

March 14, 2016

Joseph Byrne, Chair
California Water Commission
Department of Water Resources
1416 Ninth St. Sacramento, CA 95814
Sent via electronic email to cwc@water.ca.gov

Re: Water Storage Investment Program Quantification Regulations

Dear Chair Byrne and Commissioners,

On behalf of the above-listed organizations which together represent more than 850,000 Californians, we are writing to provide comment on the draft regulations on *the methods of quantifying and managing public benefits*¹ awarded through Proposition 1, Chapter 8 (also known as the Water Storage Investment Program).

We appreciate that the regulations include specific language promoting the Human Right to Water. Unfortunately, the regulations as written fail to achieve the requirements of the statute. The following deficiencies must be addressed in the final draft:

- Calculations of ecosystem and other public benefits must exclude existing environmental mitigation and compliance obligations and only account for net improvements in order to comply with Proposition 1;
- The effects of climate change must be accounted for in calculating benefits and impacts throughout the planning horizon, rather than freezing the effects of climate change in 2050;
- Provide sufficient guidance to accurately and adequately monetize public benefits and to ensure that projects are cost-effective and represent the least-cost alternative for providing the stated public benefits;
- Remove unnecessary barriers to funding that prevent integration of these funds with the implementation of the Sustainable Groundwater Management Act;
- Ensure that projects will be adequately managed over the life of the project to ensure that taxpayer funded public benefits actually materialize;

Calculations of ecosystem and other public benefits must exclude existing environmental mitigation and compliance obligations and only account for net improvements in order to comply with Proposition 1;

¹ California Water Code section 79754

The draft regulations fail to comply with existing statutory requirements in the identification and quantification of public benefits in three major areas:

- 1) The draft regulations allow the use of WSIP funds to meet existing environmental compliance and mitigation obligations, which does not improve environmental conditions or result in a public benefit, and is prohibited by statute;
- 2) The regulations do not provide clear direction for quantifying or monetizing the ecosystem or water quality impacts of a project. Since the statute specifies that WSIP funds can only be used for “net” improvement in ecosystem and water quality conditions (that is, the ecosystem and water quality benefits of a project less its impact), this guidance is needed in order to develop consistent numbers so the Commission can rank projects;
- 3) The regulations are inconsistent in requiring the calculation and use of “net” benefits to calculate the fundable portion of public benefits.

The effects of climate change must be accounted for in calculating benefits and impacts throughout the planning horizon, rather than freezing the effects of climate change in 2050;

The regulations provide a definition of planning horizon, which is “the future time period, in years, over which project costs will be paid and benefits received, normally based on the expected project life plus the construction period. The planning horizon may not exceed the expected life of the project facilities plus the construction period, or 100 years, whichever is less.” However, instead of accounting for climate change throughout the planning horizon, the regulations select an arbitrary date of 2050 to freeze the effects of climate change, ignoring predicted effects of climate change after that date.

Provide sufficient guidance to accurately and adequately quantify and/or monetize public benefits and to ensure that projects are cost-effective and represent the least-cost alternative for providing the stated public benefits;

The regulations inappropriately rely upon the project proponent to identify the value of the public benefits of the project and provide no direction or guidance on how those benefits should be calculated. This will incentivize inflated valuations of benefits and those values will likely be based on subjective cost estimates. The resulting valuations will make the projects difficult, if not impossible, to compare and require significant staff time to normalize. Staff should instead comply with statute and provide specific methods and specific guidance on how to quantify and monetize benefits to ensure a minimum level of quality and objectivity is attained.

Remove unnecessary barriers to funding that prevent integration of these funds with the implementation of the Sustainable Groundwater Management Act;

Water Code 79707 (e) provides that “Special consideration” will be given to projects that support the integration of multiple jurisdictions. This preference in the language of Proposition 1 has been reiterated by Commissioners in their public statements and in the draft regulations in 6002.(b)(2)(I) and 6002.(c)(2)(L).

Unfortunately the regulations provide no actual guidance on how such integration might be evaluated or encouraged in the application process; rather the regulatory requirements and timeline are structured in a way that is likely to penalize integration.

While the California Water Action Plan lists both integrated water management and groundwater storage as priorities, the regulations currently discourage both. Specifically, despite the fact that no vote has been taken by the Commissioners, staff counsel insists that funding from this chapter will be disbursed in a single round of funding in 2017, with a mandatory pre-application process early in the calendar year.

Few integrated surface water-groundwater projects will be able to qualify in this timeline because the legal authorities they need to generate needed matching funds will not yet be finalized (new Groundwater Sustainability Agencies are not required to be formed until 2017). Groundwater storage provides significant benefits at a much lower cost than surface water storage.² The draft regulations undermine state priorities and Proposition 1's expressed purpose by precluding dozens of promising projects that optimize surface water and groundwater management from applying for funds.

Ensure that projects will be managed over the life of the project to provide tax-payer funded public benefits;

The draft regulations fail to provide adequate information about how public benefits funded with these taxpayer dollars will be assured through the life of the project. Because these benefits are created with public funds, reports on their efficacy need to be made public. At a minimum, the funding agreement should require public review and comment before a contract is finalized or subsequently amended; a right of third-party enforcement to allow the public to enforce the public benefits; an explanation of how adaptive management will be implemented; and timely public disclosure of monitoring data and reports. In addition, projects should not only account for initial construction costs but also end-of-life decommissioning costs in order to reflect the full costs over the lifetime of the project (as recommended by the World Commission on Dams, 2000). These requirements will help to ensure that Chapter 8 funds are managed in a transparent manner, and that public benefits promised by project applicants actually materialize.

We look forward to seeing our concerns addressed in the final regulations

Sincerely,

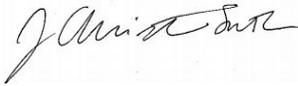
² *Storing Water in California: What can \$2.7 billion buy us?*, Rohde, et. al. Stanford Water in the West, 2014



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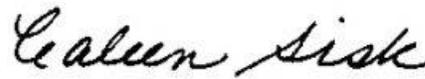
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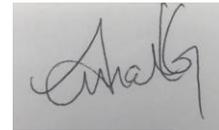
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