



July 27, 2015

Joe Byrne, Chair
California Water Commission
1416 9th Street
Sacramento, CA 95814

RE: Consideration of Existing Compliance and Mitigation Requirements for Proposition 1 Water Storage Regulations

Dear Chairman Byrne and Commission Members:

On behalf of the Natural Resources Defense Council, Defenders of Wildlife, American Rivers, The Nature Conservancy, Audubon California, and Clean Water Action we are writing regarding how the Commission's water storage regulations should address existing environmental compliance and mitigation requirements. Our organizations supported and campaigned for Proposition 1 last year, and we continue to work to ensure that the bond is effectively implemented. It has recently come to our attention that Commission staff has interpreted Chapter 8 to mean that funding from the bond could be used to meet *existing* environmental compliance and mitigation requirements. Such an interpretation is wholly inconsistent with the text and legislative history of Proposition 1. The Commission's final regulations implementing Proposition 1 must ensure that funding from Chapter 8 cannot be used to meet existing mitigation or compliance obligations. These funds must be used for storage projects that provide meaningful environmental and water quality "improvements" and other public benefits, not existing mitigation or compliance obligations.

Chapter 8 of Proposition 1 generally provides that water bond funding will be used for water quality and ecosystem "improvements," that bond funds generally will not be used for environmental mitigation or compliance obligations, and that any project that is funded by Chapter 8 must result in measureable improvements in the Delta ecosystem or tributaries to the Delta. Cal. Water Code §§ 79750(b), 79752, 79753(a), (b). As discussed in more detail below, it would clearly violate Proposition 1 to use funds from Chapter 8 to pay for existing environmental compliance or mitigation obligations.

First, section 79753(b) explicitly prohibits the use of water bond funds for existing mitigation or compliance obligations with one very narrow exception—if a project that provides new ecosystem improvements also incurs some new mitigation requirements, Chapter 8 funding can be used to pay for those new mitigation requirements. The plain text of the statute makes the narrow scope of this exception clear. It states that “[f]unds shall not be expended pursuant to this chapter for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.” *Id.* § 79753(b). To suggest that section 79753(b) means that Chapter 8 funds can be used to meet existing compliance or mitigation requirements would render the first half of the provision meaningless, overlooks the fact that the section does not refer to “existing” obligations, and ignores the requirement that public benefits are limited to ecosystem “improvements.”¹ The legislative history of Assembly Bill 1471 (Rendon) reinforces this interpretation. The August 13, 2014 Assembly floor analysis for AB 1471 states that the language in Chapter 8 includes requirements, “[p]rohibiting expending bond funds on environmental mitigation, except environmental mitigation associated with providing public benefits.” Assembly Floor Analysis, AB 1471, Concurrence in Senate Amendments, August 13, 2014, at page 2.

Second, section 79753(a) provides that only enumerated public benefits are eligible for funding, and specifies that environmental “improvements” are a public benefit eligible for funding. Cal. Water Code § 79753(a)(1). Merely meeting existing environmental compliance or mitigation obligations is not a water quality or ecosystem “improvement,” and therefore is not a public benefit eligible for funding. Funding for existing environmental compliance or mitigation obligations may improve water supply for the party that has those compliance or mitigation obligations, but it does not result in an environment that is improved compared to what is already required. The nonpartisan analysis of Proposition 1 in the voter pamphlet made clear that the bond would not fund private benefits of water storage, “such as water provided to . . . customers.” Secretary of State, Official Voter Information Guide, November 4, 2014,

¹ Although section 79753(b) uses somewhat different language from other chapters of the bond, this section still unambiguously prohibits the use of bond money to pay for existing compliance or mitigation requirements. For instance, whereas section 79732(b) prohibits the use of bond monies to pay for any mitigation measures or compliance obligations by stating that Chapter 6 funds “shall only be used for projects that will provide fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations,” section 79753(b) uses different language because it provides a limited exception allowing bond monies to pay for new mitigation or compliance obligations that are incurred in providing the new ecosystem improvements or other benefits. However, nothing in section 79753(b) would allow bond monies to be used for existing environmental compliance or mitigation obligations. Moreover, nothing in Chapter 8 of the bond requires the Commission to even allow for use of bond monies to pay for these new mitigation or compliance obligations.

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Proposition 1, Analysis by the Legislative Analyst, available online at:

<http://www.voterguide.sos.ca.gov/en/propositions/1/analysis.htm>. Funding existing compliance or mitigation requirements would constitute an impermissible private benefit, not a public one.

Our organizations supported Proposition 1 in part because Chapter 8 required a competitive process for funding cost-effective storage projects, including both surface and groundwater storage projects, which requires significant environmental *improvements* in order to be eligible for funding. Using Chapter 8 funding to pay for existing environmental mitigation and compliance obligations is wholly inconsistent with the text and legislative history of Proposition 1, and subverts the will of the people. In order to comply with Proposition 1, the Commission must ensure that the final regulations for water storage funding do not permit funds to be used to pay for existing environmental compliance or mitigation requirements.

Thank you for consideration of our views. We would be happy to discuss this further at your convenience.

Sincerely,



Doug Obegi
Senior Attorney
Natural Resources Defense Council



Michael Lynes
Director of Public Policy
Audubon California



Rachel Zwillinger
Water Policy Advisor
Defenders of Wildlife



Jennifer Clary
Water Program Manager
Clean Water Action



Steve Rothert
California Director
American Rivers



Sandi Matsumoto
Associate Director
The Nature Conservancy