



Water Storage Investment Program: Consideration of Site Visits

Introduction

Currently, Commissioners are limited in their ability to visit Water Storage Investment Program (WSIP) project sites. Individual Commissioners could visit WSIP potential project locations and talk with prospective applicants freely before the application submission period ended in August 2017. Since then, the Commission’s *ex parte* policy has been in effect, which precludes individual discussions between Commissioners and project proponents. The policy allows Commissioners to focus on their decisions within the WSIP without external influence and limits interaction with applicants to publicly noticed meetings. Since the Commission’s initial Maximum Conditional Eligibility Determination in 2018, applicants continue to work to advance their projects to meet Proposition 1 requirements necessary to proceed to final award hearings. Prior Commissions voiced interest in visiting the project locations before each project’s final award hearing. At the July 2022 Commission meeting, staff presented an informational item regarding the “road to final funding” and asked for Commissioner input on site visits. During the discussion, Commissioners expressed a variety of opinions regarding site visits and requested the topic to be added as an action item to the agenda for a future Commission meeting.

Staff Analysis

In the July 2022 discussion, Commissioners expressed a variety of thoughts on the desire, cost concerns, and scheduling of site visits. In this analysis, staff reviews aspects of the WSIP and current project timelines to help define the context to which site visits would need to conform.

WSIP is still an active, deliberative process. As indicated in the introduction, the WSIP is still in progress as a competitive process. The *ex parte* policy and regulations were designed to promote a transparent and fair funding process and will remain in effect until the Commission’s final funding decision. The *ex parte* policy limits communications between individual Commissioners and external parties regarding WSIP applications to scheduled public meetings. Site visits, if the Commission decides to conduct them, need to occur in a manner that is consistent with the *ex parte* policy, reduces any perceived bias among competing projects, promotes public transparency of information Commissioners receive, including how that information will be used in decision making that is consistent with the regulations governing WSIP. To comply with these aspects of the WSIP, site visits would need to be:

- Scheduled public meetings of the entire Commission or an official sub-committee of the Commission subject to Bagley-Keene requirements.

- Consistent between projects, in other words what is made available for one project needs to be made available for all.
- Optional, at the project's discretion, not the Commission's.

Timing. There are three factors that shape the context of timing of site visits: the WSIP process, seasonal timing of site visits for any given project, and overall project timing as it relates to the Commission's decision to engage in site visits.

It's generally understood that a site visit helps Commissioners understand a project. The information presented and reviewed in the WSIP application represents a project at a point in time, specifically 2017. As the projects advance to a final funding hearing and complete the Proposition 1 requirements, they will become more defined in their facilities and planned operation. Proposition 1 ties the Commission's funding decision to the public benefits of a project, which will also be more defined, because projects will be contracting with administering agencies for the public benefits. These factors suggest the best time for a site visit would be between the time the draft Contracts for Administration of Public Benefit are brought before the Commission and the final funding hearing.

Another aspect of timing is seasonality. Reviewing the project timelines supplied by applicants, <https://cwc.ca.gov/Water-Storage>, Commission staff estimates most final funding hearings to occur late in a calendar year or early in the calendar year (winter). This estimate, combined with process timing described above, places potential site visits within the wet season. While not an impossibility, it is a logistics factor, since each project would be entitled to a site visit before the final funding hearing, and the Commission would need to accommodate that request to maintain a fair process. Additionally, a review of the project timelines shows clusters of projects may be ready for final funding hearings around the same time. For example, three projects estimate final funding hearings in late 2024 or early 2025. If those timelines hold, site visits would also be clustered, which could create several public meetings at project sites in a short time span.

The last aspect of timing is overall project timelines. Completing Proposition 1 requirements for final funding can take multiple years and, within that time, individual Commissioners may change. Individual opinions about site visits may also shift. Neither one of these aspects should be an obstacle to performing site visits, but it is important context in the Commission's consideration of site visits. The decision the Commission makes regarding site visits commits future Commissioners to follow through with that decision. Because site visits must be public meetings, a quorum of the Commission or a sub-committee must be available for in-person site visits into the foreseeable future.

Site visit information and application to Commission decision. When considering site visits, it is important for Commissioners to consider what information they may gain from that visit and how the information might impact their decision-making process. The long timelines in the

WSIP process mean that Commissioners that were part of the beginning of the process (regulation development, application submittal, and review) will not be the same Commissioners who will make the funding decisions at the end of the process. Site visits can help Commissioners understand the general layout of facilities, size, and complexity of projects and understand the basic operations in producing the public benefits. Site visits also provide time with applicants in a setting that can help Commissioners generate questions as different aspects of a project are discussed. While much of this information can be provided in briefings, it is difficult to replicate the sense of scale that a site visit provides. Project locations may also be undeveloped property, which makes understanding the facilities and operations more of a conceptual exercise.

Other opportunities for the Commission to interact with applicants. Unless the Commission has a concern about a project's progress, the remaining regulatory opportunities for Commissioners to interact with applicants are limited to the draft Contracts for Administration of Public Benefit (CAPBs) and the final award hearing. The draft CAPBs offer Commissioners the opportunity to understand the public benefits the State is contracting for, which may be different from the public benefits described in the application. Commissioners can offer comment on draft CAPBs, but the CAPBs are the purview of the administering agencies (California Department of Fish and Wildlife, Department of Water Resources, and State Water Resources Control Board). The final award hearing is the last action in the WSIP process and occurs after the applicant has secured all Prop 1 requirements (including executed CAPBs). At the final award hearing, the Commission will consider the changes to the public benefits since the project was described in the application and determine the funding award for the project. The Commission can award amounts less than the Maximum Conditional Eligibility Determination, but not more. Decision making will likely focus on the public benefits a project agrees to provide because that is the basis of the State's investment per Proposition 1. However, understanding the project facilities and operations likely also helps Commissioners understand how the project may produce the public benefits.

Additional considerations. While site visits may be beneficial to Commissioners' understanding and comfort level surrounding the project, the Commission should consider how information gained from a site visit is relayed to the Commission as a whole. Based on the *ex parte* policy, the options open to the Commission for site visits are a quorum of Commissioners via a regular Commission meeting, or a subcommittee. While a subcommittee meeting is more economical and logistically simpler than a full Commission meeting, use of a subcommittee would mean the subcommittee would still need to brief the full Commission to transfer the information obtained from the site visit to the full Commission. It may be simpler and more economical for the staff to assemble footage and information for the Commissioners and brief them all instead of incurring costs and logistics for a full Commission site visit or a subcommittee site visit with a follow-on briefing.

Efficiency. In the July 2022 site visit conversation, Commissioners expressed the desire that any site visit be done as economically as possible to not create an unnecessary expenditure and that it not delay a project's timeline toward the final funding hearing.

Urgency. The only urgency related to site visits stems from the need for consistency and the timeline for the fastest moving project. Sacramento Regional County Sanitation District (Regional San) staff estimates they will be ready for their final funding hearing for the Harvest Water Program in late 2022 or early 2023. The Commission needs to make decisions regarding site visits so staff can appropriately schedule Regional San's site visit within that project's projected timeline, if needed.

Staff Recommendation

Based on initial Commissioner input at the July 2022 meeting and further analysis, staff recommends a virtual tour presented by staff in conjunction with the applicant. A virtual tour involves putting together a visual tour of a site with graphics, photos, or video and presenting that information at a Commission meeting. This would not be a "live" virtual tour. Staff would endeavor to bring recorded footage and other presentation materials to the Commission to help Commissioners understand the facilities, layout, scale, and operations involved to produce the public benefits. Staff would work with applicants to prepare the presentation materials. Applicants would also be present to help answer any Commission questions. Although the Commission requested staff to consider maximum flexibility regarding site visits, the Commission's *ex parte* policy and the competitive nature of the WSIP limit the options for conducting in-person site visits. The staff recommendation represents the most efficient means of providing Commissioners with information, with the least likely impact to project schedule. Because the competitive process is still at play and site visits would need to be done fairly and consistently it would be difficult to maintain a process that treats all projects the same and guarantees fairness for all projects. Staff proposes the virtual tours be presented to the Commission at a regular meeting after the draft CAPBs come to the Commission, and before the final funding hearing, if the project chooses to engage in a virtual tour.

Commission Decision

The Commission can decide to adopt staff's recommendation, opt for an alternative site visit methodology, or not perform any type of site visit. If the Commission adopts the staff's recommendation, staff will begin working with Regional San to prepare a virtual tour of the Harvest Water Program and continue to work subsequently with applicants as they approach the later stages of their timelines. If the Commission pursues an in-person option for site visits, the Commission is limited to a full Commission meeting or a sub-committee. If the Commission decides to use a sub-committee, staff urges the Commission to populate the sub-committee during the September meeting. Staff would then work with the sub-committee to begin working on the logistics for a tour of the Harvest Water Program. Staff would similarly work to create a sub-committee visit as other applicants approach the final funding hearing. If the

Agenda Item: 9

Meeting Date: September 21, 2022

Page 5

Commission decides to forego any type of site visit, Commissioners could rely on their own review of existing project information to become familiar with the projects as they finish the WSIP process.

Background

Through the WSIP, the 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 MCEDs, decisions that set the amount of Proposition 1 funding potentially available to a given project. Since then, one applicant withdrew from the program, making its MCED available for potential use elsewhere. From January 2021 through March 2022, the Commission considered options and made several decisions to redistribute the returned MCED amount. The Commission decided to not pursue a second solicitation and used the returned MCED amount for a series of inflationary adjustments and adjustments to MCEDs for three projects that were shorted in 2018 because total project requests exceeded available funding. The seven remaining applicants are working to complete the Proposition 1 requirements, which include obtaining permits and completed environmental documents, contracts for the administration of public benefits, and contracts for non-public benefit cost share, before returning to the Commission for a final award hearing.

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 September meeting, the Commission will decide whether to adopt the staff recommendation, to opt for an alternate site visit methodology, or to not perform site visits at all.

This is an action item.

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