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**Brian Johnson**  
California Director

August 31, 2015

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

**RE: Compliance and Mitigation Requirements for Proposition 1 Water Storage Regulations**

Dear Chairman Byrne and Commission Members:

On behalf of Trout Unlimited (TU), I am writing to comment on the Water Commission's (Commission) water storage regulations; specifically Commission staff's interpretation of Chapter 8 of Proposition 1. It is our understanding that Commission staff interprets Chapter 8 to mean that funding from the bond can be used to meet *existing* environmental compliance and mitigation requirements. As discussed more fully below, TU believes this interpretation to be inconsistent with the text and legislative history of Proposition 1 which requires that funds be used for storage projects that provide meaningful environmental and water quality "improvements" and other public benefits, not existing mitigation or compliance obligations. As an organization that supported Proposition 1 last year, we continue to work to ensure that the bond is effectively implemented. To that end, we recommend that the Commission 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 to maintain consistency with the language of Proposition 1.

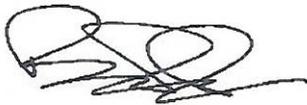
Neither sections 79753(b) or 79753(a) of the California Water Code support the Commission staff's interpretation that funding from the bond can be used to meet *existing* environmental compliance and mitigation requirements. Section 79753(b) explicitly prohibits the use of water bond funds for existing mitigation or compliance obligations with a 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.” 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.

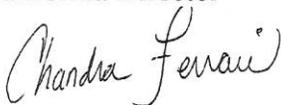
Similarly, section 79753(a) does not support the Commission’s interpretation that funding from the bond can be used to meet *existing* environmental compliance and mitigation requirements. This section provides that only enumerated public benefits are eligible for funding, and specifies that environmental “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.

To ensure consistency with the language and intent of Proposition 1, TU recommends that the Commission take action to ensure that its 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 comments. Please contact me at 415-385-0796 if you have any questions.

Sincerely,



Brian Johnson  
California Director



Chandra Ferrari  
Water Policy Advisor and Staff Attorney, California and Oregon