



December 10, 2015

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

Sent via email to: cwc@water.ca.gov

RE: Comments on November 2015 Draft Water Storage Regulations

Dear Chairman Byrne and Members of the Commission:

On behalf of the Natural Resources Defense Council (NRDC) and Defenders of Wildlife, we are writing to provide comments on the November 24, 2015 draft water storage regulations. As discussed briefly below, in several critically important respects the draft regulations are inconsistent with the requirements of Proposition 1 and sound public policy. In our public comments and in prior letters to the Commission, we have discussed in detail most of the issues below. Instead of restating those issues from our prior comment letters, we have focused on developing the recommended edits to the draft regulations that are attached to this letter. We strongly urge the Commission to make changes to the draft regulations at the December Commission meeting, consistent with the recommendations in the attachment to this letter, to ensure consistency with Proposition 1 before initiating the formal rulemaking progress.

First, the draft regulations allow the Commission to spend bond monies to pay for existing environmental mitigation and compliance obligations, in violation of Proposition 1. As discussed in detailed comments by NRDC and other organizations dated November 12th, October 13th, and July 27th, Proposition 1 prohibits using bond monies to pay for existing environmental compliance and mitigation obligations.

Second, while the draft regulations require identification of adverse ecosystem impacts of a storage project, they fail to require the applicant and Commission to include those impacts in the quantification of benefits; as a result, the draft regulations do not quantify the net benefits of projects and fail to adequately account for environmental impacts of a project. This issue has likewise been raised in multiple prior letters to the Commission. As a result, the draft regulations overstate the potential benefits of projects, resulting in a flawed ranking of projects.

Third, the draft regulations fail to specify critically important requirements of the contracting process to ensure public benefits are achieved. Among other deficiencies, the draft regulations fail to specify that the public – which is paying for these public benefits -- has access to the

*Comments on November 24, 2015 draft Proposition 1 Water Storage Regulations
December 10, 2015*

reports of public benefits and has a role in adaptive management of public benefits in the future. Our prior letters to the Commission provide the rationale why these changes are necessary and appropriate.

Fourth, the draft regulations unreasonably limit the agency technical reviews and peer reviews of applications by limiting those reviews to methodology and quality control. These reviews must also include substantive review of the applications' conclusions and claimed public benefits.

In addition, we continue to have significant concerns with the climate change analysis identified in the draft regulations, including: (1) limiting climate change effects to 2050, even for modeled public benefits that exceed that date, consistent with DWR staff's presentation on the availability of that modeling; (2) lack of clarity ensuring that the climate change analysis is downscaled to the watershed level, consistent with staff's statement at the prior meeting; (3) inconsistency with the State's guidelines on climate change modeling, including both wetter and drier scenarios; and (4) the lack of integration of sensitivity analysis on climate change into the quantification of public benefits. To address these concerns, we generally support the recommended edits to the draft regulation developed by the Union of Concerned Scientists.

As noted above, attached to these brief comments are suggested edits to the draft regulations to address these concerns. Please contact us at your convenience if you have any questions or would like to discuss this further.

Sincerely,



Doug Obegi
Natural Resources Defense Council



Rachel Zwillinger
Defenders of Wildlife



Steve Rothert
American Rivers

Enclosure

NRDC, Defenders of Wildlife, and American Rivers
Proposed Amendments to November 2015 Draft Water Storage Regulations

December 10, 2015

Page 4: Amend the definition of “existing mitigation or compliance obligations” to be inclusive, not narrowly defined, and specifically identify biological opinions, water rights, licenses (FERC and SWRCB), water quality standards, etc. Eliminate the word “enforceable” to avoid disputes over whether existing permit and condition terms are enforceable and by whom.

(40) “Existing environmental mitigation or compliance obligations” means ~~enforceable~~ requirements or conditions including those in existing biological opinions, water rights orders and decisions, licenses, water quality standards, water quality certifications, permits, contracts, or grants intended to protect the environment.”

Page 17: Amend the references to the Wild & Scenic Rivers Act to ensure consistency with Prop. 1.

“(1) Does not adversely affect any river afforded protection in the California Wild and Scenic Rivers Act or the Federal Wild and Scenic Rivers Act pursuant to California Public Resources Code section 5093.50 et seq or 16 U.S.C. § 1271 et seq. as required by Water Code sections 79711(e) and 79751(a);”

Page 17: Amend the scope of the technical review of applications so that it is not limited to quality control, but actually evaluates the merits of the application.

“(A) The following items shall be reviewed and evaluated ~~from a quality control perspective~~ from applications that are deemed complete and meet basic eligibility requirements by the review outlined in sections 6002(c)(3) and 6002(c)(4) during the technical review period:”

Page 18: Amend the scope of the technical review so that it is not limited to evaluation of the methods used, but actually evaluates the conclusions reached.

“(E) The technical reviewers shall evaluate the methods, assumptions and conclusions ~~(extent to which assumptions were stated, scientific principles of ecosystems and water quality that were used, data sources identified, model/process used, internal consistency)~~ used in the quantification of public benefits required by section 6004. For ecosystem improvement benefits and water quality improvement benefits, the technical reviewers from the California Department of Fish and Wildlife and State Water Resources Control Board shall also evaluate the benefits as they relate to the ecosystem and water quality priorities and relative environmental values.”

Page 25: Amend the regulation’s monetization of project benefits, in order to ensure that applicants monetize the net physical changes, including negative impacts of a project, not just the benefits of a project:

(4) Monetize the Value of Net Project Physical Changes Benefits. The applicant shall estimate the monetary value of net physical changes benefits in accordance with subsections (A) – (H) below. The appropriate level of analysis for monetizing each public benefit type depends on the magnitude of that public benefit compared to all public benefits or the size of the proposed project. If physical benefits cannot be monetized, the applicant shall provide justification why and include a qualitative description of the benefits.

Page 26: Amend the public benefits that can be allocated to the program to exclude all existing mitigation or compliance obligations, consistent with Proposition 1.

4. Shall not be associated with an applicant's existing environmental mitigation or compliance obligations;

Page 26: Amend the public benefits that can be allocated to the program to include new environmental mitigation or compliance obligation costs that are associated with the public benefits of a project, consistent with Proposition 1.

(5) Shall consider the cost share of new environmental mitigation or compliance obligation costs associated with a proposed project component providing the public benefits, which shall not exceed the percentage of the public cost allocation for the related public benefit category.

Page 32: Amend the reporting requirements so that reports regarding project operations and public benefits are submitted annually for the life of the project, without exception, and clarify that the reports will be made available to the public.

(b) Any project funded under the Program shall, on an annual basis commencing with the end of the first full year of operation, submit a report to the Commission and the public agencies identified in Water Code section 79754. The report shall include, at a minimum, a description of actual project operations, documentation of annual public benefits provided, and description of any changes in the amount or type of public benefits and why those changes occurred. The reports shall be submitted annually for the life of the project ~~or until such time as the Commission makes a determination that the reports can be provided less frequently or are no longer necessary.~~ This and any additional reporting requirements shall be implemented through the funding agreement or agency contracts specified in Water Code 79755(a)(3). The reports will be made available to the public.

Page 32: Amend the provision regarding contracts with public agencies to include minimum contract terms and procedures that will help to ensure the identified public benefits are achieved.

(c) Per section 6003(b)(2), any project funded under the Program shall enter into a contract with the California Department of Fish and Wildlife, the State Water Resources Control Board, and the Department of Water Resources to administer the public benefits of the project. These contracts shall

supersede any preliminary operations, monitoring, and management commitments made in this section under subsection (a). These contracts shall, at minimum:

- (1) Be subject to public review and comment before being finalized or amended;
- (2) Include a right of third party enforcement to allow the public to enforce the public benefits;
- (3) Specify how adaptive management will be implemented to secure the identified public benefits; and
- (4) Require that all monitoring data and reports be made available to the public.

Page 32: Amend the section on funding agreements to clarify that the Commission will seek rescission or reimbursement of dispersed funds if projects fail to provide the identified public benefits.

(e) Per section 6003(e), any project funded under the Program shall enter into a funding agreement with the Commission. The funding agreement shall include language consistent with the requirements of the contracts and permits identified in subsections (c) and (d) and describe how the funding recipient will ensure the public benefits identified for the project are achieved. The funding agreement shall also describe the conditions under which the Commission ~~may~~shall rescind or require reimbursement of Program funding if the project does not provide the identified public benefits.