The SHIBATANI GROUP, INC.

Water Supply Strategic Planning, Climate Change Hydrology, New Reservoir Development And CVP/SWP Operational Compliance for California's Water Industry

October 1, 2015

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DELIVERED BY U.S. MAIL

The Hon. Joseph Byrne, Esq.
Chairman
California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

Re: California Water Commission – Water Storage Investment Program Commentary on Requested Technical Services

Dear ~~Chairman~~ Byrne: SOE

Please find attached a commentary I have prepared on the requested technical services recently released by the California Department of Water Resources, Division of Statewide Integrated Water Management for the *Water Storage Investment Program* under Chapter 8 of Division 26.7 of the California Water Code.

The prescient nature of new water storage development in California and the high level of inter-agency and stakeholder reliance upon which the Commission's work will ultimately be tested, make it imperative that a careful review of this initial scope of work be undertaken. Properly implemented, the technical complexities and overlapping institutional issues that define our new water storage challenges can be assimilated into a workable platform through this Scope of Work, so long as the objectives and proposed work activities are internally well articulated.

I will not be proposing on this solicitation myself, rather, I am merely offering these comments and suggestions, as I have done on past occasions, as a means of hopefully assisting the Commission in its efforts to prepare the most efficient, effective, and defensible public benefits framework possible.

Very sincerely yours,

The SHIBATANI GROUP International
A Division of The SHIBATANI GROUP, Inc.

Robert

Robert Shibatani
Managing Partner & Principal Hydrologist

RS/sj
Attach.

cc: Paula Landis, Executive Director, Water Commission ✓
Fran Spivy-Weber, Vice Chair, SWRCB
Randy Fiorini, Chair, Delta Stewardship Council

COMMENTARY

Technical Services for the Water Storage Investment Program

Under Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014

From RFQ No. 10105919 - Exhibit A

As noted in the above referenced RFQ, the Department of Water Resources (DWR) is supporting the Water Commission (Commission) in the implementation of the *Water Storage Investment Program* funded by Chapter 8 of Division 26.7 of the California Water Code. The selected Contractor shall assist DWR with the tasks described in the Scope-of-Work, as reproduced below.

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1. Provide engineering and environmental support in the development of regulations and application requirements for the implementation of the Water Storage Investment Program funded by Chapter 8 of Division 26.7 of the California Water Code. All rulemaking (regulation) activities, except for Item Nos. 9 and 18 below, will be performed by DWR and Commission personnel.

Commentary:

Some general assumptions and observations. It is assumed that this solicitation, as an on-call award will be timed to meet the needs of all potential project applicant packages. So, firstly, any tools, methods, and/or metrics developed, will be done so early enough so that project applicants can use that information in the preparation of their own public benefits analyses. Secondly, that the same timing necessity would apply for the development of evaluation, screening, prioritization, and ranking criteria, so that the project applicants will also have early indication of what these are (e.g., *knowing the playing field upon which they will be playing*) before they finalize their project descriptions and new storage designs. Thirdly, it is assumed that the actual evaluation and ranking assignments cannot (and will not) be undertaken until all project applicants have completed and submitted their environmental/public benefits documentation. Any cross-comparative analyses suggested by these various Scope tasks can only occur when all such project documentation are deemed to be available. This will realistically mean that for those latter tasks, activities cannot occur for several years (it will take several years for project applicants to complete and certify their EIRs and related documentation, especially, where contentious new on-stream surface storage projects are proposed).

A key provision of this solicitation must be that the work products generated be furnished by a completely independent contractor(s) who is not, has not, and will not engage in work activities involving any new water storage project for which monies under Prop 1 will be sought. The nature of any contractor(s) involvement is important to disclose. Past activities are equally as important as current activities. For example, if a contractor(s) helped design, evaluate, or provide input on any specific element of a new storage project as part of an initial feasibility study, but is no longer involved with that particular project, that contractor(s) would still retain first-hand knowledge of how, why, and under what circumstances the project was developed and would be in a strong position to influence its ranking through advocating the establishment of certain evaluation and scoring criteria. This would constitute an unacceptable bias and conflict and should be avoided.

Since public monies are involved, it is absolutely critical that there be no hint of bias, conflict, or tacit favoritism from the use of contractor(s) who have in the past, are still currently, or plan in the future, to work on new water storage projects that will be subject to the Commission evaluation process. The Commission's internal work products and, most importantly, the development and execution of its evaluation, screening, and ranking

process must be completely separate from any work undertaken on those projects for which these same evaluation, screening, and ranking processes will be subject.

The Commission should make it clear whether the work under this solicitation will include any environmental (e.g., impact analysis) activities. Such activities should proceed with caution. It cannot be perceived as though the Commission is doing any part of the environmental review (e.g., under CEQA) associated with any project proposal. In other words, work that would be required by the project applicant themselves as a "lead agency" with their own independent discretionary approval authority must not be implicated in any way to the Commission process. Prop 1 monies are not intended to cover the environmental permitting and approval processes (e.g., CEQA requirements) of the project applicants.

The Commission also must be careful not to undertake activities that could be perceived as directly assisting the mitigation requirements of certain projects. Again, this related to the CEQA environmental review issue noted above.

While recognizing the preference for CalFED water storage projects under the Act, the Commission should take care not to create a process so tilted in favor of these projects that the vast majority of other genuine and seemingly reasonable water storage projects are simply reduced to irrelevance. That would defeat the entire purpose of seeking State wide interest in developing new water storage options. Everyone knows that the CalFED water storage projects are favored (in reality, some are still legitimate, others less so). These are identified in the Act. But the evaluation and screening process must be genuine and cannot be seen as a mockery (e.g., *what if the developed screening process disfavors the CalFED projects? Can the Commission then exempt certain CalFED projects from the process, so that they will pass and be selected, while other projects are subject to having to pass the selection process?*).

In the end, the Commission must be very careful in ensuring that whatever it undertakes, and whatever information is produced, the advantages, benefits, or informational processes can be equally applied and made available to each and every project applicant. This can be accomplished without a problem arising, but it will take very diligent oversight by the Commission, especially at the outset of the process, to properly define what it can (or should) be asking their contractor(s) to do, and what it should refrain from asking them to do. So long as everything that is requested is meticulously thought out beforehand, the risks of untoward instances arising in the future should be minimized.

I think that one of the initial efforts of the Commission is to solidify an updated list of all the potential new water storage projects that may come before it during this process. This information may already be known. Regardless, I think that knowing this information up front; that is, the number, type, size, location, operational characterization, etc. will go a long way in helping hone the evaluation, screening, and selection criteria and would provide the Commission with a better sense of the scale and direction of the various hydrologic, hydraulic, economic, and other types of studies it is envisioning will be required.

Perhaps a final cut-off date for submitting a Notice of Intent or some form of Notice to File would be helpful in *stirring the bushes*, and getting the project applicants to verify their intentions.

2. Develop methods, including tools and metrics, for quantification of public benefits (ecosystem, water quality, flood control, emergency response, and recreation) associated with water storage projects and as defined in Chapter 8 of Division 26.7 of the California Water Code.

Commentary:

Good task. A few observations. *Will the Commission seek independent review as to the acceptability of the various methods, tools, and metrics being proposed or, will it assume that whatever is generated is acceptable to put out as Commission sanctioned? How frequently and, at what level of completion, will draft work products be put out for public comment and review?* Waiting too long raises the potential of missing key fatal flaws. Putting out too much raises the risk of de-sensitizing the public and could significantly affect the schedule.

Where various project applicants have their own favored or traditional tools or methods, every effort should be made now to find out what those instruments are.

Where the contractor(s) select already established tools, methods, or metrics, it is important that the Commission know the contractor(s) opinion of these instruments. *What is their opinion of them? What are the advantages and disadvantages? Where have they been used successfully before? What does the literature say about how they could (or perhaps should) be improved?*

3. Develop economic values for the public and non-public benefits of water storage projects including ecosystem, water quality, flood control, emergency response, recreation, water supply, and hydropower.

Commentary:

Same observations as No. 2 above.

4. Develop guidance for conducting, review, and conduct engineering and economic analyses of water storage projects using commonly accepted analytical tools and methods to determine the benefits and costs.

Commentary:

Same observations as Nos. 2 and 3 above.

Why is the Commission proposing to undertake engineering and economic analyses of water storage projects? Is this not the sole purpose of the project applicants in their determination of the public benefits and the core of their own submissions to the Commission?

Why would the Commission replicate the very same processes being undertaken by the project applicants? I can see the Commission contractor(s) providing a peer review of the information provided by the project applicants, but to needlessly duplicate efforts seems unnecessary.

It begs the question; *when does the Commission anticipate that such activities (by its contractors) would be completed?*

5. Develop guidance for, review, and perform economic and cost allocation analyses to determine the economic values of the benefits of water storage projects and cost share responsibilities of the beneficiaries of the water storage projects.

Commentary:

Same observations as Nos. 2, 3 and 4 above.

Again, isn't this the responsibility of the individual project applicants? Isn't this the reason why the Commission is expending so much effort in developing the methods, tools, and metrics, so that it can provide these to the project applicants, for their use? Isn't that the sole purpose of why an agency prepares Guidelines; so that they can offer these Guidelines to the public for their use? If this is not the case, then why do we need the pending Guidelines at all; why not just go directly to preparing the Regulations?

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It is not clear (at least to me) what the phrase, "*…cost share responsibilities of the beneficiaries of the water storage projects*." Is meant to convey.

6. Develop guidance for, review, and perform financial analyses for water storage projects to show that there are sufficient funds from public and non-public sources to cover the construction and operation of the projects over the planning horizon.

   Commentary:

   Same observations as Nos. 2, 3, 4 and 5 above. If certain projects have a PPP element that includes confidential financing information with an investor owned consortium, *how will the Commission accommodate that in its need to know the details of the non-public sources?*

7. Develop criteria for evaluating, scoring, and ranking the benefits of water storage projects and other evaluation criteria.

   Commentary: A few observations.

   Will these criteria be available for public review and comment in their draft forms? Again, with respect to timing, I would expect that every project applicant would want to know this information as soon as possible. Knowing how and under what criteria, their projects will be evaluated, is a vital piece of information that would help design and define a project. Since many projects are already underway, having to redo design and operational elements after the criteria are made public (assuming it is some far off time in the future), puts a tremendous strain on the limited resources of water agencies.

   Will the Commission be asking the contractor(s) to also develop "impact" criteria associated with the environmental review documentation that each project applicant will have to prepare and submit to the Commission? Again, if so, then these criteria must be a prerequisite for all project applicants to use in their CEQA analyses and they must be made available as soon as possible. The consistency issue cannot be emphasized enough.

   To the extent that the hydrologic mass balancing that will serve as the foundation for all project applicant analyses, impacts will cover a wide range of water-related effects (e.g., EOM reservoir carryover, reservoir water surface elevations, minimum instream flows/temperatures, Delta inflow, etc.). Impacts to these water metrics should be standardized (i.e., consistent) across projects, regardless of project design. For the Commission to establish these various impact criteria at the outset would be important.

   While this may seem an innocuous issue, since it deals with environmental impacts (a seemingly unrelated issue for the Commission as it focuses on public benefits of the various projects), it will have direct consequences since, as discussed, the hydrologic changes modeled by the project applicants represent the key determinant for both impacts and benefits (i.e., they are antonyms, so they are easily transposable). There is no other way to quantitatively ascribe water-related benefits than through hydrologic modeling. For this reason, establishing *impact criteria* will be very important.

Note that this is separate and distinct from the earlier comments provided under Task 1 since this has to do with providing the project applicants with guidance on performing their environmental impact review, as opposed to having the Commission do it for them.

8. Develop priorities and relative environmental values for ecosystem and water quality benefits and develop associated metrics for the California Department of Fish and Wildlife and the State Water Resources Control Board.

Commentary:

By the wording used in this task, it appears as though these agency priorities will be used to help "guide" the Commission's evaluation criteria.

What is unclear from this wording is how the contractor(s) should view these (and other key federal/State agencies). If the contractor(s) are to be responsible for the development of such values and metrics for CDFW and SWRCB, it is assumed that they will be agents for these two State agencies and that such activities will not be overseen by either DWR or the Commission. It is assumed that the contractor(s) will engage directly with these agencies. *If so, will the Commission exercise any editorial authority over the stated priorities of these agencies?*

I also think that the inter-agency coordination must extend beyond just the CDFW and SWRCB. As we have recently discussed with the Delta Stewardship Council, other key agencies play a significant role in California water storage and the potential for new water storage. While it may be convenient to exclude agencies such as the Corps or Reclamation, or even NMFS for that matter, the loss of the critical input from these water storage agencies represents a real risk.

As an example, one could ask the question, "*If new surface water storage reservoirs are subject to S.7 under the federal Flood Control Act, where Corps reservoir operating rules (for flood control) are mandatory, then why wouldn't Corps priorities be just as important as those for CDFW and/or the SWRCB*?" Under those conditions, which apply to most dams in California, the Corps has arguably more relevance than any other agency in terms of setting the yield, empty space, and resulting carryover provisions of reservoirs than any other agency, even DWR. On the matter of new surface water storage, the Corps is arguably, the most important agency. To not include the Corps, merely on the basis of convenience, would seem ill advised.

As most people realize, there is significant overlap in the new water storage interests of the Commission and what several other agencies/entities have, and continue to pursue regarding State water resources management. Determining how best to solicit that input, taking care to ensure that it represents focused high level policy input, and taking the time to review those policy priorities with staff from those very same agencies to see if they are truly consistent and supportive will be important.

9. Develop the initial and final statements of reasons for rulemaking and develop, also for rulemaking, economic impact analyses/assessments (EIA), standardized regulatory impact analyses (SRIA), and fiscal impact estimates per California Government Code sections 11346.2, 11346.3, 11346.5, and 11346.9.

Commentary:

While the contractor(s) could provide some advisory discussion, this task is really the charge of Commission staff and, in particular, Commission legal counsel.

10. Review and use analytical tools, such as hydrologic and hydraulic computer simulation models and spreadsheets, to evaluate the benefits and impacts of water storage projects.

Commentary:

Some clarification is necessary here. *Is the intent that the contractor(s) will develop the hydrologic and hydraulic modeling tools and platforms for use by the individual project applicants to determine and identify the public benefits from the applicant's projects?* If so, then the timing is critical. These have to be completed as soon as possible since project proponents are already working on their feasibility and, in some cases, CEQA compliance documentation. If they use models and platforms different than what the Commission will ultimately endorse, then a significant amount of time will have been wasted.

The salient issue comes down to the Commission answering this question; **"Do you want to provide the applicants with a Commission sanctioned set of tools, methods, and modeling platforms to perform their analyses or, will you let the individual project proponents proceed independently?"** The answer(s) to this question has enormous time, cost, and legal defensibility implications.

If the Commission selects the former (e.g., provide a Commission sanctioned set of tools), then not only does timing becomes critical, but if your models and tools differ from those used by other long-standing water agencies/applicants, then the Commission may find itself in a heated debate over what constitutes "best available" method and information. There is a very real possibility that a project applicant, having worked with a particular modeling platform for decades, will not want their proposed water storage project evaluated with something completely different.

If the Commission develops these tools, then the vetting process will require significant effort at various stages of development. Just taking one element as an example; to develop a CVP/SWP operational assumptions platform for use in CALSIM II, various federal, State, regional and local water and resource agencies, and environmental stakeholder groups would have to approve the assumption listing. As we all know, the significance of any one operational assumption can, and does have, rippling effects throughout the CVP/SWP due the integrated nature of the system. **(This will affect hydrology and, therefore, any claim for specific public benefits)**

Case Example:

Focusing on just one of over a hundred assumptions, let's look at the complexity and implications of selecting one key assumption. *What will the Commission recommend be used as the flood control diagram for Folsom Reservoir in the current (2015) and future 2040 context? Will it be the current (though expired) interim 400-670 TAF "variable" curve? The previous 400-600 TAF curve? The original 400 TAF "fixed" rule curve? Or, with the implementation of the new flood spillway, will a new curve more attuned to maintaining carryover storage be appropriate, at least for the future 2040 condition?*

Projected over a future hydrologic record, the difference in available post-flood season carryover between these flood encroachment rule curves is significant. Assuming the vagaries in reservoir refill are identical between water year types, this could translate to a 270 TAF difference. Add in known climatic shifting in Sierra Nevada watersheds like the upper American River basin (e.g., earlier season snowmelt) and this difference could even be greater.

The question for the Commission then becomes, **"How are you going to reconcile differences between project applicants based on their discretionary selection of the Folsom Reservoir rule curve, especially in the 2040 context, when the implications of the amount of available water they are claiming is a specific result of their selected operational rule curves for the reservoir?"**

11. Develop "without project" conditions assumptions (including climate change, sea level rise, etc.) for use in the modeling and economic analyses of water storage projects.

Commentary:

This is a good start. A few clarifications.

To determine the potential public benefits of a project, the analysis must be comparative in nature. In other words, it must follow a similar approach to that used in CEQA evaluations where an existing or base condition ("without-project") is compared against a "with-project" condition. In actuality, the ideal assessment would probably more closely follow a NEPA-type evaluation where the same existing or base condition would be used, but it would be compared against a "future" with-project condition. This latter approach seems more realistic given the time it would take for most new water storage projects to secure approval, design, and construction (i.e., a minimum of 10-years, but more realistically, 15-20-years). This would mean that the "future" with-project condition would have to be set at the year 2025 or, more realistically, at 2040. Accordingly, the contractor would have to develop, at a minimum, two baselines (the existing "without project" condition and a "future" with-project condition). The comparison of potential hydrological effects between these two timeframes is what provides the increment of effect that is translated into *public benefits*.

Keep in mind that, consistent with CEQA (or NEPA), any EIR will also have to address alternatives. While this is not a Commission issue, since it will not be preparing EIRs, but rather, will rely on the individual project-level EIRs prepared and submitted to them by individual project applicants, the Commission will need to understand how the various alternatives have been structured and cross-compared in those EIRs. *Do some alternatives provide greater public benefit than others? Do they do so by compromising adverse environmental effects in other areas? What if a Lead Agency deliberately exercises its option to issue Statements of Overriding Considerations on an alternative that is environmentally "friendlier", but has lower demonstrable public benefits than another alternative? Would the Commission have any say in such situations?*

These are just a few of the kinds of questions that would typically come out of a thorough alternatives examination.

The other issue from this task description is related to what is meant by "climate change". *Does this mean GHG emissions or, more appropriately, an analysis focused on water-related resources?* While GHG emissions and typical carbon foot-printing are often the focus of many EIRs and like evaluations, for water projects addressing the effects of climatic forcings, this type of analysis is largely irrelevant. Of greater interest and relevancy is addressing how a shifting climate will affect the proposed project. *Will climate change affect the way the project is operated? Will it reduce the potential public benefits that the applicant is suggesting would be made available?*

Water projects should focus more on the effects of climate change on the operation of the project, rather than the effects of building the project on the cumulative climatic change signal. As noted, most new development type EIRs focus on the latter. For this Commission undertaking, however, it is much more important to know whether climate change will affect the project and whether the project applicant is clear and forthright in this eventuality. Most importantly, the Commission (as well as all reviewers) will need assurance that the

applicant's analysis was indeed based on these anticipated changed conditions. In other words, *did they include a climate-sensitized baseline from which to do all of their hydrologic analyses?*

In terms of methodological approach, there are standard practices and data archives readily available to make this part of the climate change analysis straight forward. Basically, establishing the new projected future precipitation involves using output from global circulation models (GCMs), spatially downscaled and bias corrected. These data already exist in several national archives. The new precipitation data would replace the old historic precipitation data in any runoff hydrologic model of choice (e.g., VIC, TOPMODEL, SNOBAL, WEAP, etc.). Output from the runoff hydrologic model(s) are then used as input to run your system models, like CALSIM II, to generate your operational hydrology. If done in this sequence, the output from CALSIM II (and its various environmental models) can then (and only then) be said to be *climate-sensitized* and appropriate for analysis. The various operational hydrology outputs (e.g., reservoir storage, releases, Delta inflow, instream flows, etc.) are then used to identify the potential impacts to the project. They can also be used to demonstrate public benefits to various water resource elements.

Emerging issues in the climate change/water resource arena such as extreme event hydrology and storm characterizations, can also be addressed at the stage where GCM output is incorporated into the runoff hydrology models. It is very important, especially in California, that projected changes in storm characterizations be addressed. Simply looking at annual totals (by WYs) or even monthly totals, will not effectively capture the real threats of a changing climate to California water resources. **The anticipated changes in the <u>magnitude</u>, <u>frequency</u>, <u>intensity</u>, and <u>duration</u> of winter storms will be considerably more important than a simple determination of whether the future water years are wet, above normal, normal, below normal, dry, or critically dry.** Annual totals may, in some instances, show very little change, relative to current conditions. This might lead some to believe that there would be no adverse effect on hydrology. If, however, that annual precipitation, under a shifting climatic regime, occurs in fewer storms of greater intensity, then the implications to flood control, reservoir storage, carryover capability, and available water may be significantly different. This is the essence of extreme event hydrology evaluation.

Again, here is where the Commission must decide whether it wants to provide direction on the specific climate change methodology or, whether it wants to leave it all up to the project applicants. Providing specific direction will help make each assessment consistent with each other. If, however, the Commission does not provide this direction, it could be faced with many different types of analyses; which will make it virtually impossible to compare. Even if the approach outlined above is followed, but the choice among which GCMs making up the modeling ensemble differs, then significantly different results (for the same watershed) can occur. We must remember that there are over 100 different GCMs, each with a particular bias. It is very easy to construct an ensemble that is, "wet-biased", just as it is very easy to establish one that is, "dry-biased". The Commission will be hard pressed to *peel-back* these various ensembles if they allow the project applicants to proceed with their own approaches.

12. Conduct integrated studies of multiple potential water storage projects to identify potential conflicts such as competing for the same water sources among the projects.

<u>Commentary</u>:

This is a significant task. Not only in its scope, but particularly, in terms of its complexity. The same issue regarding timing also applies here. This task would first require that information regarding <u>all</u> potential water storage projects be obtained. The task would not necessarily require completed environmental review documents (e.g., EIRs), but it would, at a minimum, require detailed project descriptions that included discussion on water right entitlements, operations that would include how much water, which water, diversion

schedule, seasonal offsets, prioritized takings above all other prescribed uses, and places of (intended) use (for return flow calculations) among others.

As worded, this task will encounter the long-standing difficulty that has complicated many past water actions; namely, trying to "color" water so that its migration and source can be traced. *If two projects, on separate tributaries to the Delta, both claim an enhanced public benefit in terms of increased Delta inflow, which assessment is real? Can they both be real?* There is only so much additional water that can represent a beneficial improvement to Delta inflow at any given time. *Who gets to claim that benefit? And can they claim all of it? What if there are 10 projects all claiming a public benefit to Delta inflow? How does the Commission ensure that no one is double-counting?*

This is where we need to closely compare regulatory standards to what the individual projects are claiming to provide. For example, Table 3 in D-1641, sets out the various Bay-Delta water quality standards. For many standards, there is a specific time-of-year provision. Claimed benefits that actually represent a real a benefit, would be those that significantly improve upon the minimum standards when the baseline standard is at its lowest. In other words, projects that operationally increase Delta inflow in February, cannot have the same public benefit (even if the quantity of water is greater) than a project that provides an increase in Delta inflow in say, July. *Will the Commission provide the necessary direction to project applicants so that they provide enough detail to ascertain a maximum possible benefit or, will that forensic exercise be left up to the Commission to figure out?*

This task will also likely encounter situations where project analyses, because of their system operational modeling, will make claims of distant benefits, when it is not precisely clear how, either the CVP or SWP would be operated to accommodate increasing yield (flows) in a particular tributary to the Delta. Both USBR and DWR, through their coordinated operations and, governed somewhat loosely by the OCAP (and to a lesser extent, the COA), possess significant latitude in how they choose to meet the various instream, Delta inflow, and water quality obligations. As an example, just because there is increased yield in one tributary, let's say the upper Feather River, that does not mean that the increased yield directly translates into a Delta benefit. The USBR and DWR have many options from which to meet in-Delta needs. Much would depend on the current condition of the Delta (e.g., in or out of balance), what the other major tributaries are releasing, and how quickly the Delta must return to "balance" conditions, to name but a few issues.

Another matter speaks directly to the conflict issue. *What if two applicants in the same watershed who, as it happens, differ on the seniority and firmness of their water rights?* Both proceed with preparing their project applications and operational descriptions, but when one examines the water right availabilities, it becomes clear that both are claiming the same right or portions of the same right. *How will this be untangled by the Commission evaluation process? How will the Commission verify that what is being claimed as available for storage, can actually occur both legally and physically, under the various WYs, PODs, season of diversion, etc.?*

13. Develop guidelines and criteria for application evaluations.

Commentary:

Previous comments also apply here. And just to be clear, is *what is being asked here the technical expertise to help the Commission actually write the guidelines and criteria? Or will the contractor(s) actually prepare these draft versions?*

14. Develop a decision support tool for the evaluation of the applications.

Commentary:

Good. *But what is specifically being envisioned here?*

15. Prepare, conduct, and facilitate workshops, hearings, and other public meetings for the Water Storage Investment Program.

Commentary:

No issue here. If the public process is open-ended then the workshops, hearings, and other public meetings should include all stages of work product development. Due diligence suggests that as many scoping and initial planning workshops be held to demonstrate, if challenged later, that every effort was made to solicit input.

Equally important, however, if not more important, will be the Commission's responsibility to address each of the comments that were received. The Commission clearly has the discretion to choose whatever path, approach, and methodology it wishes, but it should document its position on each comment received, even if only in internal memoranda. What must be avoided are efforts directed towards gleaning public comment, only to ignore them altogether when they are received. This would not look good if challenged later, especially if one cannot show that it did anything with the comments received, despite all of the efforts to solicit them in the first place.

16. Conduct reviews and evaluations of project applications.

Commentary:

This task extends the contractor(s) role to one of reviewer. It is a big responsibility and not one without important legal, technical, and administrative considerations. We have touched on some of the legal issues previously (e.g., contractor(s) cannot review or evaluate project applications that they had, or have active involvement).

Ideally, the Commission can and should look to the contractor(s) to develop any of the various methods, tools, and/or metrics that would be part of the evaluation decision tool. The contractor(s) can also develop guidance and provide input on how the evaluation, screening, prioritization, and ranking criteria and procedures for implementing those criteria should be made. These are acceptable tasks of any contractor(s).

But by asking the contractor(s) to actually perform the evaluation, screening, and ranking, the Commission is essentially putting the selection of various projects into the hands of a third-party. This is not necessarily fatal, but raises the risk of scrutiny and challenge. Project applicants who, for whatever reason, have their projects rank low (even if completely justified), could be tempted to examine the work history of the contractor(s) to ensure that no tithing can be established between the contractor(s) and the higher ranked projects.

17. Develop the application requirements. The application requirements shall include details on the application process, eligibility requirements, and review and scoring criteria. The application requirements shall work in accordance with the regulations and program guidelines for the implementation of the Water Storage Investment Program.

Commentary:

Many of the previous comments apply to this task as well. *How is this task separate and distinct from Task 12 and/or Task 13?*

18. Compile oral and written comments received on the regulations and draft written responses to the comments. Copies of the comments and responses shall be kept in electronic format such as a database. Categorize and code comments and respond to comments.

Commentary:

Again, just for clarification, is it the intent that only the draft Guidelines and Regulations will be made available for public comment and Commission prepared responses or, will it be the Commission's approach to include many interim draft work products as well?

19. Compile all the materials (written documents, documents referred to in staff reports, internet references and resources including websites and downloaded documents, presentations, public notices, public comments and responses, correspondence) for the Water Storage Investment Program and transmit the materials to DWR in electronic format for administrative records.

Commentary:

This should not pose problem.

20. Plan and perform Water Storage Investment Program outreach and communication. Develop and execute media relations and outreach strategies.

Commentary:

A potentially large task in terms of level of effort. But the need for transparency and outreach make this an important task. The key point will be in identifying those elements of the process (including work products) that are deemed relevant to warrant a high level of media and outreach attention. The Commission will have to balance the need for transparency and public participation against the risk of overkill, public apathy, and cost/benefit. To the extent possible, media relations should attempt to integrate (or at least reflect upon) other water yield/storage initiatives that are ongoing across the State. The better the Commission attempts to integrate new water storage interest *writ large*, the more effective and committed it will appear to the public.