

Summary of Stakeholder Advisory Committee Member Comment Letters on Definitions of Public Benefits and Eligible Project Types

At the May 4 2015 Stakeholder Advisory Committee (SAC) meeting, SAC members were asked by staff to provide written comments on the staff draft definitions of public benefits, eligible project types, and public trust resources by May 15, 2015. Nine sets of written comments were received from SAC members and a set of comments was received from an agency participating as part of the public. In addition to comments on public benefits, eligible project types, and public trust resources, SAC members and the public commented on the proposed technical and economic analysis, grant solicitation and review process, and the regulations and guidelines.

The comments in their entirety are attached. Below is a summary of the recommendations and suggested revisions received from the SAC members and staff’s response. Rows highlighted in grey indicate areas needing further discussion.

Comment ID	Topic	Comment	Times Mentioned	Staff Response
Public Benefits				
PB-1	Ecosystem Improvements	Wildlife areas and refuges should be eligible for funding. Amend the document to clarify that the term “wildlife refuges” is commonly understood to include state wildlife areas, national wildlife refuges, and privately managed protected wetland habitat areas, and the Commission should also use this definition to ensure maximum ecosystem benefits.	4	Comment noted and consistent with staff draft definition. “Wildlife refuges” have been clarified as proposed.
PB-2	Ecosystem Improvements	Supplies that enable maintenance of wetlands and wildlife refuges at current baselines at times when water would otherwise not be provided should also be considered improvements. For example, “improvements” could be defined to include maintenance of wetlands that would otherwise experience reduced water availability during times of drought.	2	An improvement is identified by comparing with project to without-project conditions. Maintenance of wetlands above the baseline condition (i.e. maintenance improvements) could be considered an ecosystem benefit under the proposed definition.
PB-3	Ecosystem Improvements	Certain water use practices on private agricultural lands such as winter flooding for crop decomposition provides valuable habitat for wildlife, and we urge the Commission to include the option of counting such water uses as ecosystem benefits if the benefits are enforceable and create increased habitat reliability.	2	The example provided would be considered an ecosystem benefit under the proposed definition.
PB-4	Ecosystem Improvements	When considering ecosystem benefits on private agricultural lands, the Commission should make sure that the proposed benefits are enforceable through contracts and/or easements and agency oversight, and accrue from practices that truly benefit wildlife such as winter flooding of rice fields.	2	Comment noted. The Commission will ensure all necessary permits and easements are in place before projects are funded to assure proposed benefits will be provided.
PB-5	Ecosystem Improvements	Table 1 needs to be revised to clearly indicate that in order to be eligible for funding, a project must result in “a measurable improvement to the Delta ecosystem or to the tributaries to the Delta.”	1	Table 1 includes the subject provision per Water Code 79752. All projects will be reviewed to ensure they are consistent with all applicable provisions of the Water Quality, Supply, and Infrastructure Improvement Act of 2014.
PB-6	Ecosystem Improvements	Only benefits to native fish and wildlife and their habitats should be considered.	2	Comment noted and consistent with staff draft proposal. Text clarified.
PB-7	Water Quality Improvements	Ensure that by relying on Department of Fish and Wildlife (DFW) and State Water Resources Control Board (SWRCB) priorities that public trust resources defined by the courts are not excluded from the possible list of water quality improvements. Further, there could be secondary benefits that stem from public trust resources that if not prioritized by one of the named agencies could be excluded as a water quality improvement benefit. DFW and SWRCB may shift their priorities based on changing conditions and potential project proponents should not be penalized for this priority shift.	1	The definition of public trust resources used by the program relies on existing case law and statute. The priorities of DFW and SWRCB will be included in the regulations and therefore codified for administering the program. The evaluation of water quality improvement benefits and the achievement of water quality priorities will not be the same. Although they are related, the evaluation will support different project evaluation criteria.
PB-8	Water Quality Improvements	Clarification is needed to be clear that projects for the cleanup and restoration of groundwater resources should prioritize the Human Right to Water (HRTW).	1	Legal counsel for the Commission and SWRCB provided the SAC a determination on public trust resources and HRTW at the June SAC meeting. Although HRTW will not be considered a public trust resource for the purposes of allocating Proposition 1 funding through the WSIP, HRTW will be an important part of project formulation for project proponents. Staff is currently developing language on HRTW for the program guidelines. Eligible projects, such as groundwater contamination prevention and remediation projects, may significantly contribute to the objectives of HRTW.

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PB-9	Water Quality Improvements	What are “significant” public trust resources needs to be rethought and brought to the SAC for further discussion.	3	Determination of “significant” public resources has been discussed with legal counsel and will be discussed at the July Commission meeting. The current Staff proposal utilizes the relative environmental value of water quality improvements to inform significance, but ultimately the Commission will decide which public trust resources will be determined to be significant.
PB-10	Water Quality Improvements	Maintaining salinity or water quality for agricultural or urban water users is a private benefit that may have incidental ecosystem benefits, but is not eligible for funding from Proposition 1. The text in the Benefits Example of Table 2 should be revised accordingly.	1	Text was clarified. The calculation and evaluation of public benefits will be reviewed by a technical review team and independent peer reviewers on a project by project basis. Ecosystem improvements that can be acceptably quantified and/or documented can be considered public benefits under the proposed definition.
PB-11	Water Quality Improvements	It seems that significant public trust resources should be wider than the limited categories suggested and the definitions should take that into account things like protecting commerce, navigation, a wider range of ecological values, habitat preservation, restoration and conservation. Also, the preservation of waterways should be widened beyond the qualifier of “in their natural state.” There are many water ways that are not in their natural state and preventing further degradation is still beneficial and should be considered a public benefit—along with restoration.	1	One of the public benefits identified in statute is water quality improvements in the Delta, or other river systems, that provide significant public trust resources. Therefore, the public trust resource qualifier is only tied to water quality improvements. Ecological values, restoration, and conservation would qualify as ecosystem improvement benefits as long as the benefits contribute to the restoration of aquatics systems or native fish and wildlife.
PB-12	Flood Control	While flood control benefits are not limited to the example identified in section 79753(a)(3) of Chapter 8, any flood control benefits should be related or similar to the expressed language of the statute.	1	It is important to not view examples as limiting lists; the flood control benefit expressed in the statute is one example of many flood control benefits that could be provided by water storage projects. All of the appropriate and measurable flood control benefits of water storage projects consistent with SB 5 and other flood management programs in the state should be considered. The statute language does not expressly exclude these common types of flood control benefits.
PB-13	Flood Control	Flood control benefits do not have to be just related to water storage space in a reservoir. Additional benefits should be listed, such as a bypass that slows down water, infiltrates water, and/or reduces flood risk; and setback levies that slow down flows and/or allow groundwater recharge.	1	Benefits related to groundwater infiltration/recharge would not be counted as flood damage reduction benefits. Flood control benefits would be represented by reductions in flood risk or flood damage.
PB-14	Emergency Response	Include emergency responses that utilize a project’s water supplies for fire suppression as an emergency response benefit.	2	Emergency response benefits will qualify if water is held in storage and supply is dedicated to emergency response purposes outside of normal facility operations or average water supply for all other purposes is reduced for the expected (average) amount of water used for emergency purposes. This definition would include emergency response supplies for fire suppression.
PB-15	Emergency Response	Providing water supplies during dry water years and droughts should not eligible for funding under Proposition 1 Water supplies for customers are private benefits.	1	Comment noted. Conflicts with comment below. Staff sought SAC input at July 1 meeting. SAC members indicated that emergency response supplies should be held in storage above dead pool so supply is available when needed. SAC members also indicated emergency supplies should be adaptively managed by the storage owners/operators so that supplies can be used for any emergency purpose. Further, SAC members noted that the Proposition 1 voter’s guide indicated that water provided to customers is considered a private benefit (verified by staff) and some members believe that this is the case regardless of emergency condition. Staff will discuss this topic with Commission members during the issue working session at the July Commission meeting.
PB-16	Emergency Response	Include drought water supplies as a qualifying emergency response benefit.	1	Comment noted. Conflicts with comment above. See staff response above.
PB-17	Recreation	Recreational benefits that result from water delivered through a water system, including municipal water systems and by irrigation districts, should not be included- like public parks, golf courses, swimming pools.	1	Comment noted and consistent with staff’s proposal.

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PB-18	Recreation	Recreation benefits must be net benefits. Applicants must show that there will be a net regional increase in recreation, and not simply a diversion from non-crowded nearby recreation at comparable facilities. Only recreation facilities should be eligible for funding, not the cost of construction of storage.	1	Benefits and impacts of a project must be considered and all project applicants must evaluate and document changes (positive and negative) that result from implementing a proposed project. Language on appropriate reimbursable costs will be provided in the Guidelines. Some recreation benefits could be allocated to the construction of storage, such as swimming and boating.
PB-19	Quantification of Public Benefits	Benefits should be allocated to the recipient of the benefit, not the type of action that results in the benefit. For example, any benefit to water quality or recreation that results from an ecosystem improvement should be allocated to recreation or water quality not to ecosystem improvements.	4	In allocating benefits, it is acceptable practice to count all benefits directly caused by ecosystems improvement actions as ecosystem benefits so long as benefits are not double counted (e.g., counting a benefit as both ecosystem and water quality). As long as applicants follow standard economic and benefit/cost allocation principles, applicants will have flexibility in how they allocate their project benefits and costs. If recreation benefits exceed recreation facility costs, recreation could be asked to fund a share of joint costs. All analysis will be subject to technical and independent peer review.
PB-20	Quantification of Public Benefits	Public benefits must be above existing regulatory obligations.	1	Section 79753(b) allows for Chapter 8 funding to be expended on compliance obligations associated with providing public benefits. Many existing compliance obligations are not being met (river temperature and flow objectives for example) and new projects are being formulated to ensure flow and/or water quality objectives are met or met more reliably. Project staff consider the ability to meet these objectives that are not met in the without project condition to be associated with providing a project benefit. The WSIP would not reimburse costs or actions that support existing punitive regulatory agency requirements and/or mandates in response to negligent behavior. This item will be discussed at future SAC and Commission meetings.
Eligible Project Types				
EP-1	CALFED Projects – Shasta Dam	Enlarging Shasta Dam should not eligible for funding from Proposition 1 and should be removed from the list of eligible projects.	4	Shasta Enlargement has been removed from the eligible projects list. Although certain CALFED projects are deemed eligible under Section 79751 (a), the exception in this Section incorporating by reference prohibitions in the Wild and Scenic Rivers Act, including Section 5093.542(c) of such Act, would preclude the enlargement of Shasta Dam from being an eligible project under current law.
EP-2	Groundwater Storage Projects	The proposed clarification of groundwater projects is too narrowly focused on groundwater banks and storage that benefits project sponsors and external customers.	2	In common application the definitions of “groundwater storage projects” and “conjunctive use projects” have significant overlap. However, for the purposes of identifying the project type for funding under the WSIP, distinct definitions are required. Per Water Code §79756 (a), the cost sharing formula can be different for conjunctive use and reservoir reoperation projects than for the other project types. “Groundwater storage projects” were narrowly defined as such because all other groundwater projects would be categorized as a conjunctive use project for program purposes.
EP-3	Groundwater Contamination Remediation Projects	Additional language needs to be added to the following definitions, clarifying that no bond funds can be used to pay for any regulatory or other legal obligations which have already been assigned to a private corporation, individual or government agency with respect to preventing groundwater contamination or cleaning up of existing contamination.	1	Comment noted. Language on appropriate reimbursable costs will be provided in the Guidelines. The WSIP would not reimburse costs or actions that support existing punitive regulatory agency requirements and/or mandates in response to negligent behavior.
EP-4	Reservoir Reoperation Projects	Reservoir reoperation projects should include those that facilitate groundwater recharge.	1	Comment noted. The existing definition of reservoir reoperation projects does not preclude reservoir reoperation projects that could provide groundwater recharge benefits.
EP-5	Reservoir Reoperation Projects	Public benefits should not include simple reservoir reoperation unless a specific part of reservoir storage is dedicated to the public benefit. Also, no more than 10% of the bond act funds should be spent on this purpose.	1	Comment noted. Action is not supported by statute language. The statute does not provide guidance on dedicating or capping funding amounts to the various eligible project types. The Commission is committed to funding the best suite of projects that maximizes the return for investment of public funds.

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EP-6	General – Eligible Projects	Eligible projects must be capital outlay projects and not operations and maintenance or other types of non-capital outlay projects.	1	Comment noted. Language on appropriate reimbursable costs will be provided in the Guidelines. Operations and maintenance will not be a reimbursable cost.
EP-7	General – Eligible Projects	Eligible projects should provide only statewide benefits, and not just regional benefits. Statewide benefits should be defined as benefitting at least 30% of the state’s population.	1	Comment noted. Action is not supported by statute language.
EP-8	General –Eligible Projects	Storage in flood plains achieved by expansion of the flood plain by setting levees back should be considered a storage project providing an eligible public benefit for flood control.	1	A project applicant would be required to illustrate that the project is an eligible project type based on the statutory requirements, including cost effectiveness, improvement of the operation of the state water system, provision of a net improvement in ecosystem and water quality conditions, provision of measurable improvements to the Delta ecosystem or the tributaries to the Delta, etc. Storage in floodplains is not an excluded activity and it is held to the same eligibility requirements as all potential storage projects.
Technical and Economic Analysis				
TA-1	Methodology	Require the use of standard economic analysis methodology and units. Ensure the projects use a common set of metrics for quantification of costs and benefits.	3	Staff has considered requiring applicants to use a standard economic analysis methodology and unit values. Staff is concerned with recommending one methodology due to the variability in project types and locations of potential projects. There are numerous methodologies that are available and acceptable. Requiring one methodology may require applicants to redo analyses, which could be time consuming and costly. Staff will develop performance standards the all analyses must meet and provide unit values recommended by the Economic Workgroup. Applicants will be required to provide documentation that gives the reasoning and justification for using an alternative methodology or unit value. The technical review team and the Independent Peer Reviewers will review the alternative methodology or values and the analysis will be scored appropriately. Applicants will have the opportunity to resolve any issues identified by the technical reviewers or Independent Peer Reviewers. All applicants will be required to use common metrics and units provided in the Guidelines when presenting results. The Commission has given staff tentative approval to proceed with the process as proposed.
TA-2	Methodology	If Commission does not require applicants to use its recommended methodology and units, the Commission should ensure that the Independent Review Panel is provided the time and capacity necessary to conduct the critical function of “normalizing” the submitted economic data such that all applications can be compared on common scale with common units.	1	The technical reviewers and independent peer reviewers will be provided adequate time and resources to review applications. The Commission is considering applicant interactions with the review team for limited clarifications regarding submitted analyses.
TA-3	Timeline	Slow down the timeline and allow for development of a uniform methodology and metrics.	1	Timeline is set based on statutory requirement that the Commission adopt regulations by December 15, 2016.
TA-4	Guidance	Develop guidance to ensure that applications provide information that can be examined on as close to an apples-to-apples basis as possible, while providing some degree of flexibility so that projects proposing unique and innovative solutions are not buried by the evaluation.	1	Comment noted and staff is currently proposes process that allows for flexibility and appropriate level of commonality for comparison purposes, such as the use of common metrics and units.
TA-5	Independent Review	Create an independent review panel for the consideration and evaluation of costs and benefits associated with each proposed project and task the independent panel with assessing the costs and benefits for all projects according to a uniform set of metrics that the panel agrees upon.	1	Comment is generally consistent with staff’s proposed approach. The independent peer reviewers will provide an objective, independent and external peer review of the evaluations and findings of the technical review team. Peer review provides the Commission with independent perspectives and judgment of experts with knowledge and practical experience in the subject areas being reviewed.
TA-6	Independent Review	SAC should develop recommendations on the experts and organizations that comprise the Independent Peer Reviewers.	1	Comment noted. Staff will bring proposal to the Commission during the July Commission meeting.
TA-7	Technical Assistance	Provide more information on technical and economic tools and methodologies.	1	More information will be provided at future SAC meetings.

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TA-8	Without Project Baseline	Environmental baseline should be modified if water quality or other regulatory standards change.	1	Guidance to applicants on the without project baseline will be provided in the regulations and guidelines, which must go through the Office of Administrative Law's formal rule making process. Any modifications to the baseline would result in a change to the regulations and guidelines and would require a new formal rulemaking process. Significant changes in regulatory standards can be reflected in sensitivity analyses done by the project applicants.
Grant Solicitation and Review Process				
SR-1	Number of Cycles	Provide at least two opportunities to submit project proposals.	4	Staff has considered the pros and cons of providing one or more than one project solicitation. Staff has proposed starting with one solicitation period because the statute requires the program to be competitive (i.e., compare all projects to each other) and the scoping survey indicated that most projects would have the minimum requirements for application eligibility by the timeline proposed by staff. If there are not enough eligible projects in the first solicitation to distribute all the funding available, or if some eligible projects are deemed unworthy for state investment, another solicitation will be conducted. The Commission has tentatively accepted staff's proposal.
SR-2	Stakeholder Involvement	Encourage project proponents to define their ecosystem improvements early and to involve stakeholders, including landowners, conservation organizations and scientists during project development.	1	Comment noted and the process being developed includes several opportunities for the Commission to solicit project information (such as scoping surveys, concept papers, pre-applications, and applications).
Regulations and Guidelines				
RG-1		Clarify in the guidelines and regulations that the Commission will only fund net ecosystem benefits, as required by Proposition 1.	3	A comparison of with-project to without-project conditions evaluating both positive and negative impacts will be required. The regulations and guidelines will provide guidance and requirements for how ecosystem benefits and impacts should be analyzed and considered during the project evaluation process. Guidance is still under development.
RG-2		Draft guidelines should encourage those who are helping to plan and propose water storage projects to include wildlife water deliveries in early planning documents, to ensure that 50% of the State's public benefit requirement will be dedicated to ecosystem improvements.	1	Comment noted.
RG-3		Recommend that the proposed clarification for the Guidelines include implementation of the HRTW as part of the list of public trust resources.	2	Legal counsel for the Commission and SWRCB provided the SAC a memorandum on public trust resources and HRTW at the June SAC meeting. Although HRTW will not be considered a public trust resource for the purposes of allocating Proposition 1 funding through the WSIP, HRTW will be an important part of project formulation for project proponents. Staff is currently developing language on HRTW for the program guidelines. Eligible projects, such as groundwater contamination prevention and remediation projects, may significantly contribute to the objectives of HRTW.
RG-4		The regulations and guidelines need to be consistent with section 79753(b) and 79732(b), both of which generally prohibit the use of Proposition 1 funds to meet existing environmental mitigation or compliance obligations.	1	Water Code Section 79732(b) applies to \$1.5 billion in funding related to Chapter 6 and is not applicable to the Chapter 8 WSIP. Water Code Section 79753(b) allows for Chapter 8 funding to be expended on environmental mitigation measures or compliance obligations associated with providing public benefits.
RG-5		Time for SAC activities is overly ambitious.	1	Comment noted and appreciated. The timeline is set based on statutory requirement that the Commission adopt regulations by December 15, 2016. The Commission is working to submit a Notice of Proposed Rulemaking to the Office of Administrative Law by the end of November 2015.