information on how additional funding would be beneficial to Willow Springs Water Bank Conjunctive Use and Kern Fan Groundwater Storage projects, and how the inflation adjustment would benefit all projects.

Summary of Issues

In the December meeting, Commissioners expressed the need for additional information on several issues.

Authority to adjust MCEDs. The Commission asked staff to further review the legal basis for existing project MCED adjustment by the Commission. The Commission has legal authority to

adjust existing MCEDs as suggested in the staff recommendation. The Commission has authority to continue to make ongoing decisions about the administration of the Water Storage Investment Program, under Proposition 1.

Project Status. Commissioners asked for a better understanding of projects' status and projects' ability to move forward within the WSIP. Staff has reviewed each project's status and the remaining projects are in a position to move forward within the WSIP. At this stage of project development, projects have issues to overcome to advance their projects, including the cost increases expressed at the December meeting by Valley Water and Sacramento Regional County Sanitation District on their respective projects. However, at this point in time, all projects are making efforts to comply with WSIP requirements, and it is too soon for staff to identify any project as unable to move forward. At the January meeting, applicants will be available to answer further questions regarding project status.

Effects of Commission Action. The Commission asked for more information to understand the effects on the projects of a decision to change the MCEDs, and the effects of making those decisions now or in the future. Staff has discussed the impacts of adjusting MCEDs with existing project applicants and indicates how Commission decisions will impact existing projects in the following section. At the January meeting, applicants will be available to answer further questions from Commissioners regarding their ability to move forward with and without MCED adjustments.

Commission decisions on existing project MCEDs affect the amount of funding available to use if the Commission opens a second solicitation. If the Commission increases current projects' MCEDs, less money will be available for new projects, which may serve as a disincentive to new projects' willingness to participate in the screening process.

Commission Decision

The Commission is considering whether to move forward with adjusting MCEDs as laid out in the introduction:

- 1) Adjust Willow Springs Water Bank Conjunctive Use Project and Kern Fan Groundwater Storage Project MCEDs from their current level to the amount originally requested by the applicant. This would use \$46,006,686.
- 2) Adjust all seven WSIP project MCEDs using a 2.5% inflation adjustment. This would use \$61,406,962.

Additional information about and the implications of the Commission's decisions on these two matters is laid out below.

The Commission may choose to increase the MCED for Kern Fan Groundwater Storage Project by \$18,122,685 (from \$67,537,315 to \$85,660,000) and Willow Springs Water Bank Conjunctive Use Project by \$27,884,001 (from \$95,405,999 to \$123,290,000) to the applicants' originally requested amounts. The Commission can decide to increase the MCED's as indicated above. These projects received a ranking of 3, the lowest ranking for projects that received an MCED, during the 2018 application review and were given MCEDs less than the amount requested due to funding shortfall. These projects and their benefits were vetted through the application review process and are eligible for the applicant request amounts specified above. Adjusting the MCED provides certainty to these projects that the State is willing to support these projects as originally configured and will help solidify and move efforts currently underway.

Alternatively, the Commission could also decide not to increase these MCEDs, leaving them at their current levels. At a minimum, this would mean the applicant, partners, and local rate payers would need to make up the difference to implement the project as configured. Other funding sources, such as other grants, may be sought by applicants to help close any funding gap. Project proponents may not be able to make up the difference, which could result in the public benefits described in the application being reduced: the water that would be used for the public benefit could be used by other partners (revised cost allocations). The Commission received a comment letter from Willow Springs Water Bank Conjunctive Use Project in December indicating they would need to reduce public benefits if the MCED is not adjusted.

As an additional option, the Commission could decide to delay this decision and hold funding to incentivize new projects to submit to the screening process with the prospect of a second solicitation. This causes uncertainty for the Willow Springs Water Bank Conjunctive Use Project and Kern Fan Groundwater Storage Project applicants, because they will not know what their MCED will be. This uncertainty can impact decisions that the applicants need to make regarding project partners or project configuration and associated planning activities. A month or two delay would not be significant, but longer delays may impact the applicants' 2021 finance or budget decisions. Similarly, delaying the decision also causes uncertainty for those projects submitting to the screening process as it will be unclear how much funding may be available for a second solicitation if the Commission decides to pursue a second solicitation after screening is completed at the end of 2021.

The Commission may choose to provide an MCED increase of 2.5% to all seven remaining WSIP applicants. Projects were required to use 2015 dollars in their applications. Inflation of about 10% has occurred since 2015. This option provides an adjustment to all projects to help compensate for inflation. This does not increase the public benefit of any of the projects nor does it guarantee that projects will produce the public benefits that they have proposed. However, this decision does signal to applicants that the State is willing to help bear some

inflationary cost increases that have occurred since the application was submitted. This additional investment is consistent with a “beneficiary pays” principle. Inflationary cost increases are otherwise borne by the applicant, project partners, and, ultimately, rate payers.

The Commission could decide to provide an MCED inflationary adjustment of a different percentage. The Commission can utilize the entire TFRA MCED amount in an inflationary adjustment of five to seven percent depending on any MCED adjustments to Willow Springs Water Bank Conjunctive Use Project and Kern Fan Water Storage Project described above. However, the Commission would then lose the ability to hold some of the TFRA MCED amount to fund projects found through the screening process and a potential second solicitation, and thus to incentivize new projects participating in the screening process. Changing the percentage of inflation adjustment changes the amount that is available for a potential second round of applications and can impact the desire for new projects participate in the screening process.

The Commission could decide to not give an inflation adjustment. Projects would likely still advance, leaving increases in costs to be borne by applicants, other public funding agencies, project partners, and local rate payers. A potential consequence is reduction of public benefit provided based on cost allocations or other project modifications due to increasing costs. Ultimately, the boards or decision-making entities for these projects will need to figure out how to cover inflationary cost increases and scope cost increases to implement the projects.

The Commission could also decide to delay this decision and hold funding for a possible second solicitation to incentivize new projects to submit to the screening process. If the Commission waits to see what projects submit to the screening process before deciding on an inflation adjustment to existing applicants, there would be uncertainty to existing applicants related to the tentativeness of future Commission action. A month or two delay may not be problematic. However, waiting six months or until the close of the screening process (end of 2021) introduces uncertainty for existing applicants as they prepare feasibility studies to meet the January 2022 deadline. Uncertainty would also exist for projects submitting to the screening process as to the amount of funding that could be available to support a second solicitation.

Staff Recommendation

To provide the most certainty to existing applicants and new projects submitting to the screening process, staff recommends that the Commission be clear and concrete on what portion of the returned TFRA MCED will be used to support existing projects and what portion will be available for new projects, with the understanding that any amount retained to incentivize new projects requires a future Commission decision - likely in early 2022, after the Commission can see the project pool resulting from the screening process - to proceed or not proceed with a second solicitation before it can actually be applied to new projects. Staff recommends adjusting the MCED for the Kern Fan Groundwater Storage Project and Willow

Springs Water Bank Conjunctive Use Project to their applicant request. This adjustment brings the State into a better beneficiary pays position with these two projects, with the State shouldering the full expense for the public benefits that will be produced by the project. Staff further recommends making an inflation adjustment to the MCEDs for all seven remaining projects to signal the Commission’s recognition of inflationary costs and their willingness to offset those costs that would normally be borne by project partners and rate payers. Finally, staff recommends reserving a portion of the available MCED amount to incentivize new projects. The amounts recommended by staff for these adjustments are presented in Table 2.

Table 2. Staff Recommendation

Option	Project impact	Funds
Increase Rank 3 MCED to Applicant’s Request	Kern Fan Groundwater Storage Project	\$18,122,685
	Willow Springs Water Bank Conjunctive Use Project	\$27,884,001
	Rank 3 Adjustment Total	\$46,006,686
2.5% Inflation Adjustment	Chino Basin Conjunctive Use Program	\$5,172,500
	Harvest Water Program	\$7,012,500
	Kern Fan Groundwater Storage Project	\$2,141,500
	Los Vaqueros Reservoir Expansion Project	\$11,475,000
	Pacheco Reservoir Expansion Project	\$12,113,750
	Sites Project	\$20,409,442
	Willow Springs Water Bank Conjunctive Use Project	\$3,082,250
	Inflation Adjustment Total	\$61,406,942
	New project incentive	\$63,916,372
Consider New Projects	Total Funds	\$171,330,000

Background

Through the WSIP, the California Water Commission will invest nearly \$2.6 billion in the public benefits of water storage projects, consistent with the requirements of Proposition 1 (the Water Quality, Supply, and Infrastructure Improvement Act of 2014), Chapter 8. In July 2018, the Commission made Maximum Conditional Eligibility Determinations, decisions that set the amount of Proposition 1 funding available to a given project, for eight projects that will create more than four million acre-feet of storage capacity. Since then, one applicant has withdrawn from the program; the seven remaining applicants are working to complete the Proposition 1 requirements, which include obtaining permits and environmental documents, contracts for the administration of public benefits, and contracts for non-Proposition 1 funding before returning to the Commission for a final award hearing.

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This agenda item implements Goal Four of the Commission's Strategic Plan, which calls on the Commission to carry out its statutory responsibilities for the Proposition 1 Water Storage Investment Program.

Meeting Overview

At the January meeting, staff will present additional information to the Commission regarding the main questions posed by Commissioners in December. The Commission will have the opportunity to ask questions of applicants and hear public comment before deliberating on any MCED adjustments.

This is an action item.

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