



KAHN, SOARES & CONWAY, LLP

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Re: Agricultural Presidents' Council Comments Regarding the May 20th Meeting
California Water Commission Issue Working Session Discussing Definitions
of Public Benefits

Dear Water Commission staff:

The Water Commission has been tasked with selecting projects for Chapter 8 funding through a competitive process that ranks potential projects based on the public benefit criteria established in the Water Bond. Because of this task, it is important that the public benefits identified in the Water Bond are defined in line with the intent of Chapter 8 to ensure only water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions are funded with the limited monies available.

On behalf of the Agricultural Presidents' Council (APC) I submit the following initial comments regarding Water Commission staff's discussion of public benefits.

Table 1. Ecosystem Improvements

APC agrees with many of the points raised by staff in the "additional considerations" section of the rubric. First, it is important that economic benefits resulting from ecosystem improvements be counted as ecosystem benefits. Under the statute, ecosystem improvements include changing the timing of diversions and improvement of flow conditions and temperature that contribute to the restoration of aquatic ecosystems and native fish and wildlife, including those in the Delta. While ecosystem improvements will be considered ecosystem benefits because of the restoration of aquatic ecosystems and fish and wildlife, this restoration benefit will have far reaching secondary benefits, such as increased water supply for human consumption and agricultural production, which should be included as ecosystem benefits.

APC also agrees that ecosystem benefits should include restoration of terrestrial habitat and creation of new aquatic habitat. Aquatic habitats are critical to native fish and wildlife habitat and to California's economy and human health. Aquatic habitats, such as the Delta, serve as natural filters, reduce pollution, control floods and act as nurseries for many aquatic species, as well as serve as important transportation, recreation and wildlife hubs. Thoughtfully created aquatic habits and restored terrestrial habitats could improve the overall wildlife population, which would lead to improved water quality and water supply. As such, these habitats should be included as an ecosystem benefit.

APC further agrees with the summary of ecosystem improvements and principals in calculating ecosystem improvement benefits outlined by Water Commission staff in the "benefit examples" section of the rubric.

Table 2. Water Quality Improvements

While APC understands Water Commission staff's reasoning underlying the term "significant" as to public trust resources, APC encourages the Water Commission to 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. Shifting and changing priorities could also exclude secondary benefits created by a water quality improvement providing public trust resources. For example, if a project creates a water quality benefit through improved conditions for the Delta smelt, which then allows for exports for human consumption, agricultural uses or other local improvements of water quality, these benefits may not be included if not listed as a DFW or SWRCB priority. Because of this, APC agrees with the Director of DWR's guidance from the 2013 discussion that the statute should be interpreted more broadly in regards to water quality.

APC agrees with the "proposed clarification of guidelines" outlined by Water Commission staff. While the public trust doctrine is not static and will continue to develop with new legislative and judicial actions, the Water Commission should rely on currently defined public trust resources in order to maintain the intent of Chapter 8.

APC understands Water Commission staff's explanation of the considerations that must be made when determining whether a benefit should be categorized as an ecosystem benefit or a water quality improvement benefit. However, APC is concerned with any categorization or exclusion of benefits simply because the benefit could be considered either an ecosystem benefit or a water quality improvement benefit. Rather, the categorization should be made when analyzing the individual benefits and unique characteristics of a proposed project.

Table 3. Flood Control Benefits

The "proposed clarification for the guidelines" section of the rubric creates a broad interpretation of flood control benefits. The language of Chapter 8 identifies flood control benefits as those that increase flood reservation of existing reservoirs in response to the effects of California's changing hydrology and decreasing snow pack. 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.

Table 4. Emergency Response

APC agrees with the overall direction of Water Commission staff in defining emergency response benefits. However, emergency response should not be limited to large scale disasters or acts of terrorism. For example, wild fires are a common natural disaster in California in which reservoirs are heavily relied upon for water supplies for fire suppression. Water supplies for fire suppression have become increasingly important in this fourth year of drought and will continue to be so as the climate of California continues to change. Therefore, APC encourages Water Commission staff to include emergency responses that utilize a project's water supplies, such as Cal Fire's use of reservoir water for fire suppression, as an emergency response benefit.

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Table 5. Recreational Purposes

APC is encouraged by the Water Commission staff's approach to defining the recreational purposes benefit and agree with the "proposed clarifications for guidelines" section of the rubric. Water storage projects, especially reservoirs, can provide a multitude of recreational benefits including aesthetics, swimming, boating, fishing, camping, skiing and hiking. The guidelines and examples outlined by Water Commission staff do a good job of capturing these benefits and other recreational benefits that may be provided by new water storage projects.

The comments provided are reflective of APC's initial opinions concerning the Water Commission staff's definitions and explanations of Chapter 8 public benefits. These opinions may evolve and change as more clarification of public benefits is provided by staff and as the Water Commission members begin discussions regarding public benefits under Chapter 8.

More work is needed, but APC is encouraged by the direction of the Water Commission staff and the thoughtful analysis they have conducted concerning the public benefits identified in Chapter 8 of the Water Bond.

Please do not hesitate to contact me if you have any questions or require further clarification on the comments provided above.

Sincerely,

KAHN, SOARES & CONWAY, LLP



Lauren M. Noland-Hajik