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SAN JOAQUIN VALLEY WATER INFRASTRUCTURE AUTHORITY

San Joaquin Valley Water Infrastructure Authority (letterhead)

Sent electronically to: WSIPComments@cwca.gov

Joseph Byrne, Chairman
Members of the Commission
California Water Commission
P.O. Box 924836
Sacramento, CA 94326

Re: **Comments on the California Water Commission Draft Water Storage Investment Program (WSIP) Quantification Regulations dated September 2, 2016**

Dear Chairman Byrne and Members of the Commission:

The San Joaquin Valley Water Infrastructure Authority (Authority) appreciates the opportunity to provide comments on the California Water Commission ("CWC" or "Commission") revised draft Water Storage Investment Program ("WSIP") regulations dated September 2, 2016 as Title 23, Division 7, Chapter 1 of the California Code of Regulations ("revised draft Regulations"). The Authority commends the efforts of the Water Commission and staff to develop these regulations through an open and transparent process. In this letter, we do not differentiate the draft Regulations from the supporting Technical Reference Document (TRD) that provides technical details on analytical methods and procedures, as it is our understanding that the Commission currently intends to incorporate the TRD into the Regulations by reference.

The Authority represents a diverse and broad region within the San Joaquin Valley encompassing the counties of Merced, Madera, Fresno, Kings and Tulare. This region is home to a culturally diverse population of nearly 2 million, with a Latino population representing almost 50 % of the total. The region is rich in its unique ability to grow over 300 different crop types which allows it to be this nation's leader in agricultural production. The region's communities, many of which are disadvantaged, are largely supported by this same agricultural industry which in turn is dependent on the availability and reliability of water supply. The Authority's purpose is to seek means to develop much needed new above-ground and groundwater storage through the construction of key regional infrastructure designed to reduce water shortage problems and the all-too-frequent loss of millions of acre feet to flood releases from Friant Dam due to insufficient water storage capacity in Millerton Lake.

The San Joaquin Valley has experienced severe water shortages over the past few years and future conditions appear to be worsening. Several factors, acting in combination, contribute to this situation. First, the San Joaquin River Restoration Program (SJRRP), initiated in 2006, will result in a long-term reduction of water deliveries to the eastern San Joaquin and Tulare Lake basins of nearly 200 thousand acre feet (TAF) per year without the recovery of released water and/or development of alternative water supplies. Second, numerous regulatory actions over the past few decades have progressively reduced the reliability of water exported from the Delta to the west side of the Valley. During the recent (and potentially ongoing) severe drought conditions, these Delta restrictions led to unprecedented releases of water from Friant Dam to meet San Joaquin River water right Exchange Contract deliveries that historically have been satisfied with Delta exports since 1952. The

resulting zero or near-zero allocation to the conjunctive management Friant Division has led to greater reliance on groundwater as a backstop, but this has exacerbated long-standing groundwater overdraft in much of the region. Lastly, the passage of the Sustainable Groundwater Management Act (SGMA) in 2015 further threatens the long-term sustainability of the region by potentially imposing strict limits on the use of groundwater. Our ability to adapt to these relatively sudden and significant events, and also prepare for future climate change, relies on the development of new and expanded water management infrastructure.

Investment in the proposed Temperance Flat dam and reservoir is one such infrastructure improvement that can help bring stability to our region and is a primary focus of our Board and member agencies. The final feasibility report and environmental impact statement for Temperance Flat Reservoir, now under review by the United State Secretary of Interior after many years of investigation, design, operational evaluation, feasibility analysis and environmental study, are expected to be released at any time. More than 20 years of Federal and State investment and study, directed and carried out at a cost of over \$35 million by the Department of Interior and Bureau of Reclamation alone, have developed an exhaustive record of analysis. The effort was initiated in 1995 under the CALFED Bay-Delta Program in which Interior, Reclamation and the State of California were full partners.

The Federal feasibility and environmental review of Temperance Flat has included an extensive examination of potential projects, locations, and benefits. After rigorous evaluation, Reclamation selected the Temperance Flat Reservoir river mile 274 site as the most effective location for optimizing water management opportunities in the upper San Joaquin River to provide a broad set of regional benefits. The new reservoir would provide about 1.3 million acre-feet of much needed additional flexible storage to achieve current water management objectives and provide adaptability to a changing climate that is projected to reduce the largest California water storage system, the Sierra Nevada snowpack, and increase rainfall to levels that will overwhelm existing reservoirs, especially the current main reservoir on the upper San Joaquin River, Millerton Lake. The feasibility study was evaluated using a baseline that reflects recent conditions and included a sensitivity analysis to demonstrate how the project would perform under future climate change scenarios. A principal finding of the feasibility study is that the operations of Temperance Flat Reservoir can be tailored to provide public benefits defined in Proposition 1 Chapter 8, and non-public benefits to a wide region.

With the Federal feasibility study essentially complete, we are now focusing our efforts with Reclamation and local entities to identify projects that would enhance the regional benefits of Temperance Flat Reservoir or be enhanced through its operation. The Authority strongly believes that the State and Federal investments and technical products prepared to date adequately meet the intent of the legislation you are now charged with implementing. We have significant concerns regarding the inflexibility inherent in the draft Regulations and offer the following suggestions for your consideration.

I. THE REVISED DRAFT REGULATIONS' PROVISIONS RELATED TO ENVIRONMENTAL MITIGATION MEASURES AND COMPLIANCE OBLIGATIONS SHOULD BE REVISED TO BE CONSISTENT WITH THE LANGUAGE AND INTENT OF CHAPTER 8.

The provisions in the draft Regulations related to “environmental mitigation or compliance obligations” are inconsistent with the language and intent of Proposition 1. These provisions have the potential to limit the Commission’s ability to fund projects that provide the greatest magnitude of public benefits, as required under Chapter 8.

The January 2016 initial draft Regulations correctly addressed the issue of beneficiary cost allocations in proposed projects’ applications. The initial draft Regulations would have required that the portion of public benefit cost shares allocated to the WSIP “[s]hall not be associated with existing environmental mitigation or compliance obligations except for those associated with providing the public benefits.” We continue to support this approach as it is consistent with the plain language of Water Code section 79753(b) and the intent of Proposition 1.

We have reviewed comments provided to you by the Association of California Water Agencies (ACWA) and the Sites Project Authority (SPA) on this topic, and concur with their positions and recommendations.

Recommendation:

Reinstate language from the January 2016 initial draft Regulations that accurately reflects the spirit and the letter of the statute.

II. THE UNTESTED CLIMATE CHANGE EVALUATION APPROACH IN THE REVISED DRAFT REGULATIONS ARE OVERLY PRESCRIPTIVE, REQUIRE SPECULATION ABOUT FUTURE CONDITIONS, AND IMPOSE UNNECESSARY COSTS UPON PROJECT APPLICANTS

As an investor, the State of California has a fiduciary responsibility to determine if the public benefits provided by storage projects can be sustained into the future in light of climate change. In fact, an analysis of project sensitivity to climate change is required to comply with Governor Brown's Executive Order, however the manner in which climate change is to be considered is not prescribed. We concur that project sensitivity to climate change should be a factor used by the Commission to evaluate eligible projects, but its significance should be limited to estimating the resilience of the proposed Proposition 1-eligible public benefits. It should not be used as the basis for determining the benefits to be included in the return on public investment calculation, or the financial commitment of other project participants.

The method proposed in the draft Regulations requires far more than a sensitivity analysis to indicate how projects could perform under or adapt to potential climate trends; it requires a full feasibility evaluation and allocation of project costs among benefit categories and beneficiaries. Because benefit values are the primary driver of a cost allocation, developing or assigning values can be controversial and introduce uncertainty that results in significant challenges to funding decisions and agreements with other cost share partners. Estimating economic conditions into the distant future is difficult and further complicated by the potential world-wide effects of climate change on market conditions, population growth and location, and innumerable related conditions.

The approach described in the draft Regulations has never been applied in California and is effectively unproven and experimental. The accelerated timeframe to submit applications following release of final Regulations make the adoption of such an approach a risky venture for the Commission. The Temperance Flat feasibility study, and the other CALFED storage project feasibility studies, have shown that meaningful cost allocations require an optimized distribution of project benefits, which results from an iterative evaluation and project formulation approach. Such an approach is simply not achievable in the five-month time frame anticipated between the release of final Regulations and application submittal, particularly one that requires project applicants to make numerous assumptions.

The science used to predict the effects of climate change is relatively immature and continues to evolve. Recently, CWC staff provided hydrologic inputs to the CALSIM model based on a composite of climate change scenarios for years 2030 and 2070. Their application as specified in the draft Regulations will also require that significant assumptions on other inputs that can affect the validity of economic findings be made by project applicants. For example, to establish "without project" baseline conditions for 2030 and 2070 using the CALSIM model, each project proponent will be required to determine and incorporate unique assumptions related to *"infrastructure, population, land use, water use, water operations, laws, regulations and other characteristics relevant to the analysis of the project"* into the modeling tools and data sets. One significant requirement is that applicants must assume full implementation of SGMA in the planning horizon analysis, and provide and justify a best estimate of the future effect of SGMA implementation. For many applicants, this requirement predates the timeframe by which their plans for SGMA implementation must be developed.

Establishing the inputs required by the draft Regulations will involve numerous assumptions, many of which may be speculative or could be asserted to be speculative, thereby exposing funding decisions by the Commission to potential challenges. The CALSIM model is not a simple input-output model, and typically requires numerous interactive applications to achieve a stable and generally consistent representation of conditions for any baseline condition. We fully expect this will be necessary to establish the project-specific "without project" 2030 and 2070 baselines once the necessary assumptions are integrated to the model logic and data sets.

Many recent climate change projections show that hydrology in California under future conditions is likely to be drier in dry years, and wetter in wet years. The hydrologic information provided by CWC staff, however, indicate that future climate under the projected 2030 and 2070 conditions will be wetter in both wet and dry years. While this may be one valid representation, it does not reflect the range of potential future scenarios that could result or provide a robust set of conditions under which resiliency can be evaluated. The CWC staff recently stated they may provide additional scenarios to reflect more extreme wet or dry conditions for 2070 and that the release of those scenarios will occur after this

comment period has long since closed. Consequently, the full extent of work required to comply with the draft Regulations is not known at this time.

Once project-specific CALSIM operational baselines for 2030 and 2070 have been established, an evaluation of project benefits relative to these baselines will require additional assumptions and inputs, and also involve iterative adjustments by individual project proponents to optimize project operations. The results from these CALSIM simulations will then be used as inputs to numerous other evaluation tools, such as reservoir and river temperature, Delta salinity, fisheries production, hydropower generation, recreation, groundwater, and regional economics models. Each of these dependent evaluations will require their own assumptions, which will further compound the uncertainty inherent in the results. When this approach is applied to numerous separate project applications, it likely will produce inconsistencies that make objective comparisons of projects difficult, if not impossible.

Adoption of the draft Regulations will require that extensive new evaluations be done on projects with complete or nearly complete feasibility studies. As noted above, significant funds have already been expended by the Federal government, the State of California, and several local agencies in the preparation of feasibility studies under the CALFED Program. When work began on these studies in 2003, the Bureau of Reclamation, DWR, and local entities collaborated to develop a set of “Common Assumptions” that were to be used for all CALFED project feasibility studies. The “Common Assumptions” process included development of a CALSIM model that reflected 2030 level of development water demand conditions, hydrologic inputs without climate change adjustments, and a consistent regulatory operational framework. As the feasibility studies progressed, these assumptions were adjusted to reflect changes at the State-wide and local levels. For example, the CALSIM model was adjusted to incorporate the operational requirements for the 2006 San Joaquin River Restoration Settlement and the 2008/2009 biological opinions for Delta Smelt and Chinook salmon. Other assumptions regarding land use, population, and infrastructure were established in the appropriate operations and economics evaluation tools. This process required significant effort and was designed to minimize inconsistencies amongst project studies.

The authors of Proposition 1 were well aware of the ongoing CALFED feasibility studies at the time and many anticipated that the technical work resulting from those studies would be directly applicable to the Chapter 8 application process. Unfortunately, the process described in the draft Regulations effectively penalizes CALFED projects that have completed feasibility studies by requiring new work that otherwise could have been performed as part of the study if the guidelines had been provided sooner. Preparing an application for Temperance Flat based on the draft Regulations will require new analyses similar to, but different than, those already completed in the Federal feasibility study process. Because the feasibility study has been completed and Federal funding for additional work is now limited, the costs to complete the required additional evaluations will impose an unanticipated and unnecessary financial burden on a region that continues to suffer the effects of drought and regulatory-induced water shortages.

The Authority, the local cost share partner with Reclamation, is striving to identify local projects that would enhance the regional benefits of Temperance Flat Reservoir or be enhanced through its operation. This is an extremely important exercise locally. Our present focus is to understand how Temperance Flat Reservoir assists the region to survive changing regulatory conditions in the Delta, and enable locals to thrive during the implementation of SGMA, while greatly enhancing the conditions for fish and wildlife in the San Joaquin River. As Authority staff and Mayor Victor Lopez of Orange Cove testified to the full Commission in September, the proposal to provide a very expensive and time consuming climate change exercise, which will yield different but not more precise projections than the climate change studies already carefully completed by Reclamation, will catastrophically divert limited local funds away from our effort.

We believe a more straight-forward and common-sense approach to evaluate potential climate change effects on storage project public benefits is both necessary and warranted. We encourage the Commission to adopt an approach that allows applicants to demonstrate the resiliency of public benefits under a range of potential climate change scenarios through sensitivity analyses, rather than the prescriptive benefit-cost and cost allocation approach presented in the draft Regulations and TRD.

Recommendation:

The final WSIP Regulations should provide project proponents with the opportunity to present alternative analyses that are responsive to the climate conditions outlined in the TRD. These changes will ensure that the Commission will be able to meaningfully consider how projects and their public benefits might change under uncertain future climate conditions. This approach will allow project proponents to more accurately present their project benefits under a variety of different scenarios and leverage relevant technical work that has already been completed.

III. WILD AND SCENIC RIVER DESIGNATIONS AND PROTECTIONS SHOULD ONLY BE RECOGNIZED FOR RIVER SEGMENTS IDENTIFIED THOROUGH FEDERAL OR STATE LEGISLATION.

Proposition 1 includes the following language regarding wild and scenic rivers: *"Nothing in this division shall be construed to affect the California Wild and Scenic Rivers Act (Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code) or the federal Wild and Scenic Rivers Act (16 U.S.C. Sec. 1271 et seq.) and funds authorized pursuant to this division shall not be available for any project that could have an adverse effect on the values upon which a wild and scenic river or any other river is afforded protections pursuant to the California Wild and Scenic Rivers Act or the federal Wild and Scenic Rivers Act."*

The California Public Resources Code, Division 5, Chapter 1.4, Section 5093.546 states *"Classification or reclassification of rivers or segments of rivers within the system as wild, scenic, or recreational shall be by statute."* Similarly, 16 US Code, Section 1273, states: *"The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned ..."*

The process by which rivers and streams are added to the Federal or State Wild and Scenic Rivers systems is methodical, requires technical findings of eligibility, recommendations, and ultimately involves legislative action.

Recommendation:

The Commission should interpret the wild and scenic language of Chapter 8 to apply only to river or stream segments that have been added to the Federal or State Wild and Scenic River systems through State of California or Federal legislation.

IV. THE FINAL WSIP REGULATIONS SHOULD PRESERVE THE COMMISSION'S DISCRETIONARY AUTHORITY UNDER PROPOSITION 1.

In 2009, Chapter 8 (Water Storage Section) was developed by the legislature and thoughtfully placed in the hands of nine public individuals that would form a revived California Water Commission. The legislators and administration at that time recognized that large scale water storage projects would require large investments by partners and had to be viewed through different lenses than grant programs typically administered by DWR. They also agreed that these individuals should have significant discretion in the funding of these projects and provided for input via consultation by Fish and Game and State Water Resources Control Board.

The legislation requires that the magnitude of public benefits be quantified and ranked, but does not specify how the Commission should use this information in the allocation of Chapter 8 funds. The process described in the draft Regulations and TRD is so prescriptive that it practically eliminates all the discretion of the Commission itself. Your discretionary authority is clearly spelled out in the legislation. Your judgment should be the final say on projects that meet the best interests of the citizens of California, and funding decisions should not be made solely on the results of numerical quantifications.

Recommendation:

Recommendation: Article 3 should be revised to ensure that the Commission retains its discretion over project funding allocation decisions and the Commission should ensure that the WSIP regulations are implemented in a manner that is consistent with the Commission's goal of promoting integration of storage projects.

Thank you for the opportunity to provide our comments on the proposed regulations. In addition, we have reviewed and endorse the detailed comments provided by the Bureau of Reclamation on the draft Regulations and the TRD. For the Storage Program to advance these important purposes, we encourage the Commission to move quickly to re-align the current regulations with Proposition 1 and refocus on a clear and more direct path forward for the state to immediately start investing in the “public benefits” of water storage in California. If you have any questions, please contact Mario Santoyo at msantoyo@sjvwia.org or (559) 779-7595.

Sincerely,

A handwritten signature in cursive script that reads "J. Steve Worthley".

Steve Worthley
Chair
San Joaquin Valley Water Infrastructure Authority