



CALIFORNIA FARM BUREAU FEDERATION

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Sent via E-Mail
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August 17, 2015

Chairman Joseph Byrne, and Members
California Water Commission
P.O. Box 942836
Sacramento, CA 94236-0001

Re: Business and Agricultural Coalition Comments on Water Storage Investment Program Issues

Dear Chairman Byrne and Members:

The undersigned organizations appreciate the opportunity to provide the Commission with the following comments in relation to its meeting on August 19, 2015, specifically the Water Storage Investment Program (“WSIP”) and the important tasks of project selection and review for water storage projects eligible for Chapter 8 funding and associated development of criteria and/or regulations for the measurement of the public benefits of such projects. California’s voters have given the Commission an extraordinarily urgent responsibility to develop new and increased water storage, and we urge the Commission to evaluate these projects in an efficient and deliberate manner to maximize the public benefits that new water storage can provide for all of California.

Chapter 8 restricts the “public benefits” eligible for funding to those public benefits that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions. Section 79753 further defines five areas of public benefit which are the sole means of meeting those requirements: ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreational purposes. The Commission has already heard testimony on a number of specific storage projects that may meet these requirements, and indeed there are well-developed potential projects that will satisfy multiple objectives. We believe the assessment and quantification of the public benefits of projects must separate overlapping categories of public benefits, and should also consider secondary public benefits that result.

More particularly, we provide the Commission with the following specific comments in relation to the five general areas of public benefit identified in Water Code Section 79753:

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1. Ecosystem Improvements.

Additional water supplies stored in surface water projects can provide obvious public benefits in terms of ecosystem improvements by changing the timing of water diversions or improving flow and temperature regimes. Those supplies can also directly and indirectly provide public benefit through restoration of aquatic ecosystems and native fish and wildlife. We encourage the Commission to consider the public benefit of associated improvements in terrestrial habitat which can be enabled by projects funded by Chapter 8, as well as new aquatic habitat that may be created as a secondary result of such projects.

Another key issue relating to public benefits—including ecosystem and water quality benefits in general—relates to Chapter 8’s treatment of project mitigation, versus net improvement of conditions over a determined baseline. Our organizations concur generally with the interpretation of Water Code section 79753 offered in the staff memo designated as Agenda 5 for the Commission August 19, 2015 meeting. The point has been further articulated in the August 12, 2015 letter to the Commission from the Association of California Water Agencies, with which we also concur.

Specifically, our organizations believe that a plain reading of that statute amply supports the view that an improvement over the pre-project baseline condition in any of the five “public benefits” areas is an eligible “public benefit.” An eligible “improvement” is any improvement over the pre-project condition, even where the pre-project condition reflects some non-attainment of all regulatory requirements. If this were not so, each project seeking Proposition 1 funding would be saddled with the whole burden of any background condition of noncompliance, yet could not receive any Proposition 1 funding for improvement over that background condition, before removing the whole of that burden in its entirety. For any facility linked to the troubled Sacramento-San Joaquin River Delta, this could mean instant disqualification from consideration for any Proposition 1 funding for any improvement over the pre-project baseline, thus defeating the express purposes of Proposition 1 and perversely preserving an unsustainable status quo. In this scenario, for example, a proposed surface water facility anywhere connected to the Sacramento-San Joaquin River Delta or its extended watershed would absorb sole responsibility for all past and present environmental liabilities as a condition precedent to eligibility for even so much as one cent of the Chapter 8 monies available in Proposition 1. In contrast, a groundwater remediation project in some remote corner of the state would assume none of this regulatory burden, thus jumping to the front of the Proposition 1 funding line. We oppose this unnatural reading of clear language and intent of section 79753, and instead support staff’s common sense reading of the statute.

Lastly, against the backdrop of a system predicated on profound hydrologic modification, declining populations of threatened and endangered species and a possible changing climate, it is

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a reality that *further* hydrologic modification becomes one of the *only* means of possible adaptation. Indeed, were it not for the flow and temperature control releases from our existing surface water facilities, it is fairly certain that our remaining populations of native species would be even *further* depressed, or non-existent. At the same time, our state is now home to 39 million people, a global center of agricultural productivity, and a world leader in environmental stewardship. New water storage is a necessary and inevitable part of future adaptation to increasing demands and long-term change.

2. Water Quality Improvements.

Additional water storage carries with it the potential for great improvements in water quality, either directly or indirectly through integrated operation and management of other water storage facilities. Among the public benefits accruing as a result of water quality improvements, the Commission should consider any benefit to public trust values. Those public trust values which may benefit from such improvements must be as broad as the public trust is currently defined by California's courts, and not just by those water quality priorities identified by CDFW and the SWRCB with respect to direct protection and enhancement of fish and wildlife resources.

3. Flood Control Benefits.

Chapter 8 specifically recognizes that California's water management system will increasingly be called upon to provide flood control benefits as the state's hydrology changes and its snowpack decreases. New storage will provide additional flow-buffering through increased reservation of flood control space, either directly through a Chapter 8-funded project or indirectly through re-operation of existing flood control facilities. We urge the Commission to evaluate carefully the flood control benefits of such new storage facilities, particularly in light of the planning context which is identified in the Department of Water Resources ("Department")'s ongoing system-level flood planning Central Valley Flood Protection Plan ("CVFPP") effort. That effort has clearly underscored the possibility of dramatic change to the state's hydrology in certain watersheds and the public risk from flood events. Additionally, the CVFPP has opted for a "non-structural" floodplain and flood bypass-centered approach, adopting an agnostic posture on surface water storage, instead relying on the Water Bond and the Commission's process for resolution of this important question. Robust consideration of potential flood control benefits of new storage facilities and integration with the Department's evolving CVFPP blueprint should be a high priority, and a prominent consideration for the Commission and the State of California.

4. Emergency Response.

The Commission is no doubt aware that this year the extreme drought conditions have exacerbated a difficult fire season, and large fire complexes have presented firefighting

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authorities at all levels with extraordinary fire suppression tasks. It is likely these conditions may become more recurrent as California's climate changes. The Commission's evaluation of the public benefits of water storage projects should consider fire suppression as a public benefit, as water supplies are likely to be increasingly called upon for fire suppression. Additionally, new water storage can provide important benefits in relation to extended interruptions or reductions of water deliveries from the Delta, whether from natural drought or catastrophic failure.

5. Recreational Purposes.

Water storage projects – in particular, reservoirs – often have many direct and indirect benefits to the public as a result of increased recreational opportunities. These include not only boating, fishing, and swimming, but also camping, hiking, skiing, tourism, and aesthetic values.

With respect to the particular issues and documents that appear on the August 19 meeting agenda, we provide the following comments:

A. Draft Eligibility Criteria for Eligibility and Completeness Review.

The draft eligibility criteria for eligibility and completeness review, posted on the Commission's website as a link to the meeting agenda, comports directly with the relevant Water Code sections.¹ We have no specific comments in relation to this document, although we note generally that the range of eligible projects in Chapter 8 is sufficiently elastic to accommodate a variety project types, from major above-ground surface water facilities, to groundwater storage and conjunctive use projects, to reservoir reoperation projects, local and regional storage projects “that improve the operation of water systems in the state and provide public benefits,” and even “groundwater contamination prevention or remediation projects that provide storage benefits.” At the same time however, there are three separate chapters in Proposition 1 allotting significant sums specifically to such things as “Regional Water Security, Climate, and Drought Preparedness” (Chapter 7—\$0.810 M), “Water Recycling” (Chapter 9—\$0.725 M), and “Groundwater Sustainability” (Chapter 10—\$0.900 M).

Past statewide general obligation bonds have directed significant public investment to local and regional projects. Future statewide bonds will likely continue to support such projects. Furthermore, as a general matter, local financing for local projects is fairly readily had at the local level on an on-going basis, in response to the needs of each agency's water users and local ratepayers. In contrast, only Chapter 8, as approved by the California electorate, makes specific reference to “*Statewide Water System*

¹ The Water Code sections referenced include Water Code sections 79712, 79751, 79752, 79757(a)(1), 79750(b), 79711(e), 79751(a), 79754, 79755(a)(3), 79755(a)(5)(B), and 79757(a)(3).

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Operational Improvement”—and, unlike the kind of small-scale local and regional projects that are undertaken pursuant to a variety of financial mechanisms, the dedicated \$2.7 billion of Chapter 8 monies in Proposition 1 represent California’s only major upgrade to the State’s statewide water system for a generation or more.

It follows that whatever other factors go into the Commission’s calculation of public benefits and project eligibility, a very basic and cross-cutting criterion of all such projects should be the requirement that these projects provide demonstrable *statewide system benefits*, not easily had on small-scale local or regional basis. The stature of any project finally selected should be commensurate to the statewide and system-wide reach of the language and intent of Proposition 1 itself, consistent with the voters’ approval of Proposition 1 on the basis of the need for significant investment in our statewide water system.

The \$2.7 billion in continuously appropriated monies specifically placed in Chapter 8 are meant to change the *status quo* and put California’s water future on a sounder footing. Criteria in the Commission’s Water System Investment Program should faithfully capture and preserve this central purpose as articulated by the citizens of California.

B. Draft Evaluation Criteria for Technical Analysis.

The draft evaluation criteria for technical analysis comports with the relevant Water Code sections. With respect to specific areas of public benefit and their evaluation, we refer you to our comments above. We also appreciate the document’s specific reference to future climate change scenarios in evaluating the magnitude of public benefits.

C. Integration Studies.

Water Code Section 79750(b) requires that Chapter 8 funds be used in a manner that improves the operation of the state’s water system. As such, integration studies are essential to identify the synergistic and antagonistic effects a project may have against the backdrop of the existing system and other competing projects. In the case of multiple projects applying for Chapter 8 funds, we agree the evaluation must include how the projects compete for new or recaptured water supply and how they compete in meeting the demands of potential common beneficiaries. The timing of integration studies is a key question.

While reconnaissance-level integration studies early in the application process may have some utility in screening potential projects and effecting change to those projects where necessary to avoid antagonistic effects, premature study may delay the full application and approval process, as well as the eventual buildout, of meritorious projects.

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Constantly shifting regulatory, environmental, planning conditions have confused and stalled past efforts to move projects toward an endpoint. Even once a project is selected, it is universally acknowledged that construction of the project faces additional legal challenges that take years to resolve. As such, we concur with the staff-recommended option to perform antagonistic integration studies during the full application review phase. To be effective and manageable, the Commission's overall process must impose some reasonable limits, provide a 'snap shot' in time, and otherwise go with the best project proposed. Real progress and rehabilitation of California's aging and inadequate water infrastructure is desperately needed, and as the old saw goes, we cannot therefore "allow the perfect to be the enemy of the good" during project planning.

D. Management and Monitoring of Public Benefits.

Regarding management and monitoring, we concur with the "bubble comment" in the posted materials for the August 19 meeting that third-party enforcement of contracts regarding public benefits entered into pursuant to Water Code section 79755(a)(3) is not authorized by statute, and could provide significant impediment to project operations.

E. Common Assumptions – Economics.

We have no comments on the draft working paper on common assumptions for project economics at this time, but intend to follow evolution of the framework through the August 19 meeting in order to provide additional input.

F. Common Assumptions – Physical Changes.

We have no comments on the draft working paper on common assumptions for physical changes as a result of projects, but intend to follow evolution of this framework through the August 19 meeting in order to provide additional input.

While we recognize there will be many applicants for Chapter 8 funding, we encourage the Commission to recognize those projects that are in the advanced planning and study phases, specifically the projects identified in the CALFED Bay-Delta Record of Decision, as referenced directly in Water Code section 79751 – because they have been extensively studied, are close to shovel ready, offer cost-effective enhancements to system resiliency, and provide multiple public benefits.

Lastly, we agree with comments made that the Commission should begin a process of engagement as early as possible with the limited number of potential technical consultants on quantification of public benefits.

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The undersigned agricultural organizations appreciate the Commission's consideration of the foregoing.

Very truly yours,



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