

**THE CITY OF SAN DIEGO**

October 3, 2016

Sent via Electronic Mail to WSIPComments@cw.ca.gov

The Honorable Joseph Byrne, Chair
and Members of the California Water Commission
P.O. Box 924836
Sacramento, CA 94236

Subject: Comments on the California Water Commission Draft Water Storage
Investment Program Regulations

Dear Chair Byrne and Members of the Commission:

Thank you for the opportunity to review and comment on the revised Water Storage Investment Program (WSIP) Quantification Regulation (regulation) and incorporated Technical Reference Document (TRD). The City of San Diego's Public Utilities Department (SD PUD) provides water services to the 1.4 million residents of the City of San Diego (City), as well as wastewater services to the larger metropolitan region of 2.2 million residents. In order to provide a reliable, sustainable and local source of high-quality water, the City is building on our operational synergy to implement the landmark Pure Water San Diego (Pure Water), the first potable reuse project in the state of California to utilize a surface storage reservoir to hold the 'new water' produced. This novel project will require a wholesale reoperation of Miramar and other local reservoirs, and will produce a source of local water supply that will reduce the City's dependence on imported water from Northern California and the Colorado River.

The City believes the Pure Water Program is an excellent candidate for WSIP funding, as the implementation of new, local and sustainable sources of water supply such as Pure Water facilitates the operation of the state water system by increasing regional independence and mitigating the significant environmental impacts of the imported water system on the Delta. Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014, provided that the measure's funding was meant to implement the objectives of California's Water Action Plan, which are more reliable water supplies, the restoration of important species and habitat, and a more resilient and sustainably managed water infrastructure. Efforts to expand regional and sustainable sources of 'new water'—such as the Pure Water Program—facilitate all three of these goals, as they increase the reliability and resiliency of the state's water supply portfolio while also reducing pressure on sensitive ecosystems far from the water's end users.

The City has made a considerable commitment to create a water supply that will provide one-third of the its water supply needs by 2035. In 2009, the City began an extensive evaluation program that included numerous planning studies. Those studies systematically led the City to the current proposed Pure Water Program. In 2011, our team began an award-winning outreach and education effort to help stakeholders gain a higher level of understanding and



support for the Pure Water Program. The construction of the 1-million-gallon-per-day (mgd) Demonstration Advanced Water Purification Facility at the City's North City Water Reclamation Plant site was completed and the demonstration facility began operation in June 2011.

Through the Pure Water Program, the City will reclaim and purify 83 mgd of new drought-proof, locally-produced water supplies once the final phase is complete by 2035. Lessening the demand for imported water supply from the Colorado River and Northern California Bay Delta will significantly improve our state's ability to address ongoing droughts, climate change and vulnerability to natural disasters throughout the state. Reducing demands for water withdrawal from the Delta will also provide ecological benefits.

The Pure Water program will provide a return on investment for both water supply reliability and ecosystem enhancements. Resources such as the WSIP provide essential resources to enable realization of broad benefits such as those provided by the Pure Water Program.

Implementation of the WSIP in an efficient and thoughtful manner, consistent with the requirements of the enabling statute and the voters' intent in passing Proposition 1 in 2014, will facilitate the development of innovative and environmentally beneficial water storage projects throughout the state that will provide reliable and sustainable water supplies for all Californians. The City believes that WSIP funds should be accessible to any project that meets the requirements of the statute, and encourages the development of implementing regulations that do not preclude otherwise-eligible projects from applying.

The City understands the complexity of the Commission's task in crafting program rules that are sufficiently flexible to allow for a range of applicant project profiles while also providing a sufficient basis for objective evaluation and discretion by the Commission. In hopes of facilitating that effort the City offers the following comments on the revised regulation:

The Regulations' Provisions Regarding Delta Impacts Should be Modified to Provide Greater Compliance Pathways for Applicant Projects Outside of the Delta Watershed

Water Code Section 79701 contains the policy findings supporting enactment of Proposition 1, stating that "[t]his measure provides funding to implement the three objectives of the California Water Action Plan which are more reliable water supplies, the restoration of important species and habitat, and a more resilient and sustainably managed water infrastructure." Consistent with these policy directives, the City supports broad discretion for the Water Commission to receive WSIP funding applications from a wide variety of project proposals located throughout the state. This approach will provide the Commission with the ability to select projects that enhance the sustainability, reliability and resiliency of the state's water supply system in the most cost-effective manner.

Water supply for over 25 million Californians—the majority of the state's population—flows through the Delta, and much of this water leaves the Delta watershed for delivery to Southern California. Ongoing ecological instability in the Delta region has led Southern California water agencies to pursue alternative sources of supply in an effort to reduce their reliance on this sensitive Northern California ecosystem. By increasing Southern California's

‘water independence’ through local supply and storage initiatives, the statewide water system’s reliability, resilience and sustainability is greatly enhanced, in line with the official findings and policy intent behind Proposition 1 and the WSIP program. Southern California’s historic demand for Delta water is quantified and tracked in great detail, and it is thus reasonable to argue that reducing that demand will in turn lead to measurable improvements in the Delta ecosystem.

However, the realities of Southern California water operations and the interactions between wholesale and retail agencies south of the Central Valley conflict with the requirements contained in the revised draft regulation. Section 6003(a)(1)(L) requires that “[i]f a project is not within the watershed of the Delta, specific contracts shall be identified that would be changed or entered into to demonstrate some assurance of benefits to the Delta ecosystem.” The City of San Diego purchases water from our regional wholesale agency, the San Diego County Water Authority (SDCWA), which in turn purchases water from the Metropolitan Water District of Southern California (MWD). The City does not have a contract with SDCWA, and SDCWA in turn does not have a contract with MWD. Although SDCWA has historically been MWD’s largest customer, and the City has been SDCWA’s largest customer, the large quantities of water that are passed among these agencies are not governed by contracts. The authority for water sales lies in each wholesale agency’s enabling legislation. This is standard practice for most Southern California water agencies, making it difficult for these agencies to meet the requirements of the draft regulation, even if they are pursuing water storage projects that would otherwise meet the requirement of the WSIP statute.

In order to ensure that the Commission receives WSIP funding applications from a broad range of projects throughout the state, we urge the addition of language allowing projects to meet the Delta improvements requirement through agreements or other arrangements, instead of exclusively through contracts. This change will help to address the practical limitations inherent in Southern California projects’ efforts to meet the WSIP program’s statutory requirement that an applicant provide “measurable improvements to the Delta ecosystem or to the tributaries to the Delta.”¹

The City understands the difficulties the Commission faces in structuring quantification regulations that align with the requirements of the WSIP statute, but we believe the program can be structured to allow for a broad range of applicants without creating practical restrictions that will limit WSIP funding to only Northern California storage projects. *We urge the Commission to modify the language of regulation Section 6003(a)(1)(L) by adding “, agreements or amendments” immediately following “specific contracts,” to allow for greater flexibility in meeting the statute’s requirement of a showing of “measurable improvements to the Delta.”*²

The Regulations’ Provisions Regarding Environmental Mitigation Measures and Compliance Obligations are Inconsistent with the Language of Chapter 8

¹ Water Code § 79752

² Water Code § 79752

The City shares the concerns of the Association of California Water Agencies that provisions in the draft regulation regarding WSIP funding for “environmental mitigation or compliance obligations” appear inconsistent with language of Chapter 8. Water Code section 79753(b) provides that “[f]unds 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.” In contrast, the regulatory language related to this requirement in the revised draft at Section 6004(a)(7)(a)(4) is more restrictive, stating that requested WSIP funding “[s]hall not be associated with existing environmental mitigation or compliance obligations.”

Chapter 8 does not distinguish between ‘existing’ and other compliance obligations or mitigation measures, nor does Chapter 8 include a wholesale prohibition on funding for these activities. The Commission’s discretion in selecting storage projects for WSIP funding should not be cabined beyond the requirements of statute, as these limitations could bar eligibility for projects that would otherwise comply with the requirements and policy intent of the WSIP program, as well as the state’s voters in enacting the initiative. *We request an amendment to Section 6004(a)(7)(A)(4) to add “except for those associated with providing public benefits” following “compliance obligations,” in order to preserve Chapter 8’s allowance for funding these project expenses.*

Clarification is Needed on Deadlines for Submission of the Various Components of the WSIP Funding Application

The City appreciates that considerable documentation and analysis is required by the WSIP statute as well as the Commission’s regulations in order to establish a program that allows for thorough evaluation of applicant projects. Unfortunately there remains a lack of clarity about the timeframe for completion of a number of application components. Both the statute and regulation provide some ordering of the submission of these documents relative to each other, but it is difficult to determine actual calendar deadlines, and thus how much time an applicant has to complete and submit each element. Given the complexity of the application requirements, this makes it very hard for potential applicants to assess the resources that will be required to apply for WSIP funding, and the feasibility for any given agency of submitting an application.

As an example, Chapter 8 of Proposition 1 (2014) outlines a number of requirements that must be met prior to the Commission’s allocation of funding pursuant to that article. These requirements include feasibility studies (WC Section 79755(a)(5)(A)), required Commission findings (WC Section 79755(a)(5)(B)), environmental documentation (WC Section 79755(a)(5)(C)) and all other federal, state and local approvals, certifications and agreements required (WC Section 79755(a)(5)(C)). During the May 18, 2016 meeting, Commission staff proposed expediting the application process in order to distribute WSIP funding more quickly, and announced a tentative application deadline of late May 2017. This deadline implies that the application elements outlined above must be received by that deadline. However, in reviewing the draft regulation, Section 6003 (Application Submittal) states that

an application “shall” include “draft feasibility studies (if available)³,” “[a]ll publicly-available environmental documentation⁴,” and “a listing of permits known to be necessary for construction and operation⁵.” It is unclear what level of overlap exists between these elements and their respective deadlines for submission to the Commission.

In another example, WC Code Section 79755(c) allows funds to be made available through WSIP for the completion of environmental documentation and permitting of a project, outside of the elements listed as required in advance of the allocation of WSIP funding in WC Section 79755(a), as listed above. It is unclear which application elements must be submitted by project proponents in order to be eligible for WSIP funding for these purposes, and how this process fits into the larger WSIP application process.

While we understand the policy basis for a more speedy distribution of program funds, it would be helpful to applicants working on scheduling project delivery to have a better understanding of what is due and when. We request that the Commission produce a stand-alone list or timeline for the WSIP application process that includes detailed deadlines for submission of the various required application elements.

The Timeframe for Applicant Responses to CWC Determinations Regarding Application Completeness Should be Extended from 14 Days to 30 Days

Due to the complexity of both the WSIP application and the ensuing evaluation process by the Commission, the City greatly appreciates the regulations’ inclusion in Section 6006 of a phase in which CWC feedback will be provided to applicants regarding the completeness of their submitted applications. Giving applicants the opportunity to respond to specific deficiencies that could otherwise potentially invalidate an application is good public policy, and the City is thankful that Section 6006(c) includes such a period. However, the current time allowed is very short considering the volume of documents that must be compiled to complete a WSIP application. We request that the response period be extended from the current 14 days to calendar 30 days to yield more time for applicants to submit any final missing pieces to the Commission. This change will help ensure that entire applications—which will require significant time and financial resources to compile—will not be invalidated as a result of simple omissions.

Clarification is Needed Regarding Whether Ecosystem Improvements to Oceanic Environments are Eligible for Funding through the WSIP

The City is considering applying for WSIP funding for the Pure Water Program, and as a result we are evaluating the fundable public benefits attributable to our project. Water Code Section 79753(a) provides that WSIP funds “may be expended solely for...public benefits associated with water storage projects,” and lists five types of public benefits

³ Draft regulation, § 6003(a)(1)(P)

⁴ Draft regulation, § 6003(a)(1)(T)

⁵ Draft regulation, § 6003(a)(1)(X)

eligible for funding. Chief among the five are ecosystem improvements, which must comprise at least half of the public benefits funded by WSIP for any selected project.⁶

Ecosystem improvements are defined in statute as follows:

“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.”⁷

Section 6001(a)(28) of the revised draft regulation contains a similar definition of “ecosystem improvements.” Neither Chapter 8 nor the draft regulation appear to exclude ecosystem improvements to ocean environments from the definition of ‘ecosystem improvements,’ but they don’t clearly include it either. The Technical Reference Document (TRD) that is incorporated by reference in the draft regulation does not articulate the analytic methods that WSIP applicants should use to calculate the physical changes attributable to improvements in oceanic environments. Chapter 4 of the TRD includes sections on Surface Water (4.3), Groundwater (4.4), Riverine Hydrology (4.5), and Delta Hydrodynamics (4.6), but doesn’t appear to include any specific directives regarding oceans.

California’s has over 800 miles of coastline⁸, much of which features significant population centers that are served by large water supply agencies that rely on the state water system and storage projects to provide water to their customers. These agencies—including the City of San Diego—may have water storage projects in development that meet the statutory requirements for WSIP funding eligibility but whose ecosystem improvements largely involve the ocean and not inland waterbodies such as creeks, rivers, lakes or reservoirs. We request that the draft regulation clarify whether ecosystem improvements to California’s ocean environment are eligible for WSIP funding.

Ecosystem Improvements Definition Should be Enhanced to Include Quantifiable Greenhouse Gas Emission Reductions and Air Quality Improvements

Chapter 8’s definition of ‘ecosystem improvements’ requires that public benefits under the statute “contribute to the restoration of aquatic ecosystems and native fish and wildlife.”⁹ The policy goal of the WSIP program is to fund ecosystem improvement public benefits above and beyond each of the other listed types of public benefits. In order to maximize the discretion of the Commission to select projects that provide the greatest variety and most cost-effective delivery of public benefits—including ecosystem improvements in different areas throughout the state—the implementing regulations should clarify the expansiveness of this category as approved by the voters in Proposition 1 of 2014.

⁶ Water Code § 79756(b)

⁷ Water Code § 79753(a)(1)

⁸ <https://coast.noaa.gov/data/docs/states/shorelines.pdf>

⁹ Water Code § 79753(a)(1)

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Considerable research is being conducted to identify and quantify the climate and greenhouse gas (GHG) emission impacts of California's water system. A significant share of the energy generated and consumed in the state has been attributed to the treatment and transport of our water supply.¹⁰ As a result, the type of energy produced, the timing of its use as well as the amount of energy consumed by the water system have significant impacts on both climate and air quality.

Water storage projects that are able to reduce the amount of GHG emissions and other pollutants discharged into the air will yield valuable ecosystem benefits to the state. These GHG emission reductions and air quality improvements will 'contribute to the restoration of aquatic ecosystems and native fish and wildlife' in many ways, including reducing turbidity and pollutant deposition in waterways and reservoirs and reducing ambient air and water temperatures, conditions that have been shown to enhance both terrestrial animal and fish survival. We request that the definition of ecosystem improvements in the draft regulation be expanded to include quantifiable improvements to air quality and reductions in greenhouse gas emissions attributable to WSIP applicant project.

Conclusion

We appreciate the opportunity to comment on the WSIP regulatory package and offer a Southern California water agency perspective on the proposal. Should you have questions or concerns, please feel free to contact me or Carolyn Ginno at (858) 654-4286.

Sincerely,



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Deputy Director, External Affairs

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¹⁰ <http://www.energy.ca.gov/research/iaw/water.html>