



REGIONALSAN

TAKING THE WASTE OUT OF WATER

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September 9, 2015

The Honorable Joseph Byrne, Chair
California Water Commission
P.O. Box 942836
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Submitted via e-mail: cwc@water.ca.gov

Subject: Comments on Water Storage Investment Program Draft Regulations Text

Dear Chair Byrne and Commission Members:

The Sacramento Regional County Sanitation District (Regional San) appreciates the opportunity to comment on the draft regulations for the Proposition 1 Water Storage Investment Program (WSIP). Regional San provides wastewater treatment for over 1.4 million residents and businesses in and around the Sacramento region, treating on average, around 150 million gallons per day of wastewater. With the future completion of Regional San's wastewater treatment plant upgrades – known as the “EchoWater Project” – all of the Plant's approximately 167,000 acre feet per year of treated water would meet water recycling standards and could be available for additional water recycling and groundwater storage and enhancement opportunities. We are dedicated to protecting, conserving, and restoring water resources in California, and know that WSIP offers an excellent opportunity to help fund projects that will enhance the resiliency of our water system.

Our specific comments on the draft regulations are outlined below.

Article 1. Definitions

- General Comment: Regional San recommends that the definitions be reviewed to ensure that they are consistent with, and not in conflict with other water related statutes or regulations promulgated by state agencies or departments such as the State and Regional Water Boards or Delta Stewardship Council. For instance, both the Water Boards and Delta Stewardship Council have definitions for beneficial uses, beneficiaries, and groundwater storage.
- “Conjunctive Use”: The definition of “conjunctive use” should be clarified to ensure that both recycled water and in-lieu recharge are considered. We recommend the following changes to the definition:

“Conjunctive use projects” means projects that allow for the coordinated and planned management of **both** surface water, **recycled water** and groundwater resources in order to maximize the efficient use of **both these** resources. Water supplies, regardless of whether the source of water is surface water, recycled water, or groundwater, are stored in the groundwater basin through recharge **or in-lieu recharge**, for use later. Conjunctive use projects would include projects in which **an entity(ies) water management agency(ies)** manages their water supplies in a coordinated manner in order to optimize their portfolio of water supplies.

- “Groundwater Storage”: While the definition for “groundwater storage” is not yet included in the regulations, we have some concerns based on issue papers that have been released and discussed at the Stakeholder Advisory Committee. We believe that Groundwater Storage Projects and the associated banked water should **not be** limited to withdrawal and use for customers outside the groundwater basin or service area. Groundwater storage projects are a critical to help local agencies manage their water portfolio. Regional San recommends the following changes to the definition:

“Projects that capture and infiltrate **(including recharge or in-lieu recharge)** into a groundwater basin, by natural or artificial means, surface water supplies - including but not limited to floodwaters, stormwater, and recycled water – for later use and/or to avoid or address undesirable results such as chronic lowering of groundwater levels or reduction of groundwater storage, land subsidence, or depletions of interconnected surface water. Projects may also include those that bank water ~~for the project sponsor(s) and/or for external customers~~ in an aquifer for later withdrawal and use ~~outside of the groundwater basin boundaries or the boundaries of the project sponsor(s) service area~~. Such projects shall include contractual arrangements with the ~~external~~ customers that detail the water supply accounting and withdrawal obligations and conditions.”

- “Emergency Response”: In the draft regulations, drought conditions are not specifically included in the list of conditions that qualify as an emergency. We suggest that this definition be amended to include drought situations that are declared by the Governor as a state of emergency. As currently evidenced today, a drought can be a true state of emergency for people and wildlife when they lose access to the water resources that they depend on. Water storage projects, including surface storage, groundwater storage, and conjunctive use can all play an important role in helping California respond to drought conditions.
- “Recharge and In-lieu Recharge”: Regional San recommends that a definition be added to the regulations to define the term “recharge” and ensure that the term also includes “in-lieu recharge”.

Article 2. Guidelines

General Selection Process (Page 6)

- Regional San recommends that the Commission consider issuing two solicitations for the WSIP so that both near term and long term projects can compete for funding. Only issuing one solicitation will bias the program towards projects that are already, or nearly shovel ready. In some cases, applicants will need a significant amount of time to prepare the required analysis and documentation by the proposed 2017 solicitation date. This is particularly applicable to proposals for conjunctive use and groundwater storage projects. These types of projects can offer multiple benefits often with greater environmental and economic value. However, the relatively short time between the finalization of the regulations and the release of the solicitation means that proponents who are not currently developing their projects or who have not been able to develop the metrics to quantify project benefits won’t have time to do so. As a result, meritorious projects that have multiple benefits may go unfunded. Additionally, holding two solicitations will give Commission staff an opportunity to learn and further refine the solicitation process.

- While we appreciate the need to get these funds out the door and start work on projects as soon as possible, this is an important enough issue that it merits giving applicants and Commission staff more than one chance to go through the application process.
- An alternative to multiple solicitations is allowing more than six months between the pre- and full applications. This will give applicants more time to develop the materials needed for the rigorous application process. At least one of these options, holding two solicitations or allowing at least 6 months between the pre- and full application, is needed to ensure that a full range of storage projects can be considered and those projects that provide the most public benefits be reviewed and evaluated.

Eligibility and Completeness Review (Page 8)

- Throughout this section, there are several references to “documentation” that the Commission needs from applicants. Please clarify what type of documentation and level of detail will need to be included with proposals.
- Item iii.: The draft regulations propose a 14-day period for applicants to submit any eligibility or completeness deficiencies when they are identified by staff. Given the magnitude of these projects and the technical information that will be involved, this seems like a very short turnaround for this information. We suggest lengthening this time to at least 45 days, and also allowing for extensions where there is good cause. After all of the time and work that will go into preparing these applications, it would be very unfortunate to have an application disqualified because an applicant cannot, for example, complete new modeling work within 14 days.
- Under item v., the draft guidelines would benefit from clarity in several areas:
 - Section (2) v.2.c.: It would be helpful for the regulations to clarify what showing is required as to how the applicant can satisfy the requirement to provide documentation of compliance with “all applicable laws and regulations”. We expect that applicants will generally comply with, and seek approvals under, laws and regulations that the applicant understands to be applicable. But the applicant may in good faith not have become aware of all such laws or regulations, or the question may be uncertain. While this provision seems harmless, what will it actually accomplish? Perhaps applicants can certify that they will be perfect, but it is difficult to believe this provision would accomplish much. In the real world, 100 percent compliance with all federal and state and local laws, 100 percent of the time, may be difficult for some projects. Since other laws are enforceable in their own right, it seems unnecessary to include this requirement. However, if this language is included, the applicant should be protected so long as it acts in good faith.
 - Section (2) v.4.: We would like to request clarification on this item. Does this mean that applicants must document how they will provide the required cost share? And what would be sufficient documentation, a signed letter of intent, a contract?
 - Section (2) v.6.a.: Regional San recommends that the Commission allow applicants with a project that affects groundwater levels or quality to demonstrate consistency with existing groundwater management plans, since many applicants will not be the entities directly responsible for preparing, implementing, complying or monitoring groundwater management plans.

We also recommend that this section of the draft regulations include an additional option “e.” that states the following:

(c)(2)v.6.e. “Documentation that the project is included in an Integrated Regional Water Management Plan (IRWMP).”

Technical Review (Page 9)

- Item iv.: The Commission proposes a 30-day period for applicants to submit any additional information or documentation that technical reviewers request. Given the magnitude of these projects and the technical expertise that will be required, this is a very short turnaround depending on the type of information that may be requested. For instance, if additional technical work must be developed, models re-run or data re-evaluated, a longer response time would be appropriate. Regional San suggests lengthening the window of time for providing requested information from 30 days to 60 - 90 days, and to allow extensions for good cause.

Independent Peer Review (Page 9)

- Regarding the independent peer reviewers, Regional San believes it is important to have a group that is both as diverse and objective as possible. Given the variety of project types that will be evaluated by Commissioners and the technical review team, it is very important to have peer reviewers who not only have expertise in a variety of disciplines, but also have expertise in different types of storage projects, including conjunctive use, groundwater storage, and surface storage.
- The process by which the Commission chooses peer reviewers is also critical. Regional San recommends that the Commission establish both the criteria to be an independent reviewer and a process by which peer reviewers could be vetted by stakeholders to ensure that the most suitable team is chosen.

Section 6003. Funding Commitments

Initial Funding Commitment (Page 10)

- Section (c)(2) indicates that the Commission will be able to either substantially reduce the original funding commitment or pull funding from a project at any given time. Given the likely high cost of these projects, and the significant amount of time and resources required to plan and implement them, this is a particularly troublesome concept. We suggest that the draft regulations include some additional clarity about what type of circumstances would cause funding to be reduced or withdrawn.

Funding for Construction Activities (Page 11)

- Regional San understands the importance of ensuring that applicants have all the necessary permits to complete projects. Many permits, however, may be attained just prior to discreet phases of the construction process, so holding funds from applicants until they have all the necessary permits could cause potential roadblocks for grantees. For example, certain levee, storm water and encroachment permits may not be obtained in advance, but just prior to constructing a discreet portion of the work. We suggest that the Commission consider a tiered approach for the dispersal of funds whereby they release funds to applicants as the appropriate permitting is secured and different phases of the project are completed.

Article 3. Quantification and Management of Benefits

- It seems that the quantification of benefits requirements outlined in the draft regulations would be very cumbersome and in some cases impossible to comply with. For example, in Section (4) vi. on page 13, applicants must monetize benefits for each year of their project's planning horizon. For a multi-benefit groundwater project, the quantification of all aspects would be very cumbersome and complex to repeat for each year of the planning horizon. In some cases, it may not be possible to accurately predict what the benefits will be, given that our water system is dynamic and subject to a variety of natural conditions (drought, flooding, climate change, etc.) that cannot always be anticipated.
- Regional San is interested in working with the Commission staff more on devising quantification methodology that is equitable for groundwater, conjunctive use and multi-benefit projects, and that does not favor certain types of projects at the expense of others.
- We also recommend the Commission seek advice and lessons learned from other programs that may have been implemented in other states and have had to quantify and monetize environmental benefits. Various water quality trading programs may offer some insights. The Freshwater Trust has implemented various projects and may be able to provide some expertise in this arena. They are a 501(c)(3) not-for-profit organization that actively works to preserve and restore freshwater ecosystems and are headquartered in Portland, Oregon. Their website is: <http://www.thefreshwatertrust.org/>.

We would like to reiterate our appreciation for the opportunity to give our feedback on the development of the WSIP, a program that will have an important impact on our water supply system. If you have any questions regarding our comments or if we can be of any assistance, please call contact me at 916-876-6092 or at mitchellt@sacsewer.com.

Sincerely,



Terrie L. Mitchell
Manager, Legislative and Regulatory Affairs
Sacramento Regional County Sanitation District

CC: The Honorable Members of the California Water Commission
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Christoph Dobson, Director of Policy & Planning – Regional San