



October 3, 2016

Via E-Mail

Joe Yun
 California Water Commission
 P.O. Box 924836
 Sacramento, CA 94236
 E-mail: WSIPComments@cwcc.ca.gov

Re: Revised Water Storage Investment Program Quantification Regulations

Dear Mr. Yun and Members of the Commission,

These comments are submitted by Audubon California, California Waterfowl Association, Defenders of Wildlife, Ducks Unlimited, Grassland Water District and Grassland Resource Conservation District, Point Blue Conservation Science, and The Nature Conservancy regarding the California Water Commission's ("Commission") modified Water Storage Investment Program ("WSIP") Quantification Regulations. We appreciated the opportunity to speak at the September 16th Commission meeting to express our support for the WSIP and potential public benefits for Central Valley wetlands.

Our organizations work to protect, restore, and enhance habitats for birds and other wildlife in California's Central Valley, one of the most important and most threatened areas for waterfowl and other wetland-dependent wildlife in North America. As described in the Commission's Technical Reference Document for the WSIP, most of the wetlands within the Delta watershed and throughout California have been lost due to

dam building, reclamation and land use conversion.¹ The wetlands that remain support millions of birds that migrate along the Pacific Flyway each year (more than other North American flyways combined), and threatened and endangered terrestrial species. Wetlands also provide significant flood control, water quality, and recreational benefits.

California Water Code section 79750 requires the Commission to select water storage projects for public funding “based on the expected return for public investment as measured by the magnitude of the public benefits provided.” Public benefits include lasting improvements to ecosystems that contribute to the restoration of native wildlife, enhancement of recreational pursuits associated with the outdoors, and improvements to water quality on river systems that provide significant public trust resources.² We offer the following comments on the Commission’s revised draft WSIP regulations, with particular focus on Ecosystem Priority number 14: “Provide water to enhance seasonal wetlands, permanent wetlands, and riparian habitat for aquatic and terrestrial species on State and Federal wildlife refuges and on other public and private lands.”³

I. Water for Central Valley Refuges Must Be Incremental Level 4 Supply

Most of the Central Valley’s remaining wetlands are located in ten National Wildlife Refuges, four State Wildlife Management Areas, and the Grassland Resource Conservation District (collectively, “refuges”) that receive “Level 2” water deliveries from the Central Valley Project (“CVP”) under the Central Valley Project Improvement Act (“CVPIA”) and long-term water contracts. (See attached map.) The phrase “Level 2” originates from a Water Needs Report issued in 1989 by the U.S. Bureau of Reclamation (“Reclamation”) and prepared in conjunction with the California Department of Fish and Wildlife (“DFW”), California Department of Water Resources and U.S. Fish and Wildlife Service. These agencies thoroughly investigated the water needs of the above-described Central Valley refuges and concluded “it is clear that each refuge requires a dependable supply of good quality water to facilitate proper wetland habitat management for the migratory birds of the Pacific Flyway and resident wildlife and flora.”⁴

That 1989 Water Needs Report identified Level 2 as the then-average volume of water delivered to the Central Valley refuges. It also identified “Level 4” as the increased volume of water required for optimal refuge management. The increment of water needed to close the gap between Level 2 and Level 4 is known as “Incremental Level 4” water. Unlike Level 2 water that is delivered from the CVP, Incremental Level 4 water is obtained from voluntary sources. In the decades following publication of the Water Needs Report, deliveries of Incremental Level 4 water reached 100% in only one very wet water year, 2011. In most years more than 50% of Incremental Level 4 refuge water needs go unmet.

¹ Commission’s Draft Technical Reference Document, p. 4-88.

² Cal. Water Code § 79753.

³ Draft WSIP Regulations § 6007, Table 1 (Sep. 2, 2016).

⁴ Report on Refuge Water Supply Investigations, p. 5 (March 1989), *available at*: [https://www.usbr.gov/mp/cvpia/3406d/resc_docs/Report%20on%20Refuge%20Water%20Supply%20Investigations%20\('89%20Report\).pdf](https://www.usbr.gov/mp/cvpia/3406d/resc_docs/Report%20on%20Refuge%20Water%20Supply%20Investigations%20('89%20Report).pdf)

Compounding the Incremental Level 4 water shortage is the fact that a majority of the available Incremental Level 4 water is obtained through annual “spot market” purchases that are increasingly expensive and subject to market competition, and groundwater extractions that are constrained by water quality and other regulatory limitations. The only way to close the Incremental Level 4 water supply gap and ensure sustainable refuge management for decades into the future is to invest in reliable long-term water supplies.

The proposed WSIP regulations give priority to projects that will “provide water to enhance seasonal wetlands, permanent wetlands, and riparian habitat for aquatic and terrestrial species on State and Federal wildlife refuges and on other public and private lands.”⁵ For projects that propose to provide water to refuges that are already entitled to receive Level 2 water from the CVP, the priority language is overly broad and could be confusing for those attempting to quantify and evaluate public benefits and ecosystem improvements.

For example, an applicant for WSIP funding should not be allowed to quantify public benefits associated with the replacement of Level 2 refuge water deliveries. Level 2 water supplies are already considered reliable, and are recognized as an “operational requirement” of the CVP.⁶ Level 2 deliveries should therefore be classified as an existing “compliance obligation” ineligible for quantification as a public benefit.⁷ Providing replacement water sources for Level 2 CVP deliveries would create no “net improvement” in ecosystem conditions, as required by the Water Code and the WSIP regulations,⁸ and in some instances could decrease refuge water supply reliability.

Table 1 of the WSIP regulations and Table 4-11 of the Technical Reference Document should be revised to clarify that public benefits from providing water to Central Valley refuges must be net water supply benefits in the form of increased long-term Incremental Level 4 water deliveries. We request the following revisions shown in underline format:

WSIP regulations § 6007, Table 1, Ecosystem Priority 14 (and Worksheet):

“Provide a long-term increase in water to enhance seasonal wetlands, permanent wetlands, and riparian habitat for aquatic and terrestrial species on State and Federal wildlife refuges and on other public and private lands.”

⁵ Draft WSIP Regulations § 6007, Table 1, Ecosystem Priority 14.

⁶ Technical Reference Document, p. 2-10 (Table 2-3), and Appendix B, p. B-2 (refuge deliveries from the CVP have recognized priority).

⁷ Cal. Water Code § 79753(b); WSIP Regulations § 6004(a)(7)(A).4.

⁸ Cal. Water Code § 79750(b); WSIP Regulations § 6006(c)(2)(E).

Technical Reference Document, p. 4-95, Table 4-11:

<p>Enhance seasonal wetlands, permanent wetlands, and riparian habitat for aquatic and terrestrial species on state and federal wildlife refuges and on other public and private lands managed for ecosystem values by providing <u>a long-term increase in</u> water.</p>	<p>Deliver flows (in cfs <u>or acre-feet</u>) at managed lands at appropriate times (within-and among-years). <u>For managed lands entitled to receive Central Valley Project Level 2 refuge water, deliver Incremental Level 4 flows.</u></p>	<p>Measures of habitat enhancement: abundance (acres), distribution, species composition (diversity indices), condition, functional value (species served), etc. Aqueous and fish tissue methylmercury concentrations, <u>where appropriate</u> (mg/kg, to minimize deleterious impacts on fish and wildlife health).</p>
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II. Undefined Wetland Benefits Highlight Need for Continued Public Input

DFW has designated wetland habitats that support migratory birds of the Pacific Flyway, neo-tropical migratory birds, and native reptiles, amphibians, mammals and plants as “high-value resources” under the draft WSIP regulations. Our organizations trust that DFW and the Commission will give due priority to projects that improve such wetland habitats. However, the regulations and incorporated documents leave open the possibility that project applicants will use a wide variety of metrics, benefit types, and methodologies for quantifying wetland benefits. For example:

- The four metrics that most closely relate to Central Valley refuges are Ecosystem Metric numbers 1 (Flows), 7 (Wetlands Improved), 13 (Temporal and Spatial Distribution of Habitats), and 14 (Refuges/Wetlands). The notes for each of these metrics indicate a potential relationship or an overlap with water quality benefits. While this may be the case, a proposal for *only* refuge water quality improvements (through replacement of existing water deliveries or otherwise) without an increase in refuge water quantity should not count as a public benefit eligible for WSIP funding, particularly if the project applicant has failed to consult with affected refuges.⁹
- After stating that project applicants “must provide willingness-to-pay estimates where possible” for ecosystem improvements, the Technical Reference Document provides concrete recommendations for quantifying the value of fish species, but notes that for other DFW priority species, such as wetland species, “there are no specific measures of economic benefit to recommend for population numbers,” and “their habitat, or water provided for their habitat, can be valued

⁹ Technical Reference Document, pp. 11-5 and 11-6, Table 11-4.

using an alternative cost approach.”¹⁰

- The draft regulations state that “the number of ecosystem priorities claimed by a project shall be considered in project scoring,” yet the majority of the proposed ecosystem priorities relate to fish.¹¹
- Nine of the ten metrics for measuring physical benefits to a specific species relate only to fish species. The single remaining species-specific metric, Ecosystem Metric number 25, refers to “other special status species” but lists two examples of fish species. There is no reference to the threatened giant garter snake or other terrestrial species of concern, such as the tricolored blackbird.¹²

Preferably, project applicants will work closely with affected wetland managers and stakeholder groups before submitting an application to the Commission that includes a proposal for refuge benefits. For example, the Central Valley Joint Venture (CVJV) is tasked with conserving migratory birds and their habitats for the benefit of wildlife and the public.¹³ Consistency with the goals and objectives of the CVJV Implementation Plan is listed as a criterion that project applicants must address when submitting the proposed Ecosystem Priorities Application Worksheet to the Commission. Without consultation with the CVJV and affected refuge managers, a water storage proposal could create conflicts with existing refuge statutory and contract rights, or raise controversial questions about the nature and extent of wetland ecosystem improvements. Unfortunately, this advance cooperation may not occur.

For these reasons, the Commission should provide a public review, comment, and appeal process for various aspects of project applications, and should encourage Project applicants to consult with the CVJV. Giving the public time and opportunity to provide feedback on determinations of eligibility, the magnitude of public benefits provided, the application of scoring criteria, and staff’s recommendations to the Commission based on the technical review process, will be consistent with Proposition 1 and will help alert the Commission to potential conflicts and allow for collaborative resolutions before final decisions are made. We also request that the administrative appeals process in section 6009 of the WSIP regulations be expanded in scope regarding the types of determinations that can be appealed, and that the eligibility to file an appeal be extended to affected stakeholders and members of the public.

III. Public Benefits Management Requires Greater Detail

The draft WSIP regulations do not dictate a specific process to oversee and ensure that proposed public benefits are provided.¹⁴ Our organizations have a vested interest in

¹⁰ Technical Reference Document, p. 5-31.

¹¹ Draft WSIP Regulations § 6007(c)(1)(A).3.

¹² Technical Reference Document, p. 11-6.

¹³ <http://www.centralvalleyjointventure.org/>

¹⁴ Draft WSIP Regulations § 6014.

helping to ensure the efficient administration of proposed public benefits for Central Valley refuges. We request that the regulations be revised to allow for public review of proposed public benefits management contracts, require that available data and reports prepared under those contracts be made available to the public, and provide a mechanism for stakeholders to help ensure that public benefits and adaptive management plans are adhered to.

Thank you for your consideration of these comments and for your ongoing dedication and attention to the WSIP process. We look forward to the State's investment in lasting ecosystem improvements, and we strongly believe there will be a significant return on public investment in California's wetlands.

Sincerely,



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REFUGE WATER SUPPLY PROGRAM

UNITED STATES DEPARTMENT OF THE INTERIOR



REFUGES SUPPORTED BY THE REFUGE WATER SUPPLY PROGRAM

