



July 7, 2015

The California Water Commission (CWC) will be preparing to take tentative action in July as part of the Water Storage Investment Program (WSIP), as required by the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Bond). Below are our comments on some of the issues that will be before the CWC.

### **Eligibility Criteria or Eligible Project Types**

Shasta should be removed from the eligible project list. The proposed project would illegally violate the Wild and Scenic Rivers Act, and is ineligible for the funding. It makes no sense to have an ineligible project be considered eligible.

The definition of “reservoir reoperation projects” should be broadened to encompass the variety of activities where existing infrastructure can be repurposed to provide greater storage. For example, sediment removal projects allow an existing reservoir to operate as intended, providing storage at a low cost without major construction. Temperature control devices can preserve cold water to allow for more options for releasing water, providing numerous environmental benefits. These projects should clearly be made eligible. For the proposed staff definition, sediment removal should be added and existing definitions should be broadened by adding “but are not limited to” after each instance of include.

### **Definition of Public Benefits**

For all public benefits, it needs to be made clear that *net* public benefits are to be counted. This would require that an applicant characterize the loss of public benefits associated with the physical change in environment. This should include, for example, the value of habitat, potential water quality issues, or loss of recreational opportunities contained within the no project alternative. The purpose of these funds is to provide for the public benefits associated with water storage projects. Without considering net public benefits, a project could potentially decrease public benefits. Not providing net public benefits would be contrary to the legislative intent of the Water Bond and should not be allowed.

It is improper to suggest that a net public benefits analysis would be covered under an Environmental Impact Report (EIR) drafted in accordance with the California Environmental Quality Act (CEQA). An EIR only considers the significant impacts to the environment, which are not the same as the public benefits considered under the WSIP. In addition to the definitional challenges, projects under CEQA can go unmitigated should a lead agency issue a statement of

overriding consideration. In that instance, the WSIP could actually fund environmental degradation under the guise of public benefits.

Finally, the Bond allows the WSIP to fund environmental mitigation measures associated with public benefits. CEQA mitigation would be included in the costs for public benefits to be provided. If net public benefits are not taken into account, the cost of the public benefits funded would be increased by environmental mitigation where there is actually a lesser amount of public benefits than proposed. Again, this is inconsistent with the intent of the Bond.

### **Existing State Obligations**

California Water Code § 79753 subdivision (b) states that WSIP funds cannot be expended for existing environmental mitigation and compliance obligations. The CWC's regulations should clarify that the Public Trust Doctrine must be considered here for all categories of public benefits. The state is obligated to do what is necessary to preserve Public Trust resources throughout the state, include preserving minimum flows and the water quality necessary for fish species. Funding any public benefits under the WSIP to be credited for compliance with existing Public Trust obligations would violate § 79753 subdivision (b) and should not be considered during the application process. Instead, funding should enhance Public Trust resources beyond what is already required.

### **Water Supply Availability**

Funding under the WSIP should be contingent on the applicant providing a guarantee that they have the rights to the water necessary to provide public benefits. This calculation should also take into consideration the effects that climate change will have on the predictability of their water rights in the future. This will ensure that the public benefits funded will actually materialize.

### **Ecosystem Improvements**

We believe that public benefits for ecosystem improvements should be tailored to count only benefits to native fish and wildlife, net of any adverse effects. Additionally, the proposed guidelines should expand upon the offered examples in the statute to highlight benefits that represent the range of projects presented. This should include riparian habitat restoration, wetland creation, and improvement of groundwater dependent ecosystems.

### **Applying Priorities and Relative Value in Application Process Review Process**

The Priorities as they are now provided should not be used to give a project extra worthiness. The Department of Fish and Wildlife's ecosystem priorities list reservoir-based recreation as an ecosystem benefit. Relying on this document, the CWC would have to fund a recreation benefit as an ecosystem benefit, which is directly contradictory to the Bond. Additionally, many priorities appear to favor surface storage projects. Projects should be fully vetted through the application process, not pre-favored based on how those projects have worked in the past.

**Measurable Improvements to the Delta and Tributaries**

The CWC should not include areas that are not actually tributaries to the Delta in this definition. The Trinity River is only artificially connected, and the Tulare Lake Basin only connects when there are drastic and rare flooding events. Improvements to these watersheds may not help the Delta at all, and should not be defined as a tributary as it would go against the intent of the Bond.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KJ', is positioned below the text 'Sincerely,'.

Kyle Jones  
Policy Advocate  
Sierra Club California