



# Association of California Water Agencies

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December 15, 2015

The Honorable Joseph Byrne, Chair  
California Water Commission  
1416 9<sup>th</sup> Street  
Sacramento, CA 95814

**Re: Association of California Water Agencies' Comments regarding California Water Commission Staff Working Draft Water Storage Investment Program Regulations dated November 24, 2015**

Dear Chair Byrne and Commission Members:

The Association of California Water Agencies (“ACWA”) appreciates the opportunity to comment on the California Water Commission (“CWC” or “Commission”) staff working draft Water Storage Investment Program regulations dated November 24, 2015 (“draft Regulations”). ACWA represents nearly 430 public water agencies that collectively supply approximately 90% of the water delivered for domestic, agricultural and industrial uses in California. ACWA was a member of the WSIP Stakeholder Advisory Committee, and we recognize and appreciate the investments of time, effort and energy that the Commission and CWC staff have dedicated to the development of the draft Regulations.

ACWA actively participated in the development of Proposition 1 and advocated for the inclusion of Chapter 8’s \$2.7 billion to be allocated for the “public benefits associated with water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions, in accordance with [Chapter 8].” (Water Code § 79750(b).) ACWA recognizes the substantial effort that has been dedicated to ensuring that the draft Regulations provide an efficient and effective framework for the Commission’s activities under the WSIP that is consistent with the requirements of Proposition 1. The following comments and suggested amendments are intended to help ensure that the WSIP Regulations are consistent with the intent of Chapter 8 by enabling the Commission to consider funding the public benefits of storage projects that are diverse in scale, location, type and function with the goal of

improving the operation of the state water system and providing net improvements in ecosystem and water quality conditions.

**I. SECTION 6004(a)(7)(A)(4) OF THE DRAFT REGULATIONS INTRODUCES A DISTINCTION BETWEEN CATEGORIES OF “EXISTING ENVIRONMENTAL MITIGATION OR COMPLIANCE OBLIGATIONS” THAT IS NOT CONSISTENT WITH THE LANGUAGE OF CHAPTER 8.**

Water Code section 79753(b) provides that “Funds shall not be expended pursuant to this chapter for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.” Consistent with the requirements of the statute, CWC staff previously presented the Commission and stakeholders with an interpretation of section 79753(b) that would “allow[] for the funding of such measures and obligations if they are related to providing any of the public benefits enumerated in Chapter 8, which included ecosystem improvements and water quality improvements.”<sup>1</sup> ACWA continues to support this interpretation of section 79753(b) as it is consistent with the plain language and intent of Proposition 1, and we appreciate the changes that have been included in the current draft Regulations to ensure that they are consistent with the statute.

ACWA is concerned, however, that a provision in the draft Regulations at section 6004(a)(7)(A)(4) has the potential to limit the Commission’s discretion to fund projects that provide the greatest magnitude of public benefits by introducing a categorical distinction between types of environmental mitigation or compliance obligations that is inconsistent with Chapter 8. Specifically, section 6004(a)(7)(A) of the draft Regulations would require project applicants to provide a tentative allocation of the “Public benefit cost shares for the five public benefit categories [which] may be allocated to the State of California, the United States, local governments, or private interests.” As proposed, subsection (a)(7)(A)(4) would then specify that:

[The portion of the public benefit cost shares allocated to the Program s]hall not be associated with an applicant’s existing environmental mitigation or compliance obligations...

This draft provision of subsection (a)(7)(A)(4) would introduce a distinction between categories of compliance obligations and mitigation measures that is inconsistent with Chapter 8. Unlike other sections of Proposition 1, Chapter 8 does not recognize any distinction between different categories of compliance obligations or mitigation measures other than those that are “associated with providing the public benefits,” and those that are not. (Water Code section 79753(b).) Chapter 8 was clearly written to give the Commission the discretion to fund these costs as long as

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<sup>1</sup> CWC Staff, Working Draft Paper: “Issue Working Session – Environmental Mitigation and Compliance Obligations” (Aug. 3, 2015), (“CWC Staff Recommendation”), at p. 1.

they are associated with providing the five categories of public benefits.<sup>2</sup> As CWC staff has previously explained, Water Code section 79753(b) “states a broad exception allowing for the funding of such measures and obligations if they are related to providing any of the public benefits enumerated in Chapter 8, which included ecosystem improvements and water quality improvements.”<sup>3</sup>

Preserving the Section 79753(b) public benefit funding exception’s applicability to all public benefits is critical to ensuring that the Commission retains the discretion to be able to fund projects that can provide the greatest magnitude of public benefits. It is appropriate for the Commission to collect and consider information related to an applicant’s compliance obligations and mitigation measures when considering its ultimate funding allocation decisions. The Commission may then weigh and consider these commitments, responsibilities and requirements as it selects projects through a public process that “ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided[.]”<sup>4</sup> As proposed, however, the distinction introduced in subsection (a)(7)(A)(4) may limit the ability of the Commission to fund the public benefits of storage projects that improve the operation of the state water system and provide a net improvement in ecosystem and water quality conditions.

In order to ensure that the Commission is able to exercise its discretion as contemplated by Proposition 1, the WSIP Regulations should not include distinctions between compliance obligations and mitigation measures that do not have a basis in Chapter 8, nor should they include limitations on the Commission’s ability to fund the public benefits of storage projects. Consistent with ACWA’s October 23, 2015 comment letter, we encourage the Commission to delete subsection (a)(7)(A)(4) from the draft Regulations to address this issue.

**Suggested Amendment #1**  
**Delete section 6004(a)(7)(A)(4).**

**II. THE DRAFT REGULATIONS’ REQUIREMENTS RELATED TO CLIMATE CHANGE IN SECTION 6004 SHOULD ACCOUNT FOR THE CHANGING STATE OF THE “BEST AVAILABLE SCIENCE.”**

The Commission, project applicants and the public have a shared interest in ensuring that the WSIP funds storage projects that provide resilient public benefits under a wide-range of future climate conditions. These requirements, however, should be sufficiently flexible to allow the applicants’ analyses to account for the changing state of the best available science for their specific project, consistent with Proposition 1’s stated intent to ensure that state and local water

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<sup>2</sup> Water Code section 79753(b) provides that “Funds shall not be expended pursuant to this chapter for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.” (Emphasis added.)

<sup>3</sup> CWC Staff Recommendation, at p. 1. (Emphasis added.)

<sup>4</sup> Water Code section 79750(c).

agencies “use the best available science” when making decisions regarding water resources. (Water Code section 79707(d).)

As proposed, section 6004(a)(8) would require project applicants to use the “best available science” when producing sensitivity analyses intended to “describe how the expected physical changes and public benefits that would be provided by the proposed project might change due to potential uncertainties...” Under section 6004(a)(8)(A)(1)(a) & (b), however, project applicants would be required to produce these analyses using highly prescriptive technical specifications which are linked to current climate change projections. For example, section 6004(a)(8)(A)(1)(a) would require project applicants to produce a quantitative sensitivity analysis using specific numerical values for future average statewide precipitation (11.4 percent drier), temperature (5.0 degrees Fahrenheit warmer) and sea level rise (61 centimeters). Similarly, section 6004(a)(1)(C) would require project applicants to define “without-project future conditions” using prescriptive numerical values that are based on current statewide climate change projections.

Consistent with ACWA’s October 23, 2015 comment letter, we encourage the Commission to remove the prescriptive technical specifications for climate change analysis included in section 6004 of the draft Regulations. The Commission and project applicants should then work to develop technical guidance to complement the WSIP’s regulatory requirement to use the “best available science” when conducting analyses of climate change and sea level rise. This approach will ensure that the Commission is able to use the best available science to meaningfully analyze how the expected physical changes and public benefits that would be provided by the proposed project might change due to climate change.

**Suggested Amendment #2**

**Delete section 6004(a)(1)(C), (a)(8)(A)(1)(a) & (b).**

**III. THE DRAFT REGULATIONS SHOULD CLEARLY REFERENCE THE COMMISSION’S ABILITY TO FUND THE COMPLETION OF ENVIRONMENTAL DOCUMENTATION.**

Water Code section 79755(c) provides that “funds may be made available under this chapter for the completion of environmental documentation and permitting of a project.” As proposed, however, section 6003(d) of the draft Regulations would only reference the Commission’s authority to provide funding for “necessary permits.” Consistent with ACWA’s October 23, 2015 comment letter, this section should be revised to clearly reference the Commission’s authority to fund the completion of environmental documentation in addition to permits.

**Suggested Amendment #3**

**Revise section 6003(d) to include “environmental documentation.”**

ACWA appreciates the substantial ongoing efforts of the Commission and CWC staff related to the WSIP and we stand ready to continue to work with the Commission as it moves forward. ACWA and potential project applicants would welcome additional opportunities to assist the Commission and CWC staff on any issues related to the implementation of the WSIP to help ensure that the Program continues to move forward in a timely manner. If you have any questions regarding this matter, please contact me at AdamR@ACWA.com or (916) 441-4545.

Sincerely,



Adam Walukiewicz Robin  
Regulatory Advocate

cc: The Honorable Joe Del Bosque, Vice-Chair  
The Honorable Andrew Ball, Commissioner  
The Honorable Daniel Curtin, Commissioner  
The Honorable Paula Daniels, Commissioner  
The Honorable Maria Herrera, Commissioner  
The Honorable David Orth, Commissioner  
The Honorable Armando Quintero, Commissioner  
Ms. Paula Landis, Executive Officer  
Ms. Rachel Ballanti, Assistant Executive Officer  
Ms. Jennifer Marr, Supervising Engineer