December 7, 2016

California Water Commission
Attention: Joe Yun
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Sacramento, CA 94236
Sent via email to WSIPComments@cwc.ca.gov.

Re: Comments on November 22 Revised Proposed Regulations for the California Water Commission's Water Storage Investment Program

Dear Chairman Byrne and Members of the Commission:

On behalf of Defenders of Wildlife, the Natural Resources Defense Council ("NRDC"), Sierra Club California, Friends of the River, Clean Water Action, American Rivers, the Union of Concerned Scientists and our millions of members and activists, we are writing to provide comments on the November 22, 2016 draft of the proposed regulations for the Water Storage Investment Program ("revised regulations"). Our organizations have participated extensively throughout the development of these regulations, including by submitting detailed written and public comments on the original and subsequent draft regulations, and incorporate those earlier comments by reference.

While we appreciate the improvements made since the January 29, 2016 draft of the proposed regulations, we continue to find these regulations deeply flawed and ask that you direct staff to make important changes before you consider adoption. As written, these draft regulations violate the Administrative Procedure Act's ("APA") consistency, clarity, and nonduplication standards and also fail to comply with statutory requirements approved by voters in Proposition 1 in 2014. Our specific comments and recommendations are provided below.

1. **The revised regulations are inconsistent with the statutory text because they allow the Commission to rank projects based on impermissible factors.**

Proposition 1 requires that the Commission only rank projects based on the magnitude of public benefits that the projects provide: "Projects shall be selected by the commission through a competitive public process that ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided, pursuant to criteria established under this chapter." Water Code § 79750(c). The statute further defines "public benefits" to exclusively mean ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreational purposes. Cal. Water Code §§ 79753(a)(1)-(5). The statute is exceedingly clear that the Commission is only permitted to rank proposed projects based on the magnitude of these specifically enumerated public benefits.

The revised draft regulations are inconsistent with this statutory requirement because they permit the Commission to rank projects based on factors other than the specifically enumerated public benefits. In particular, section 6009 of the draft regulations specifies that projects will be ranked based on their "resiliency," and may receive up to 25 out of 100 total possible points for their score in this category. *See* Nov. Revised WSIP Reg. § 6009(a), (b). The resiliency score is comprised of two subcomponents: "integration and flexibility" and "response to an uncertain future." *Id.* §§ 6007(d)(1), 6009(g). In contravention of the statutory text, each of these subcomponents permits the Commission to assign points, and thereby rank projects, based on factors other than the public benefits identified in Proposition 1.

The terms "flexibility and integration to the State water system" are not defined but are extremely similar to the definition of "water system improvement," in earlier versions of the regulations. In fact, the language is almost identical: "water system improvements including regional and State system reliability; flexibility through integration." Water supply improvements were removed from the final regulations because they represent non-public water benefits that cannot be funded through Proposition 1. We are extremely concerned that the new definition of resiliency reintroduces these non-public benefits under the guise of responding to uncertainty.

The revised draft regulations direct that "Staff shall evaluate the integration/flexibility of the project based on the . . . information provided pursuant to section 6003 of these regulations." *Id.* § 6007(d)(1)(A). Section 6003 requires applicants to provide specific information about their project's integration and flexibility in the executive summary of their application. *Id.* § 6003(a)(1)(A). With respect to integration, applicants must describe:

> How the project is integrated into one or more state water systems, including use of new water sources such as recycled water or storm water capture. The summary must include information such as the project's inclusion in an integrated regional water management plan, other integrated planning documents, or interactions with existing projects and operations that support the description of integration.

Id. § 6003(a)(1)(A)(2). With respect to flexibility, applicants must describe "[h]ow the project increases the flexibility of the water system(s) it is integrated with, including references to analyses, data, documents, or studies included in other parts of the application that support the added flexibility." *Id.* § 6003(a)(1)(A)(3). None of this required information, which is the basis for the projects integration/flexibility score, has to relate to the public benefits the project will provide. This leaves open the possibility that a project could receive a high score for integration and flexibility, even if the benefits of that integration and flexibility will accrue to private customers and not enhance the public benefits that the project provides. Because projects may be ranked based only on the magnitude of their public benefits, allowing projects to receive points for integration and flexibility that could accrue exclusively to the benefit of private customers is inconsistent with the statute.

The "response to an uncertain future" subcomponent of the resiliency score is similarly inconsistent with the statute. For this subcomponent, projects will receive a higher score if they can show "high levels of water stored in the system due to the project during a drought." *Id.* § 6009(g)(2). To determine a project's drought storage capability, the draft regulations specify that an "applicant shall describe and quantify the amount of water stored in the water system due to the project that could be used for public benefits at the beginning and end of a five-year drought." *Id.* § 6004(a)(8)(D) (emphasis added). Problematically, there is no requirement that the stored water actually be used for providing public benefits. This means a project could receive significant points for showing that it can maintain high levels of stored water during a drought, even if that stored water is used to benefit private customers and not to provide public benefits. Because projects may only be ranked based on the magnitude of the public benefits they provide, allowing a project to receive points for stored water that could be used to benefit only private customers is inconsistent with the statute. To remedy this problem, the Commission should replace the word "could" in section 6004(a)(8)(D) with the word "will" so that the provision reads: "The applicant shall describe and quantify the amount of water stored in the water system due to the project that will be used for public benefits at the beginning and end of a five-year drought."

These problems are not remedied by the reference to public benefits in section 6001(a)(71)'s definition of "resiliency." As a general rule of interpretation, specific provisions will trump general provisions. *See, e.g.*, *Rose v. State*, 19 Cal. 2d 713, 724 (1942) ("A specific provision relating to a particular subject will govern in respect to that subject, as against a general provision, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."); *see also Diablo Valley Coll. Faculty Senate v. Contra Costa Cmty. Coll. Dist.*, 148 Cal. App. 4th 1023, 1037 (2007) ("Rules governing the interpretation of statutes also apply to interpretation of regulations."). Here, because the more specific provisions in the regulations impermissibly permit ranking based on factors other than public benefits, the focus on public benefits in the more general definition of resiliency fails to ameliorate the problem.

Further, the revised regulations' new definition of resiliency (Revised WSIP Reg. § 6001(a) (71)) does not match the definitions of resiliency provided in other state planning documents, including Safeguarding California, or peer-reviewed reports such as the Intergovernmental Panel on Climate Change's assessments. Nor does it specifically require project proponents or the Water Commission to consider climate resilience. Climate resilience is commonly defined as the capacity to: (1) absorb stresses and maintain function in the face of climate change and (2) adapt, reorganize, and evolve into more desirable configurations that improve the sustainability of the system, leaving it better prepared for future climate change impacts.

Additionally, despite our prior comments, Section 6006(c) still omits the requirement from Proposition 1 that only water suppliers who are complying with the Water Conservation Act of 2009 are eligible for funding. This violates Proposition 1, *see* Water Code § 79712(b) (4), and is inconsistent with existing law. The Commission must ensure this eligibility requirement is included in the final regulations to be consistent with Proposition 1's requirements.

Finally, section 6009(g) of the revised regulations is inconsistent with the statute because it indicates that projects will receive points for the quality of the analysis that the applicant supplies. *See*, e.g., Nov. Revised WSIP Reg. § 6009(g)(1) ("Eight to 10 points will be assigned for projects that show a high quality of analysis and high level of integration and added system flexibility. Four to seven points will be assigned for projects that show a high quality of analysis and moderate levels of integration and added system flexibility or a lesser quality of analysis and a high level of integration and added system flexibility. Zero to three points will be assigned for projects with low quality of analysis or low levels of integration and added system flexibility."). This means that a project with less public benefits could rank higher than a project with more public benefits because the project with less public benefits submitted

better analysis to the Commission. Allowing projects to be ranked based on the quality of their analysis, rather than exclusively based on the magnitude of public benefits provided, is inconsistent with Water Code § 79750(c) and all references to scoring based on the quality of analysis should be removed from the regulations.[1]

Recommendations:

1) *Revise the definition of resiliency to conform with other state documents and processes*
2) *Amend before approving the regulations, the Commission should modify the "resiliency" scoring category to ensure that all subcomponents focus exclusively on the proposed projects' quantified abilities to provide public benefits.*
3) *In Section 6009 (g) remove references to "quality of analysis)*
4) *Include compliance with Water Conservation Act of 2009 as an eligibility requirement.*

2. The revised regulations do not provide a sufficient opportunity for public input in the management of public benefits.

Section 6014 of the revised draft regulations includes significant, positive changes with respect to the management of public benefits. The regulations now describe minimum requirements for the contracts between the projects and the administering agencies, including helpful requirements related to adaptive management. We thank the Commission for the revisions that it has made to this section thus far.

However, the revisions to section 6014 fail to provide adequate opportunities for public input into the management of public benefits. Section 6014(a)(2)(B) provides the only possible opportunity for public comment, stating that, "[p]rior to the execution of the contract between the administering agency and the applicant, the administering agency may submit a draft of the contract to the Commission. The Commission, after considering any public comment, may offer comment for the administering agency's consideration prior to execution." This opportunity is inadequate for several reasons. First, the administering agency is not required to submit the draft contract to the Commission, and if it chooses not to, there is no opportunity for public input. Second, providing public input to the Commission rather than to the administering agency is problematic because the Commission lacks authority to make changes to the contracts. Third, the revised draft regulations do not provide an opportunity for the public to

[1] All references related to scoring based on the quality of analysis must also be removed from the technical reference document. *See, e.g.*, Revised technical reference document at 4-10.

provide input during the adaptive management of public benefits, which is a critical process for ensuring the funded public benefits are realized.

Recommendation: the Commission should (1) revise section 6014 to require that the public has an opportunity to provide comments to the administering agency before any contract for the management of public benefits is finalized or subsequently amended, and (2) revise section 6014(a) (2) (A) (1) (d) to include an opportunity for the public to provide input during the adaptive management decision-making process.

3. **The revised regulations still inappropriately address the effects of climate change on the potential benefits and impacts of storage projects.**

While improvements have been made to improve the climate change analysis, the regulations remain inadequate to ensure scientifically-defensible and adequate evaluation of the resiliency of projects to climate change. We support in full the comments from the Union of Concerned Scientists, summarized here.

The first problem is that there is an inconsistent approach taken to quantifying climate change impacts that is at odds with the body of scientific research and state guidance and represents a dangerous precedent for other state planning processes and policies. The revised regulations include two different methodological approaches to analyzing climate change impacts. The first approach, which is not scientifically-sound, averages together the two global warming emissions scenarios for the purposes of monetizing public benefits in Section 6004 (a)(4). The second approach is scientifically sound and follows state guidance and scientific best practice, treating the two global emissions scenarios as two separate possible futures for the purposes of conducting an "uncertainty analysis" in Section 6004 (a)(8). The state-funded California climate change portal, Cal-Adapt, explicitly warns climate data users to avoid averaging two emissions scenarios. In particular, it notes that averaging together the emissions scenarios does not give you a more likely scenario (see Cal-Adapt Website: http://beta.cal-adapt.org/resources/using-climate-projections). Unfortunately, the unscientific approach is used for monetizing public benefits, and integrate part of project evaluation and ranking, while the scientifically sound uncertainty analysis is relegated to a minor role in the resiliency section. The difference between the most and least climate resilient projects will be minimal under the currently propose scoring system.

Next, while DWR is providing useful data for applicants to consider more stressful future climate conditions, applicants are not required to use these data to *quantitatively* demonstrate how the project responds to more severe climate conditions.

Finally, the final regulations refer to an entirely re-written Appendix A in the Technical Memorandum: Climate change and sea level rise, which raises additional methodological concerns. First, Table A.1 (pg. A-5) reflects the precipitation change (and also considering temperature). This new information reveals that the precipitation for CNRM-CM5 raises a red flag as it is 5 times wetter than the other models, during a period that should have some predictability. This begs the question: What were the criteria used to select these models? This model will skew the statistics towards a wetter future. Next, in Step 2 (pg. A-7) there should only be 10 simulations to average during this period because there is only one scenario per model. Instead, the documentation refers to 20 simulations, which means that both emissions scenarios were averaged, see the first problem described above. Third, in Step 4 (pg. A-8) the HADGEM ES model does not appear to represent an extreme change in terms of drier conditions, as it is only about twice as dry as the other models. In other words, this relatively mild dry scenario is being used to represent an "extreme level of climate change," underestimating the impacts of longer and more severe droughts.

Recommendations: DWR must re-run the analysis used in the monetization of public benefits using the same data that they already have, but separating the two emissions scenarios. DWR must further make public and re-evaluate the model input used for Appendix A of the Technical Memorandum. Increase the scoring of climate change resiliency in section 6009 (a) to a minimum of 10 points.

4. The Revised Regulations' Provisions Regarding Environmental Mitigation and Compliance Obligations Lack Clarity and are Inconsistent with the Statutory Requirements of Proposition 1

The revised regulations fail to meet the APA's Clarity and Consistency standards because the sections regarding environmental mitigation and compliance obligations are unclear, internally inconsistent, and inconsistent with Proposition 1. As we have commented numerous times,[2] Proposition 1 requires that public funding cannot be used to meet existing mitigation and environmental compliance obligations, but can be used to meet new mitigation and compliance obligations that are imposed on a storage project. Unfortunately, the revised regulations can be interpreted to have different meanings, misquote the language of Proposition 1, and could allow public funds to be used to meet existing obligations that are not adequately modeled in CALSIM. Section 6004 and the Technical Reference Document must be revised to be clearly prohibit public funding for meeting existing environmental mitigation and compliance obligations, consistent with Proposition 1.

[2] All of our prior comments are hereby incorporated by reference.

First, section 8.1 of the Technical Reference Document misquotes section 79753 of the Water Code, inserting the word "existing" into what otherwise appears to be a quotation of the statutory language. *See* TRD at 8-1. This substantially changes the meaning of the sentence in manner that is inconsistent with the requirements of Proposition 1, explicitly allowing public funds to be used to meet existing mitigation and compliance obligations when they are associated with providing public benefits. Such an interpretation of Proposition 1 is unlawful. It is also inconsistent with language in the revised regulation. Moreover, the revisions of the TRD on page 8-1 eliminate clear language that cannot reasonably be interpreted to have more than one meaning, and replaces it with the aforementioned misquote of Proposition 1. The Commission should revert to the prior language on page 8-1 in order to comply with the clarity and consistency requirements of the APA.

Second, section 6004(a)(7) violates the APA's clarity standard. Cal. Code Regs., tit. 1, § 16(a)(1). For instance, section 6004(a)(7)(4) simply quotes section 79753 of the Water Code. In light of Commission staff's inconsistent—and at times impermissible—interpretations of that code section, merely including the statutory language in the revised regulations creates additional confusion rather than clarifying the statute's meaning. Moreover, it is unclear how section 6004(a)(7) is consistent with subparts (a), (b), and (c) of section 6004(a)(7)(4). While we believe that the Commission means that environmental compliance and mitigation obligations in effect as of the date of the regulation or model cannot be considered public benefits and cannot obtain public funding, the regulations do not make this clear.

Third, section 6004(a)(7)(4)(b) relies on the Applicant's determination of what are existing environmental mitigation and compliance obligations in determining what costs are eligible for public funds, by cross-referencing section 6003(a)(1)(AA). Section 6003(a)(1)(AA), however, does not require the applicant to include all existing environmental mitigation and compliance obligations. In contrast, section 6004(a)(1)(B) of the revised regulations appropriately requires the applicant to include "all existing mitigation or compliance obligations" in the without project future conditions. Moreover, it is unclear whether the technical review or the Commission, after public comment, can modify the Applicant's list of existing environmental mitigation and compliance obligations in section 6003(a)(1)(AA), or if the language in section 6004(a)(7)(A)(4)(B) requires the Commission to use the Applicant's list of these obligations regardless of their accuracy. These sections must be revised to clearly ensure that public funding cannot be used to meet any existing mitigation and compliance obligation, consistent with Proposition 1.

Fourth, section 6004(a)(7)(A)(4)(a) allows Applicants using CALSIM modeling to rely on the modeling to demonstrate they are meeting existing "flow related" mitigation and

compliance obligations, and allowing that any flows or benefits above the model results are not existing mitigation and compliance obligations. However, relying on the CALSIM model results fails to ensure that funding is not used to meet existing environmental compliance and mitigation obligations because, as the Department of Water Resources has admitted, the CALSIM model does not include all existing environmental mitigation and compliance obligations (such as water temperature requirements and carryover storage requirements). *See, e.g.*, Department of Water Resources and Bureau of Reclamation, Draft Biological Assessment for the California WaterFix project, January 2016, Appendix 5.A, at 5.A-12, available online at: https://s3.amazonaws.com/californiawater/pdfs/n5upr_Appendix_5.A_DraftBA.pdf ("Despite detailed model inputs and assumptions, the CalSim II results may differ from real-time operations given that not all the regulatory requirements (e.g. upstream temperature requirements, reservoir release ramping rates etc) or realtime operational adjustments to the Shasta Temperature Control Device are modeled in the CalSim II."). In addition, because it is a monthly model, DWR warns that, "reporting sub-monthly results from CALSIM II or any subsequent model that uses monthly CALSIM results as an input is tenuous at best." *Id*. at 5.A-13. Moreover, DWR has admitted that CALSIM modeling results will show violations of existing mitigation and compliance obligations during future droughts, which may not actually occur as modeled. *Id*. at 5.A-13. While CALSIM can be a useful representation of many existing mitigation and compliance obligations, the revised regulations inappropriately use it as a determination of all flow related existing environmental mitigation and compliance obligations. In light of the flaws and limitations of the CALSIM model, the approach in section 6004(a)(7)(A)(4)(a) is inconsistent with Proposition 1's requirement that meeting existing mitigation and compliance obligations is not a public benefit and is not eligible for public funding.

Recommendation: We strongly urge the Commission to revert to the prior regulatory language in 6004 (a)(7)(A)(4) from the Sept. 2 draft regulations, "Shall not be associated with existing environmental mitigation or compliance obligations" which provides clear direction that meeting existing mitigation and compliance obligations does not constitute a public benefit and is ineligible for funding, whereas meeting new mitigation or compliance obligations imposed as a result of the project may be funded by the Commission.

5. **The revised regulations are inconsistent with the statutory requirement that projects provide a net improvement in ecosystem and water quality conditions.**

Revisions made to the draft regulations include language that fails to ensure that projects will provide net improvements in ecosystem and water quality conditions, as required

by statute. Cal. Wat. Code § 79750 subd. (b). Previous versions of the regulations required project applicants to calculate any physical benefits and impacts of their projects and monetize these to determine the net improvements to ecosystems or water quality. The proposed revisions in the November 21, 2016 draft limits the scope of the impacts analysis to impacts of "similar physical units, location, and timing" allows impacts to be ignored and must be removed to remain consistent with the statute. Revised WSIP Reg. § 6004 subd. (a).

Project benefits and impacts will likely not be similar physical units. Numerous projects propose converting terrestrial habitats into aquatic ones. It is not clear from this regulation that project applicants would have to subtract impacts to terrestrial habitats from aquatic habitat benefits; however the loss of significant habitat on land for token amounts of aquatic habitat would clearly not be a net improvement in ecosystem conditions. Similarly, water quality conditions are frequently measured in different physical units, such as salinity or dissolved oxygen; it is not clear that these different benefits and impacts would not be analyzed against each other. Location and timing of benefits and impacts can also be different for projects, and would be limited by this proposed revision. For example, if a project were to provide temperature benefits and impacts, those impacts may not be subtracted from other temperature benefits if they were focused at different times, or if temperature benefits were targeted at a different location than the impacts. In effect, only benefits and impacts that are the same would be required to calculate net improvements. Any impacts that did not have a corresponding benefit would go unanalyzed, leading to projects that did not meet the net improvement requirement in statute.

The intent of the Water Bond was to provide additional ecosystem and water quality benefits beyond what are already supposed to occur and in addition to what exist. The proposed revisions to the regulations ignore this requirement, by functionally abandoning requirements for applicants to show net benefits, but merely just show benefits in different categories than their impacts. Many of these projects will end up with unmitigated impacts, even after the CEQA process is completed since there is the possibility of issuing statements of overriding consideration.

Recommendation: delete revisions to WSIP Reg. § 6004 subd. (a) beginning on line 6, reading "… of similar physical units, location, and timing…"

6. **The revised regulations fail to ensure that public funding is limited to the minimum reasonable value of the benefit and appears to allow applicants to overestimate the economic value of the public benefits.**

The November 22 draft regulations deleted an important requirement that the value of the public benefits provided for a project must exceed the cost of proving those benefits. This creates a concern; while there is a requirement to consider the cost-effectiveness of a proposed project (6004 (a)(4)(E)) and to use that information to monetize benefits, that requirement is not determinative of the funding allocation in 6004(a)(7), which requires only that a project proponent "provide a proposed allocation of total project costs to all project beneficiaries, including the Program." This would seem to be inconsistent with Proposition 1 Water Code §§ 79750(b)-(c). This disconnect can be readily fixed by reinstating language from the Sept. 2 draft (Section 6011(c)(4)) requiring that the Commission determine that the value of the public benefits is greater than the cost of providing those benefits and that the project is ranked relative to other projects.

Recommendation: Reinstate section 6011(c)(4) " The proposed project has net public benefits (i.e., benefits less impacts) greater than the cost to provide the public benefits and the proposed project has been ranked relative to the other projects based on its total project return on investment score;"

7. **The revised regulations include language regarding emergency response public benefits that is unclear and inconsistent with the statute.**

The definition of "emergency response" in section 6001(a)(29) of the revised draft regulations is unclear and potentially inconsistent with the statute. In particular, the word "dedicated" was deleted from this draft of the regulations, suggesting that a project can claim emergency response public benefits without ensuring that a certain quantity of water is available in the event of an emergency. Elsewhere, however, the regulations suggest that a project must set aside a specific quantity of water to be eligible for funding for an emergency response public benefit. *See* Revised technical reference document at 4-163 ("As with the other emergency categories, the applicant must define the committed quantities and conditions under which stored water will be made available for a drought emergency.") (emphasis added); *but see id.* at 4-161 ("There must be a commitment that defines the amount or share of available stored water to be provided. This does not mean that water supply must be dedicated or reserved in storage for emergency supply. For example, the commitment could state that half of the stored supply at the time of the Delta event will be made available."). The draft regulations are internally inconsistent and therefore unclear regarding whether a project must commit to make a certain quantity of water available in the event of an emergency to receive funding for emergency response public benefits.

To the extent the revised draft regulations would permit a project to receive funding for an emergency response public benefit without requiring that the project dedicate a certain quantity of water for that purpose, the regulations are inconsistent with Proposition 1 because they would allow projects to claim emergency response public benefits that they will not be able to provide in an emergency. Under this impermissible approach, a surface storage project could claim public benefits and receive funding for providing 25% of its stored supply during a Delta event. But if the relevant reservoir is drawn down to 15% of capacity at the time of the event, the amount of water available for emergency response could be insignificant, and the public would not see a meaningful benefit. Allowing a project to receive Proposition 1 funding for emergency response public benefits without ensuring the project will be able to provide the funded benefit in an emergency is inconsistent with the statute. *See* Cal. Water Code §§ 79753(a)(1)-(5) (stating that Chapter 8 funds may only be expended for specifically enumerated public benefits).

Recommendations: To remedy these problems, we suggest that the Commission revise the regulations and technical reference document to consistently indicate that projects may only receive funding for emergency response public benefits if they dedicate a specific quantity of water to that purpose, and maintain that quantity of water outside of normal project operations.

8. The revised technical reference document includes language that is unclear, inconsistent with the statute, and duplicative.

The technical reference document must comply with the APA's clarity, consistency, and nonduplication standards because it is incorporated by reference into the regulations. *See* Cal. Code Regs., tit. 1, § 20; Cal. Gov't Code § 11349.1(a). As discussed above with respect to existing mitigation and compliance obligations, project scoring, and emergency response public benefits, the revisions to the technical reference document fail to remedy and even exacerbate clarity, consistency, and nonduplication problems. *See, e.g.*, Revised technical reference document at 8-1 (language regarding mitigation and compliance obligations is duplicative, unclear, and inconsistent with the statute); *id.* at 4-10 (discussion of project evaluation/scoring is inconsistent with the statute); *id.* at 4-163, 161 (discussion of emergency response public benefits is unclear and inconsistent with the statute).

Finally, reviewing and providing comments on over 400 pages of regulatory text within 15 days is exceedingly difficult. Inclusion of the technical reference document in the

regulations without any increase in the duration of the public comment period undermines the public's ability to meaningfully weigh in on these important regulations.

Recommendation: Because these and other problems could lead to delay when OAL reviews the regulations, we suggest modifying the regulations so that they do not incorporate the technical reference document. To do this, the Commission should move the few critical components in the technical reference document—like the climate change analysis protocols, once amended—into the regulations, and provide the remainder of the technical reference document as guidance to applicants.

We appreciate the significant work staff has done in a short time to address the deficiencies of these regulations. Unfortunately, the November 22 draft regulations continue to suffer significant deficiencies, particularly in their repeated failure to comply with voter-approve statutory requirements. We understand the pressure to approve the regulations in a timely fashion, but urge staff and the Commission to take the time to ensure that they will the requirements of Proposition 1 and of the Administrative Procedures Act.

Sincerely,

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