



November 3, 2014

Joseph Byrne, Chair
and Commissioners
California Water Commission
Sacramento, California 95814

Subject: Working Draft Language for Potential Regulation, SBx7-2

Dear Chair Byrne:

On behalf of Sierra Club and its more than 380,000 members and supporters in California, I submit the following comments on the draft regulations for the quantification of public benefits for storage project funding eligibility.

California is not new to the struggle of balancing water availability and the health of California's environment. However, global climate disruption is exacerbating an already serious problem surrounding the state's water supply.

Higher temperatures and more erratic climate regimens as a result of global climate disruption are expected to reduce snow pack and other precipitation, leaving less water to store for dry months. Higher temperatures will also increase evapotranspiration rates on open surface areas including reservoirs, aqueducts and canals. Drought periods in the state are expected to increase in frequency and duration over the next century. Increased demand, resulting from population growth, and reduced supply will result in longer lower-flow conditions with higher temperatures and higher concentrations of contaminants in our rivers and streams.

These anticipated changes in California's climate require commensurate changes in how we structure our water supply system. They require greater sensitivity to ecological needs and greater emphasis on local resilience and aquifer replenishment, and less reliance on conventional water storage such as dams and reservoirs, which will prove to be ineffective and unneeded to meet water demands. It is against this background that the commission must develop regulations that ensure that only those projects that provide the greatest public benefits, that are cost-effective, and that are sensitive to the natural ecosystem in the face of climate disruption, are those funded by the \$2.7 billion in storage funds provided in Proposition 1, assuming the bond passes.

What follows are specific recommendations for changes or amendments to the draft regulations entitled "Working Draft Language for Potential Regulation, SBx7-2" released by the commission November 1, 2013.

§Zz3. Quantification of Public Benefits

Comment 1:

§Zz.3(a)(5) "Only outdoor recreation benefits that occur on or adjacent to the project proposed for funding under this section, or that result from stream flow or reservoir surface area improvements caused by the project's operation, or system reoperation, are eligible."

Recreational benefits include a wide range of activities and public services. These can be divided into contact and non-contact recreational benefits. The former are recreational activities involving body contact with water where ingestion of water is reasonably possible. The latter include but are not limited to picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities. The bond legislation does not clearly emphasize the variety of recreational benefits a proposed project can provide. The regulations should explicitly state that non-contact recreational benefits may be considered under this section.

In the first line of this section, “On or adjacent” in reference to where the recreational benefits occur relative to the projects should be removed. It will eliminate the possibility for non-contact recreational benefits, such as wildlife watching enhanced by water table improvements resulting in wetland restoration, to qualify towards the total benefits of the project as some benefits may not be directly adjacent to planned projects. “Reservoir surface area improvements” should be removed as well as it unfairly adds a greater preference to projects that increase surface storage.

Section §Zz.3(a)(5) should read as follows:

“Only outdoor recreational benefits— including non-contact recreational benefits such as hiking, camping, boating, wetland or marine life study, wildlife viewing, sightseeing, or aesthetic enjoyment in conjunction with the above activities—that result from stream flow improvements or wetland preservation and restoration caused by the project’s operation, are eligible.”

Comment 2:

§Zz.3(b): “The quantification of public benefits must be based on the principles below”

The principles used to shape the quantification of public benefits must include the pressure of current and projected drought conditions. During critically dry years, such as this one, the public benefits must be weighted differently. When water supply is as limited as we have experienced this year, there must be a mechanism to indicate that ecosystem improvement or water quality changes are more heavily weighed than recreational benefits. We cannot afford to grant recreational benefits parity with ensuring the health of our ecosystems and improving water quality in times of drought.

§Zz.3(b) should be amended to include the following:

“(9) Benefits must be weighted based on anticipated drought conditions or projected water availability for the entire state. Ecosystem improvement or water quality changes must be weighted more heavily than recreational benefits during time of low water resource availability”

Comment 3:

§Zz.3(b)(6) “Discounting procedures must be used to convert estimated future benefits to a common point in time. DWR shall provide appropriate discount factors and rates in the solicitation package described in §zz.7(a).”

The discounting procedures are provided by the Department of Water Resource (DWR). The language needs to include a public process to allow for public participation in crafting the factors and rates to be included in the solicitation package.

§Zz.3(b)(6) should be amended to read: “Discounting procedures must be used to convert estimated future benefits to a common point in time. DWR shall provide appropriate discount factors and rates in the solicitation package described in §zz.7(a). *DWR will hold a public meeting for the purposes of providing an opportunity for the public to review and comment on the information required to be prepared pursuant to §Zz.3(b)(6)*”

§Zz.4 Limitations Regarding Funding of Public Benefit.

Comment 4:

§zz.4(a) “Ecosystem improvement benefits must be at least 50 percent of total public benefits requested for funding. If non-ecosystem public benefits are more than ecosystem public benefits, then the difference is not eligible for funding.”

The regulations need to clearly state that any mitigation programs required by a proposed project proposed cannot be included in the calculation of the 50% ecosystem benefit requirement for requested funding. The benefits should only include new non-mitigation benefits that will result in a net improvement of the environment as promised as a project requirement.

§zz.4(a) should read as follows: “*The net* ecosystem improvement benefits must be at least 50 percent of total public benefits requested for funding. If non-ecosystem public benefits are more than ecosystem public benefits, then the difference is not eligible for funding. *Mitigation programs required to satisfy existing laws such as the Endangered Species Acts or wetland regulations shall not be included in the calculation of net ecosystem benefits.*”

Comment 5:

§zz.4(b) “The public benefit cost share of a project, other than conjunctive use and reservoir reoperation projects, may not exceed 50 percent of the total costs of the project. (Reference: §79746(a)).”

If conjunctive use and reservoir reoperation projects can exceed 50 % public benefit costs, they must meet certain conditions. The regulations should reflect environmental concerns related to conjunctive management projects. These include potential impacts on habitat, water quality, and wildlife caused by shifting or increasing patterns of groundwater and surface water use. For example, floodwaters are typically considered “available” for recharge. However, flood flows serve an important function in the ecosystem. Removing or reducing these peak flows may negatively impact the ecosystem. A key challenge is to balance the instream flow and other environmental needs with the water supply aspects of conjunctive management projects.

The project developers must demonstrate that there is sufficient legal water supply for the project by consulting with the State Water Resource Control Board. Water resources used for the project must not encroach on water currently dedicated to the ecosystem and it must not injure other legal rights holders. The project must consistently operate within the constraints of federal and state law, including, but not limited to the Endangered Species Acts.

§zz.4(b) should be amended to include “The public benefit cost share of a project, other than conjunctive use and reservoir reoperation projects, may not exceed 50 percent of the total costs of the project. (Reference: §79746(a)). *Conjunctive use and reservoir reoperation projects may only be exempt from the 50% public benefits cost share limit if the following conditions are met: 1) there is a determination of sufficient legal water supply for the project by consulting with the State Water Resource Control Board. 2) Water resources used for the project must not encroach on water currently dedicated to the ecosystem and*

it must not injure other legal rights holders. 3) The project must consistently operate within the constraints of federal and state law, including, but not limited to the Endangered Species Acts.”

§zz.5 Priorities and Relative Environmental values

Comment 6:

§zz.5(c)(2) “The expected magnitude of the measurable benefits; for example, increases in population numbers or habitat area for ecosystem benefit, or reduction in concentrations or reduction in the frequency of exceedance for water quality benefit.”

This section should be amended to include habitat or wildlife corridors as a measurable benefit. Habitat fragmentation can lead to an overall reduction in species population and potentially local extinction of a plant or animal species. Habitat corridors provide numerous benefits for plants and animals and can play a critical role for endangered species. Habitat corridors allow movement between isolated populations, promoting increased genetic diversity. They provide food and shelter for a variety of wildlife and help with juvenile dispersal and seasonal migrations.

§zz.5(c)(2) should be amended to the following: “The expected magnitude of the measurable benefits; for example, increases in population numbers or habitat area or *wildlife corridors* for ecosystem benefit, or reduction in concentrations or reduction in the frequency of exceedance for water quality benefit.”

Comment 7:

The Priorities and Relative Environmental values section also includes the following language:

“Other characteristics specific to individual proposed projects may also be considered in the determination of relative environmental value. CDFW and the State Water Board are responsible for providing a more detailed list of priorities and relative environmental value.”

The regulations give the CDFW and SWRCB the responsibility to provide a greater detailed list of priorities and environmental values; however they do not lay out a public process to develop the values and priorities. The language must include a public workshop and a comment period where the public will have the opportunity to provide input to help shape the values to better match the values of all of Californians and the environment.

The following should be added to the last paragraph in §zz.5(c): *“CDFW and SWRCB will hold public hearings for the purposes of providing an opportunity for the public to review and comment on the list of priorities and relative environmental value to be prepared.”*

§Zz.7 General Solicitation, Review and Evaluation Process

Comment 8:

§Zz.7 (a) “DWR shall prepare and make available to all potential applicants, a solicitation package providing details on project eligibility and available funding. The package shall describe the requirements for the content, presentation and formatting of information submitted in support of a proposed project, as well as a description of the review process and schedule; evaluation criteria; and other guidance to assist applicants. The package shall also include guidelines and a range of acceptable methods for quantifying public benefits.”

The regulations should clearly state that there will be a public process in developing the tools and the acceptable methods for quantifying public benefits.

§Zz.7 (a) should read as follows: “DWR shall prepare and make available to all potential applicants, a solicitation package providing details on project eligibility and available funding. The package shall describe the requirements for the content, presentation and formatting of information submitted in support of a proposed project, as well as a description of the review process and schedule; evaluation criteria; and other guidance to assist applicants. The package shall also include guidelines and a range of acceptable methods for quantifying public benefits. *DWR will hold public hearings for the purposes of providing an opportunity for the public to review and comment on the guidelines for the solicitation package and acceptable methods for quantifying public benefits.*”

Comment 9:

§zz.7 (b) “The Commission will appoint a project evaluation panel (panel) composed of technical experts from DWR, CDFW, and the State Water Board. The panel will also include experts from other state or federal agencies, academic institutions, and/or private industry who have relevant expertise to evaluate the technical information and analysis of public and nonpublic benefits. The panel shall review the information submitted in support of a proposed project and provide to the Commission an evaluation of how well the information addresses the eligibility and evaluation criteria provided in the solicitation package.”

The regulations should clearly indicate that there will be at least one environmental expert appointed to the panel through a transparent and public process. The panel should also include at least one water consumer ratepayer. All the panelists must be matched against a list of criteria that ensures that the expertise on the panel appropriately represents California and will operate with the understanding of the new difficulties climate disruption creates. There must be an opportunity for the public to recommend or nominate potential candidates.

The regulations should also be drafted to ensure that potential financial and institutional conflicts of interests are identified during the selection process and avoided in the final panel appointments. Any board members or consultants that are associated with existing water or irrigation districts that may apply for funding under the water bond, or that lobby state agencies on behalf of water issues, should be required to divulge the financial and/or professional relationships, and should be carefully scrutinized during the selection process for any conflict of interest.

§zz.7 (b) should be amended to include the following: “The Commission will appoint a project evaluation panel (panel) composed of technical experts from DWR, CDFW, and the State Water Board. The panel will also include experts from other state or federal agencies, academic institutions, *public interest groups*, and/or private industry who have relevant expertise to evaluate the technical information and analysis of public and nonpublic benefits. *The panelists should have a demonstrated understanding of climate disruption’s influence on water supply. The commission will provide an opportunity for the public to submit recommendations and nominate evaluation panelist.* The panel shall review the information submitted in support of a proposed project and provide to the Commission an evaluation of how well the information addresses the eligibility and evaluation criteria provided in the solicitation package.”

California is in a drought crisis, one that may last far into the future. We need to change how we as Californians perceive water as a resource. If Proposition 1 passes, the state has the opportunity to shape that perspective through the implementation of the water bond and specifically through the execution of

the storage funding chapter. California needs a cost-effective approach to storage that will withstand the new challenges that are emerging with global climate disruption.

Sierra Club California thanks you for your consideration of these requested edits when crafting the working draft language for potential regulation SBx7-2.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Moreno', written in a cursive style.

Edward Moreno

Policy Advocate

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