

Summary of Proposed Revisions to Water Storage Investment Program Quantification Regulation

Earlier this year, the California Water Commission sought public comment on proposed regulations that would govern the quantification of benefits associated with water storage projects whose proponents seek Proposition 1 funding under the Commission's Water Storage Investment Program. Over the 45-day comment period, comments were received that urged the Commission to streamline and simplify regulations and shorten the time it would take to fund projects. Based on those comments, input from other agencies, and Commissioner feedback, Commission staff propose several changes to the draft regulations. The changes presented below seek to ensure that funds can be disbursed in a timely manner to projects that meet the statutory requirements. Other proposed changes involve formatting and organizational revisions. These are the substantive changes to be discussed today:

1. Removal of the mandatory pre-application period

- The initial draft regulations included a three-month pre-application solicitation period for applicants to provide preliminary project information to the Commission. The pre-application was intended to be used to identify projects that may not meet the eligibility requirements before those project proponents undertook the expense of completing a full application.
- In early 2016, applicants submitted project Concept Papers to the Commission. The Concept Papers summarized potential applicants, project types, public and non-public benefits, and project operations. Commission staff provided feedback on the Concept Papers to help potential applicants identify potential eligibility issues. Due to this early feedback, staff feels that the mandatory pre-application period is no longer necessary.

2. Removal of the formal peer review process concept

- Originally, the draft regulations included a formal peer review process.
- A formal peer review process is not required by Proposition 1.
- Commission staff may hire third-party experts as needed on a contract basis.
- State agencies can lend significant expertise in the review and analysis of applications.
- Implementation of a formal peer review process would be challenging and overly time consuming:
 - Peer reviewers would need to be experts in California water management and all aspects of the project's claimed benefits (including ecosystem, recreation, water quality, and flood control), or the peer reviewers would need to confer with one another about individual projects, potentially creating Bagley-Keene issues.
 - Other departments and programs do not include a formal peer review process.

3. Combining of agency priority review and technical review with an Agreement in Principle process

- Originally, the draft regulations separated state agency and technical review from the effort of project proponents to enter into contracts with state agencies regarding the management of certain public benefits. To save time and streamline approval, the draft regulations have been revised to allow agency priority reviews and technical review to unfold while applicants negotiate Agreements in Principle with state agencies.
 - Agreements in Principle will identify the public benefits of a project that best address agency priorities and assign an economic value to those public benefits in advance of entering a formal contract with the state agencies.
 - State agencies responsible for managing the public benefits can evaluate the applicant's claimed public benefits and determine which benefits they are willing to negotiate a contract to manage.
 - This would eliminate, early in the process, potential differences in the amount of public benefits the Commission could fund and the amount of public benefits state agencies are willing to manage, thereby simplifying the later formal contracting process.

4. Addition of Commission review of staff's determination of benefits

- Applicants may request Commission review if they disagree with the initial staff determination of the quantification of the proposed project's public benefits.

5. Removal of the 60-day "ask"

- The initial draft regulations included a 60-day window during which project proponents and Commission staff could correct errors or provide additional supporting information.
 - The 60-day "ask" is no longer needed, given the technical workshops and technical support provided to applicants, as well as the addition of the Commission review process for the quantification of public benefits.

6. Provision for funding environmental documentation

- The initial draft regulations only provided early funding for permitting. The latest revisions would also allow early funding for environmental documentation. Early funding for both is allowed under Water Code section 79755(c).
 - Given the desire to fund qualified projects in a timely manner, early funding for the environmental documents and permitting should be made available to help applicants advance projects. The technical review process, agency priority evaluations, and Agreement in Principle negotiations will occur before these funds are disbursed, minimizing the risk of sunk costs.