



CALIFORNIA FARM BUREAU FEDERATION

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Sent via E-Mail

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September 30, 2016

California Water Commission
P.O. Box 924836
Sacramento, CA 94236

RE: Public Comments on Proposed Revisions to Water Storage Investment Program (WSIP) Regulations

Dear Chairman Byrne and Members of the Commission:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 53,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Farm Bureau, along with many others, has now many times reiterated and re-described the fundamental problem with any language in the Commission’s regulations for funding of public benefits under the Water Storage Implementation Program that diverges from the plain language of Water Code section 79753(b) concerning “public benefits” and “environmental mitigation and compliance obligations.”

While it appeared last spring, after much public comment and discussion, that a majority of the Commission had understood this fundamental point, in the intervening months the regulations have, again, veered inexplicably into the realm of unsupported statutory extrapolation. These changes appear to have crept back in through a series of staff adjustments, but the approach is contrary to clear former direction of a majority of the Commission.

The crux of the problem is that the language currently included in “Definitions,” sections 6001(32) (definition “Existing environmental mitigation and compliance”), (53) (definition of “Non-Public Benefit”) and (63) (definition of “Public Benefits”), and in section 6004 (“Quantification of Benefits”) (a)(7)(A)(5) conflicts with the plain language meaning of Water Code section 79753(b).

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The unambiguous language in Water Code section 79753(b) states, very clearly, that “Funds shall not be expended pursuant to [Chapter 8] for the costs of environmental mitigation measures or compliance obligations **except for those associated with providing the public benefits** [enumerated in section 79753(a)(1)-(5)].”

Section 79753(a) defines the range of fundable “public benefits associated with water storage projects” to include:

- (1) Ecosystem improvements, including changing the timing of water diversions, improvement in flow conditions, temperature, or other benefits that contribute to restoration of aquatic ecosystems and native fish and wildlife, including those ecosystems and fish and wildlife in the Delta.
- (2) Water quality improvements in the Delta, or in other river systems, that provide significant public trust resources, or that clean up and restore groundwater resources.
- (3) Flood control benefits, including, but not limited to, increases in flood reservation space in existing reservoirs by exchange for existing or increased water storage capacity in response to the effects of changing hydrology and decreasing snow pack on California's water and flood management system.
- (4) Emergency response, including, but not limited to, securing emergency water supplies and flows for dilution and salinity repulsion following a natural disaster or act of terrorism.
- (5) Recreational purposes, including, but not limited to, those recreational pursuits generally associated with the outdoors.¹ [Emphasis added.]

Section 79753(b) draws no distinction between “existing” and “new” “environmental mitigation measures and compliance obligations,” and rather speaks, without distinction or differentiation, in terms of “environmental mitigation measures and compliance obligations” generally.

Referring to such “environmental mitigation measures and compliance obligations” generally, section 79753(b) does not say that “public benefits associated with water storage projects” can be funded for “new,” but not “existing” mitigation measures and compliance obligations”; rather, section 79753 states, generally, that Chapter 8 funds may not be expended for “costs of environmental mitigation measures or compliance obligations,” except for the “costs of environmental mitigation measures or compliance obligations” “associated with water storage projects” and the “public benefits” enumerated above. Thus, the unambiguous language of the statute creates a clear exception to a general prohibition.

The only reasonable reading of the language in section 79753 is that there is no prohibition against the expenditure of Chapter 8 funds to cover “costs of environmental mitigation measures or compliance obligations”—whether new or existing—so long as these costs are “associated with [funded] water storage projects” and the named “public benefits.”

¹ Water Code § 79753, subd. (a).

Outside of the express language of section 79753(b), the only other relevant restrictions on the funding of such “costs of environmental mitigation measures or compliance obligations” under Chapter 8, are that:

- 1) Funded “public benefits associated with water storage projects”:
 - a. “improve the operation of the state water system,”
 - b. be “cost effective,” and
 - c. “provide a net improvement in ecosystem and water quality conditions”²;
- 2) Projects 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”³;
- 3) Funded projects “provide[] measurable improvements to the Delta ecosystem or to the tributaries to the Delta.”
- 4) The Commission’s selections conform to regulations adopted by the Commission, consistent with the associated authorizing statutes, in which the Commission addresses
 - a. “quantification and management of public benefits [as] described in Section 79753”;
 - b. “priorities and relative environmental value of ecosystem benefits as provided by the Department of Fish and Wildlife”;
 - c. “priorities and relative environmental value of water quality benefits as provided by the state board”⁴;
- 5) No funds be allocated prior to December 15, 2016, subject to various requirements, including a requirement that the Commission “adopt[] [its] regulations and “specifically quantif[y] and [make] public the cost of the public benefits associated with the project”⁵;
- 6) The “public benefit cost share of a project” not “exceed 50 percent of the total costs of [the] project” (unless it is “[c]onjunctive use [or] reservoir reoperation project[,]” in which case it the cost share *may* exceed 50 percent”)⁶; and
- 7) “[E]cosystem improvements” provided by the project are “at least 50 percent of total public benefits of the project funded.”⁷

In summary, there is nowhere any distinction between new and existing environmental mitigation and compliance obligations and no prohibition on funding the costs of such mitigation and compliance obligations, so long as these costs can be tied to quantified public benefits associated with the water storage projects funded.

Strained arguments to steer the Board toward a different conclusion, in the end fail the test of basic statutory construction.

These nuances are not merely academic, and must be taken within the social, environmental, regulatory context in which they arise. As matters currently stand, our existing system and the communities it serves are stretched to the breaking point by mitigation and

² Water Code, § 79750, subd. (b).

³ Water Code, § 79750, subd. (c).

⁴ Water Code, § 79755.

⁵ Water Code § 79755, subd. (a).

⁶ Water Code, § 79756, subd. (a).

⁷ Water Code, § 79756, subd. (b).

environmental compliance constraints that only increase, layer-upon-layer and year-upon-year. California voters passed Proposition 1 in recognition of the sad state of the existing water infrastructure, water supply, and ecosystem situation, with the expectation that the \$2.7 billion contemplated in Chapter 8 would provide an opportunity to break through the long-standing dysfunctions and physical limitations that have plagued even our best efforts to responsibly steward the environment while continuing to meet the reasonable water needs of our State.

If the opportunity for significant “net improvement” on an unacceptable *status quo* is now blocked through an arbitrary and statutorily unsupported exclusion of precisely the largest potential ecosystem and water quality benefits of proposed new water storage infrastructure, then the Commission’s regulations will have defeated the clear intent of the voters in relation to Chapter 8 and Proposition 1. This would be directly contrary to the legislative enactment through which the Commission receives its authority and, thus, it would result in an illegal regulation. Beyond this, the Commission’s action would risk denying Californians this once-in-a-generation opportunity to significantly improve the current poor state of current water and environmental affairs, instead abandoning our state to the long backwards slide from which we seem now unable to escape.

Rather than to countenance such a result, Farm Bureau joins, along with the Association of California Water Agencies, the Northern California Water Association, the Sites Joint Powers Authority, the California Rice Commission, the Family Water Alliance, the Agricultural Presidents Council, the California Chamber of Commerce, the Alameda County Flood Control and Water Conservation District, Zone 7 and others, in requesting that the Commission immediately revise its draft regulations to comport with the clear language and intent of section 79753(b) and Proposition 1.

Specifically, Farm Bureau joins in the Sites Joint Power Authority’s comments on “Environmental Mitigation and Compliance Obligations” and requested changes to sections 6001(32), (53), and (63) (“Definitions”) and to section 6004 (“Quantification of Benefits”).

As it finalizes its regulations, Farm Bureau additionally joins with others in urging the Commission to streamline and optimize application requirements to afford greater flexibility (including greater flexibility in the area of climate change), reduce project costs, and move forward agilely and expeditiously with the actual selection and funding of projects.

Thank you for the opportunity to comment on this very important matter.

Very truly yours,



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