



CALIFORNIA FARM BUREAU FEDERATION

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October 23, 2015

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

Re: Comments on October 6, 2015 Working Draft Water Storage Investment Regulations

Dear Chairman Byrne and Members:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 57,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau offers the following comments on the Commission's October 6, 2015 Working Draft Regulations for the Water Storage Investment Program.

Inconsistencies with Key Storage Language in Current Draft Language of Section 6004(a)(iii) and (iv)

As a key outstanding concern at this juncture, Farm Bureau notes that the language of section 6004(a)(iii) and (iv)¹ of staff's October 6 Working Draft Regulations (relating to “Without-Project Conditions”) deviates significantly from the clear statutory language in section 79573(b).

¹Section 6004(a): “iii. If the applicant has existing mitigation requirements or compliance obligations at the time the application is filed, the requirements or obligations shall be included in the without-project future condition. The public benefits claimed must provide an improvement above the existing requirements or obligations for the identified resource.

iv. The applicant shall determine if any relevant, existing third party (i.e., not the applicant) mitigation requirements or compliance obligations may affect the without-project future conditions. The without-project future conditions shall

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As clearly and very cogently described in Commission Staff's September 14, 2015 "Issue Summary" on the subject of "Environmental Mitigation and Compliance Obligations," the language of section 79753(b) stands in marked contrast to similar language in sections 79709(c) and 79732(b).² A plain language reading of section 79753(b) leaves no doubt that the California Legislature and People of California intended that eligible benefits under Chapter 8 extend to mitigation and compliance obligations in the existing regulatory baseline, relating to the "public benefits" enumerated in section 79753(a)(1-5).

Section 79753(b) is explicit: Funds for Chapter 8 cannot be expended on "costs of environmental mitigation measures or compliance obligations, *except for* those [environmental mitigation measures or compliance obligations] associated with public benefits as described in this section [79753(a)(1)-(5)]."³

A contrary reading that precludes projects from funding where present or future, system-level mitigation or compliance requirements are not currently met, and which instead assumes these requirements will be somehow met in the future, absent necessary improvements to our existing infrastructure, would hamstring the express purposes of Proposition 1 to improve our aging state water system, close the shortfall in available water supplies, and improve on the current environmental baseline, in the most efficient and effective manner possible.

include these as existing conditions or future modifications. The applicant may include in its quantification of public benefits the identified physical changes created or caused by the proposed project that coincidentally contribute to meeting a third party's requirements or obligations."

² Section 79709 in Chapter 4 ("General Provisions") deals with requirements relating to "funds expended for acquisition of water." Subdivision (c) prohibits funding of any water acquisition project that does not "*provide fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations in effect at the time the funds from this division are made available*" for the project and funds shall not be credited to any measures or obligations, except for any water transfers for the benefit of subsection (d) of Section 3406 of the Central Valley Project Improvement Act."

Section 79732 describes the "Purposes of Chapter 6," the chapter dealing with "Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds"—among them the requirement that funds provided pursuant to Chapter 6 be used only for "projects that will provide *fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations.*"

Section 79753 is found in Chapter 8, the chapter relating to "Statewide Water System Operational Improvement and Drought Preparedness." Section 79753 addresses "funding allocations," "public benefit associated with water storage projects," and "expenditures prohibited." Specifically, subdivision (b) of section 79753 prohibits expenditures from funds authorized under Chapter 8 "*for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.*"

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Requested Changes to the October 6, 2015 Working Draft

In place of sections 6004(a)(1)(iii) and (iv) in the October 6 Working Draft, Farm Bureau requests the Commission amend the language consistent with the plain statutory language of section 79753(b), concerning the prohibition on funding of “costs of environmental mitigation measures or compliance obligations *except for those associated with providing the public benefits as described in this section*”—and also consistent with staff’s original reading of the statute in its September 14, 2015 “Issue Summary.”

Also, consistent with the current definition of “non-public benefits” in section 6000(yy), Farm Bureau requests the following clarification on the definition of the “public benefit” in section 6000(jjj):

“Public benefit” means ecosystem improvements, water quality improvements, flood control, improvements, emergency response, and recreation associated with water storage projects *as specified in Water Code section 79753(a)(1-5).*”

Conclusion

Farm Bureau appreciates the opportunity to offer these comments on this critically important program for our state’s water future. We commend the Commission and its staff for all of their hard work, and look forward to continuing opportunities to participate in the process.

Very truly yours,



Justin E. Fredrickson
Environmental Policy Analyst
California Farm Bureau Federation