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October 3, 2016

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

Sent electronically to WSIPComments@cwcc.ca.gov

Dear Chairman Byrne and Members of the Commission:

On behalf of the California Building Industry Association, we provide the following comments on the California Water Commission's (Commission) proposed regulations (September 2, 2016) for Proposition 1, Chapter 8 (The Water Storage Investment Program or "Storage Program").

We appreciate that the Commission has made some significant improvements to the regulations since the January 2016 version, which will be helpful to the Commission as it moves forward. There remains, however, several important issues that need to be addressed by the Commission to maximize the water assets advanced with assistance from Chapter 8 funding. Most importantly, we urge the Commission to re-align its regulations as soon as possible with the specific language in Proposition 1 and the clear intent of both the Legislature and the Governor.

We offer the following general comments to assist the Commission in re-aligning the regulations with Proposition 1:

The Commission should acknowledge net public benefits contributed by projects.

The January version of the regulations recognized the importance of net contributions toward public benefits, yet they now seem to be missing from the current version of the regulations. The current draft introduces a new concept to differentiate "existing" from "new" environmental mitigation and compliance obligations, which is inconsistent with Proposition 1. Proposition 1 calls for projects that "provide a net improvement in ecosystem and water quality conditions, in accordance with this chapter." It was the intent of the legislature that for purposes of quantifying public benefit, projects funded pursuant to Chapter 8 should provide a net improvement without differentiating between existing and new mitigation. The addition of the word "existing" creates a temporal aspect that was not included in Proposition 1.

We also encourage the Commission to reinstate the important provision found in Water Code section 79753(b) to advance public benefits in a rational manner consistent with Proposition 1. In the proposed regulation, the definitions of "public benefit" and "non public benefit" only reference 79753(a). The insertion of this 79753(b) in Proposition 1 was to clarify that funds were not to be used for mitigation or compliance obligation associated with private benefits. However, the intent was that bond proceeds could be used to fund environmental mitigation and compliance obligations with regard to public benefits provided by the project.

Quantification of the "magnitude of public benefits" should be consistent with Proposition 1.

In the proposed regulations, there is a definition for "magnitude of improvement," however, there is no such term of art in Proposition 1. Proposition 1 references the "magnitude of public benefits" as a measurement for the CWC to rank projects. This liberty within the proposed regulation, taken in consideration with the addition of the word "existing" causes concern.

Additionally, in the revised regulation, “magnitude of improvement” is defined as “the quantity of the improvement” and the words “and scope” from the previous version have been eliminated. However, magnitude and quantity are not synonymous. The words “and scope” were appropriate and accurately reflect legislative intent. Again, the regulation needs to be clearly aligned with Proposition 1 both in terminology and intent in this regard. The Water Commission ought to be looking at projects and evaluating the extent to which each project can provide each of the five public benefits enumerated in order to quantify “magnitude of public benefits.”

The draft regulations unnecessarily increase the costs to prepare the applications.

The requirements in the draft regulations and the Technical Reference Document include application requirements that: (1) appear to be overly prescriptive; (2) add cost to prepare the application; and/or (3) require extensive supporting documentation in topic areas that are not a part of the primary evaluation criteria. It is critical that the application process be as streamlined and efficient as possible so as not to waste scarce resources that could go toward the actual projects seeking funding.

We encourage the Commission to aggressively pursue its schedule going forward to approve projects in an expeditious manner.

We appreciate the actions taken by the Water Commission to expedite the schedule to approve projects under Chapter 8. The time savings coupled with the shortened evaluation period will enable selected projects to become operational sooner and therefore enable the expected benefits to be realized sooner, which is important for the State of California. We support the more aggressive time schedule.

In sum, there is widespread and strong support for the public benefits associated with water storage in California and we urge you to re-align the regulations to advance this important concept. There are several proposed projects that will provide more detailed comments, which we urge you to take very seriously as you review the various comments.

Thank you for the opportunity to provide our perspective on the proposed regulations. 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.

Regards,



Dave Cogdill
CEO