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RE: Comments on WSIP draft regulations

We thank you for the opportunity to provide comment on the proposed regulations for Chapter 1 of the Water Storage Investment Program. The following comments include general comments overall and comments specific to the regulations proposed.

I. General Comments about the Proposed Regulations

- **Requirements are too onerous for smaller projects**

Staff specifically requested feedback on requirements that might be too onerous for smaller projects. Clean Water Action (CWA) has stated several times in Stakeholder Advisory Committee (SAC) and Commission meetings that the application process will be too challenging for smaller, namely groundwater, projects and is therefore unjustly skewed towards large and expensive surface water storage projects. Specifically, by not providing guidance, metrics or a model for quantifying those public benefits most commonly associated with groundwater projects (i.e., changes in volume and/or timing of surface water diversions from the Delta or its tributaries), the Department is skewing the process towards larger projects that can afford to hire consultants to do the necessary –and expensive - modeling. If the Department provided modeling for a range of benefit scenarios, all applicants would be able to use the data to plug into their applications. This would not only help smaller projects, but would provide some level of consistency among proposals that could aid in comparing and ranking projects.

- **Climate resiliency must be demonstrated in order for a Project to be deemed eligible for funding**

The regulations currently relegate a determination of climate resiliency to section 6006, where it is used to provide assurances for environmental benefits. While important, this assessment does not measure the resilience of the project itself. A project should not be funded if it cannot demonstrate that the storage provided is climate resilient. Failing to incorporate climate resiliency into project requirements also inappropriately skews eligibility away from groundwater projects that provide greater stability in long-term dry periods. Short term storage fixes that don't address long term projections for climate impacts are essentially a waste of public funds.



In order to ensure that climate change impacts are appropriately incorporated into the decision-making process, we suggest that the general selection process described in section 6002 include a new provision 6002(c)(6)(ii)(10) that includes a requirement that the Commission determine that "the project has demonstrated it is climate resilient, based on the sensitivity analyses described in section 6004(a)(8)(i)"

- **Groundwater Storage Projects should be Funded**

The directive of Proposition 1 to fund cost-effective projects should provide an incentive to support eligible groundwater projects, most of which provide significant storage benefits at a fraction of the cost of surface reservoirs. We continue to urge the Commission to consider a 2-track funding stream, setting aside significant funding for small projects that provide local water supply reliability as well as measurable benefits to the Delta and its tributaries, but that would find it difficult to compete with billion-dollar surface projects. In addition to being cost-effective and climate resilient, groundwater storage is also more likely to address the Commission's obligation to consider the Human Right to Water. As we've stated previously, communities that lack safe and affordable drinking water are overwhelmingly reliant on groundwater, which, when clean, provides an affordable drinking water source. Surface water, unfortunately, regardless of its quality, requires filtration and disinfection, making it an unaffordable option for small communities.

- **Negative Project Impacts are not included**

Proposition 1 clearly requires that funding only be provided to "net environmental benefits." Yet this requirement is not consistently included in the regulations, namely in the application process, where the applicant should be required to address or quantify the negative impacts of the project, and in the technical review process, where the reviewers are asked to confirm the public benefits, but not the "net environmental improvement." This must be a factor in determining funding eligibility.

II. Specific Comments Regarding the Proposed Regulations

- **Section 6000- Definitions**

(q)- Conjunctive use project"- The word "reservoirs" should be struck or changed to "supplies" to ensure a source-neutral definition.

(nn) "Groundwater storage project"- the word "engineered" should be removed so that the definition does not apply only to projects that construct something. We suggest that the word "designed" be used in its place.

(ffff) "Willingness to pay" is an odd thing to include in regulatory definitions. Its usefulness is unclear, as is the calculation method. We think this criteria in section 6004(a)(4)(vi)(3) should



be eliminated as well as this definition. It's vague and arbitrary and doesn't provide a strong or justifiable quantitative determination.

- **Section 6001 (a)(1)- Confidentiality-**

This provision provides the Executive Officer (EO) too much autonomy to determine what information will be redacted and thereby not subject to public scrutiny. At a minimum, the set of circumstances under which a confidentiality waiver will be considered justified should be articulated in these provisions. Such circumstances should be limited to those that meet the requirements of the Evidence Code for trade secrets protections only or for national security reasons. The EO must make a determination that information meets the standards set forth in California or federal law, and must disclose to the public the nature of the confidentiality waiver and rationale for granting it, and there should be a public appeal procedure included in this provision.

- **Sections 6002-6003: General Selection Process- through Funding Commitments**

The regulations provide a myriad of terms to describe the application process, but the structure and terms of the funding agreement are missing. This document should specify funding conditions, cash flow, timing of matching funds, provision of public benefits, in fact all basic contract requirements. fail to specify what will be contained in the funding agreement. We suggest that a new provision (e) be added to Section 6003 titled "Funding Agreement" that states "The following provisions shall be included in any funding agreement:

- specification of public benefits and how they will be maintained;
- requirement that all project permits identify the public benefits and how they will be achieved, maintained and enforced;
- grantee will provide an operations plan that includes the public benefits maintenance;
- a cash flow model;
- a requirement that all contract changes to the project be approved by the funding agency and that there be a right of public review and final approval by the Commission of the changes; and
- a process articulated for progress reporting to the Department, made available to the public"