

NRDC Comments on draft issue summaries of eligible storage projects and public benefits

Eligible Water Storage Projects

Table 1 incorrectly lists Shasta Enlargement as an eligible project. In its DEIS, Reclamation acknowledges that enlarging Shasta Dam would violate state law and impair the McCloud River, which is protected under provisions of California's Wild & Scenic River Act. As a result, enlarging Shasta Dam is not eligible for funding from Proposition 1 and should be stricken from the list of eligible projects.

While Table 1 references the language in Chapter 8 regarding the McCloud River, the document (including both Table 1 and Table 4) fails to reference section 79711(e), which is part of Chapter 4 of the water bond and which limits eligibility of projects. That section reads:

(e) Nothing in this division shall be construed to affect the California Wild and Scenic Rivers Act (Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code) or the federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271 et seq.) and funds authorized pursuant to this division shall not be available for any project that could have an adverse effect on the values upon which a wild and scenic river or any other river is afforded protections pursuant to the California Wild and Scenic Rivers Act or the federal Wild and Scenic Rivers Act.

Table 1 and 4 should be revised to include reference to this section of Proposition 1, which limits eligibility of projects.

Comments on Public Benefits

Comments on Table 1 (Ecosystem Improvements):

1. Consistent with the requirements of Prop 1, the regulations and guidelines need to clarify that the Commission shall only fund **net** ecosystem improvements, which accounts for the adverse environmental impacts of a project in making a funding determination. See Water Code § 79750. A storage project is likely to have both positive and negative impacts on fish and wildlife, and in nearly all cases those adverse ecosystem impacts will not be fully mitigated or eliminated as a result of CEQA or other regulatory processes.

For instance, a storage project may improve water temperatures that slightly benefits one fish species but also reduce flows downstream of the dam, adversely affecting several other fish species and ecosystem processes in the river. If that project results in a negative net effect on the ecosystem, it would not be eligible for funding; if the positive benefits outweigh the negative impacts, any funding should be reduced to account for the adverse ecosystem impacts and reflect the overall net effect on the ecosystem, not simply the positive benefits. This is clearly an issue that requires greater discussion.

2. 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. While Table 1 references section 79753(b) under “additional considerations,” it fails to include this requirement (and the related requirement of section 79732(b)) in the “Proposed Clarification for Guidelines.”
3. Table 1 correctly states that ecosystem benefits that are incidental to municipal or agricultural water supply are not public benefits under Proposition 1, as stated in the “Benefit Examples.” This is consistent with the Attorney General’s summary of Proposition 1, which makes clear that with respect to the storage chapter, “water provided to their customers” is a private benefit that must be paid for by local government entities and is not funded by Proposition 1.
4. 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.” Water Code § 79752. Regardless of other ecosystem benefits, a project is ineligible for funding unless it complies with this requirement.
5. Water supply for the State’s wildlife refuges and wildlife areas (in excess of existing compliance obligations) may be eligible for funding from Proposition 1 as wildlife benefits, provided that these benefits occur from a storage project that results in a “measurable improvement to the Delta ecosystem or to the tributaries to the Delta.” Water Code § 79752. In general, however, the language of Proposition 1 regarding ecosystem improvements is focused on fisheries and improving the health of aquatic ecosystems. See Water Code §§ 79732(b), 79752, 79753(a)(1).

Comments on Table 2 (Water Quality):

1. 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 (consistent with Point Three above). The text in the Benefits Example of Table 2 should be revised accordingly.

Comments on Table 4 (Emergency Response):

1. We agree that providing water supplies during dry water years and droughts is not eligible for funding under Proposition 1. That is consistent with the Attorney General’s analysis in the voter pamphlet, which stated that water supplies for customers are private benefits and would therefore not be funded by Proposition 1. Any funding for emergency response benefits must physically preserve that water in storage for future emergency response, must be available for general public use, and cannot provide benefits to specific water contractors or water users.

Comments on Table 5 (Recreation):

1. We agree that water supply for golf courses or parks are not eligible for funding.

Additional Comments

At the last Stakeholder Advisory Committee meeting, staff suggested that Proposition 1 storage funds would be allocated using a single project solicitation proposal (PSP) and using a single environmental baseline. Staff said that this single environmental baseline would be used and would not be modified if water quality or other regulatory standards change. We strongly recommend against this approach, which appears likely to violate the requirements of Proposition 1.

Proposition 1 generally requires that bond monies cannot be used to pay for environmental mitigation or compliance obligations. Water Code §§ 79732(b), 79753(b). Should the State Water Resources Control Board adopt new water quality standards in the Bay-Delta, or if additional regulatory requirements or compliance obligations are imposed by another agency, the environmental baseline used in evaluating proposals must be modified to account for the new regulations or standards. Otherwise, the Commission may award funding in violation of Proposition 1's prohibition on funding environmental compliance or mitigation obligations.

In addition, we strongly recommend that the Commission plan for at least two PSPs. Planning to use two PSPs ensures that the Commission can learn from its experience in the first PSP, can update the environmental baseline during the second PSP to account for changed standards or regulatory requirements, and ensure that surface and groundwater storage projects that have not yet completed their environmental and feasibility studies are not disadvantaged compared to those projects that are further along in the process.