

California Water Commission as a Responsible Agency under CEQA



**IN THE IMPLEMENTATION OF THE WATER
STORAGE INVESTMENT PROGRAM**

PROJECT APPLICANT'S CEQA REVIEW



- **The Commission will be awarding grants to various water storage projects under the WSIP.**
- **Grant applicants must:**
 - **Comply with California Environmental Quality Act**
 - ✦ **Conduct environmental evaluation of project(s)**
 - **Provide the Commission with both draft and final documents demonstrating compliance**

California Water Code Section 79755(a)(5)(C)

CEQA



- **CEQA applies to projects undertaken, funded or requiring an issuance of a permit by a public agency.**
- **Project analysis will likely be in the form of--**
 - Environmental Impact Report (EIR)
 - Negative Declaration (ND)
 - Mitigated Negative Declaration (MND)
- **Project applicants and the Commission have discrete roles under CEQA**

Who is the Lead Agency?



- Lead agency responsibilities fall to public agency that will carry out the project.
- When two or more public agencies are involved in a project only one agency prepares the EIR

CEQA Guidelines Sections 15050-51, 15367

LEAD AGENCY



- **Project proponent will be Lead Agency**
- **Lead agency to do all of the following:**
 - Prepare the EIR, ND, or MND
 - Independently review and analyze the environmental document
 - Circulate draft documents that reflect its independent judgment
 - As part of the adoption or certification of the environmental document, the lead agency must make a finding that the environmental document reflects its independent judgment

Pub. Resources Code Section 21082.1.

LEAD AGENCY



- **Lead agencies must be public agencies.**
- **In the event that a project sponsor is not a public agency:**
 - The project sponsor will need to find a public agency that is willing to undertake the Lead Agency responsibility
- **Non-public agencies that could sponsor a project**
 - Non-profit organizations
 - Mutual Water Companies
 - Tribal governments

Lead Agency Responsibilities



- Only the Lead Agency decides whether the project may have a significant effect on the environment
- Prepares the EIR, ND, or MND

Pub. Resources Code Section 21165(a)

What is a Responsible Agency?



- A public agency with discretionary approval authority over all or part of a project that is not a Lead Agency.

CEQA Guidelines Section 15381

Commission's Role



- **The Commission is a Responsible Agency under WSIP**
- Discretionary approval in regards to project funding
- **A Responsible Agency complies with CEQA by:**
 - Considering the EIR, ND, or MND prepared by the Lead Agency
 - Reaching independent conclusions on whether and how to approve the project

CEQA Guidelines Section 15096

Early Role of Responsible Agency



- **Early informal consultation with Lead Agency**
 - Could occur pre-application or
 - As part of proposal review
 - ✦ Must have public review draft available
- **Recommend form of CEQA environmental document**
- **Identify—**
 - Environmental information relevant to Responsible Agency authorities;
 - Alternatives or mitigation measures; and
 - Likely significant effects of the project.

CEQA Guidelines Section 15096

Focus of Responsible Agency



- **Review and comment on draft EIR/ND/MND**
 - Identify shortcomings of document
 - Identify additional alternatives or mitigation measures that should be included
 - Responsible Agency is bound by the Lead Agency's decision as to what type of document is prepared.
 - ✦ Opportunity for Commission to weigh in on potential impacts of project

Duties of Responsible Agency



- **Comment on public review draft EIR/ND/MND**
CEQA Guidelines Section 15096(d)
- **Consider the Lead Agency's Final EIR or ND**
- **If significant environmental effects of project identified:**
 - Must make findings as to how such effects might be mitigated or
 - ✦ *CEQA Guidelines Sections 15091, 15096(h)*
 - Prepare statement of overriding considerations as to why the benefits of project outweigh unavoidable adverse environmental impacts
- **Make independent decision whether to fund the project**
- **If Lead Agency is challenged under CEQA, Responsible Agency is still required to treat the document as properly prepared—unless injunction issued.**
CEQA Guidelines Section 15096

Limitations of Responsible Agency



- **Cannot require a new or subsequent EIR unless:**
 - Court invalidates Lead Agency action
 - New significant effect is found
 - Significant new information is found
 - Shift in Lead Agency Designation

Pub. Resources Code Section 21166, CEQA Guidelines Section 15162

Commission Obligations



- **If Commission approves funding for project**
 - Prepares Notice of Determination (NOD)
 - Files with State Clearinghouse
- **Filing NOD starts a 30 day statute of limitations**
 - Court challenges to the project approval under CEQA
 - Responsible Agency does not certify that document complies with CEQA.

CEQA Guidelines Section 15094

QUESTIONS?

