

September 16th Meeting

California Water Commission

Issue Working Session – Without-Project Conditions

Objective

Discuss how project applicants should evaluate improvements as a result of project implementation, including how applicants should define the without project condition.

Summary

Project applicants will be asked to compare without-project and with-project conditions to determine the potential benefits and impacts of a proposed project. This requires a detailed assessment of existing conditions and a projection of future conditions over the project's useful life. For this detailed assessment, there are many resources conditions that need to be considered in a project's study area, including:

- Water infrastructure and operations
- Regulatory conditions
- Hydrology
- Water quality
- Riverine and Delta conditions
- Aquatic and terrestrial resources
- Energy
- Recreation
- Etc.

With and without project conditions are difficult to define and are always a moving target. Further complicating the determination of with and without project conditions is a complex regulatory framework of water management requirements and targets that are in different phases of implementation. For example, in the National Marine Fisheries Service's (NMFS) 2009 Biological Opinion (BO) on Chinook Salmon and Sturgeon, NMFS indicates that several actions are identified that allow agencies to have options for alleviating stressors and that the agencies may select an option that is most practical and there is opportunity to identify alternative actions. "NMFS cares only that the stressor be sufficiently reduced" and less about the option selected. It will be difficult for potential WSIP project applicants to know how DWR and/or Reclamation will ultimately implement the requirements of the BOs because many activities are still being formulated. For example, the NMFS BO calls for providing fish passage at Shasta, Nimbus, and Folsom Dams, compliance obligations such as these could not conceivably be included in WSIP project without or with project conditions, because no actions have been identified by DWR or Reclamation with sufficient detail or likelihood of implementation for project applicants to include them in their without and with project conditions. Many water management requirements and targets will take generations to fully implement.

In recognition of the challenge to define the without project conditions, CEQA guidelines (§15126.6(e)(2)) indicate that the No Project Alternative include reasonably foreseeable changes in the Existing Conditions and changes that would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.

Option 1 (Staff Recommended)

WSIP staff recommend that project applicants use best available information to determine their without and with project conditions and future projections of those conditions. Staff recommends that applicant's use a logic similar to CEQA for selection of the without project condition, this would include a demarcation date for existing conditions and a set of changes that would be reasonably expected to occur in the foreseeable future if the project were not approved. Reasonably, foreseeable changes would need to be defined with sufficient detail to be included in the without project condition.

Project improvements would be measured as the positive outcomes between the with-and without-project conditions that are a result of implementation of the proposed projects. Net improvements would be determined by considering positive versus negative outcomes of the proposed project.

It is conceivable, and probable, that some project improvements may occur in areas with existing regulatory compliance obligations or targets, either imposed upon the applicant or an unrelated third party, for certain resource areas, the Commission shall use its discretion and the information provided in the project applicant to determine the elements of the project that are eligible for public funding.

Option 2

Include additional assumptions in the without-project condition that all existing (i.e., at the time of funding) regulatory requirements are being met. This may require project applicant's to make assumptions on how regulatory requirements in their project area would be implemented, if they are not already implemented. The definition of without-project conditions may have significant uncertainty if the actions to meet a regulatory requirement are not currently in place or if future actions are not sufficiently defined. Project improvements would be measured as the positive outcomes between the with-project condition and a without project condition that assumes all regulatory requirements are implemented. Net improvements would still be determined by considering positive versus negative outcomes of the proposed project.