October 3, 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 organizations listed below, we are writing to provide comment on the revised 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). Our organizations are very interested in the public benefits that can be generated through the investment of taxpayer-backed bonds, and want to ensure that the program fairly and accurately counts those benefits. We are also interested in ensuring that this is a competitive program and that groundwater projects are assessed fairly.

The current regulations are in many ways much improved over the draft regulations released in January of this year. They provide language on quantifying public benefits and more clearly identify how net public benefits are identified and provide a clear linkage to relevant statute. However, many of the concerns we expressed in our March comments persist in this draft, and new ones have been added. We have the following concerns

- The regulations and technical reference document create an uneven playing field for groundwater storage projects;
- The public process identified in the regulations is insufficient;
- Regulations for management of public benefits remain inadequate.

Groundwater investments are discouraged in the current regulations

The letters developed by NRDC, Defenders of Wildlife, et al. and by the Union of Concerned Scientists lay out a number of concerns with the draft regulations and technical reference document. The cumulative impact of these issues is a marked disincentive for groundwater projects. These issues include;

- *Elimination of the pre-application process laid out in Section 6002 of the January draft regulations*. This two-step process is critically important for smaller projects; it gives project proponents a chance to determine whether their project is eligible and whether the public benefits are sufficient to make an application worthwhile before they go to the considerable expense of preparing a full application. This process also provides both large and small projects the ability to identify opportunities for regional integration. Staff, in deleting this provision, cited their concept paper invitations from earlier this year as an adequate substitute for the pre-application process. However, those concept papers pre-dated these significantly revised draft regulations, technical reference paper and climate change modeling information. So those concepts were not informed by many if not most of the application requirements. We urge

[1] California Water Code section 79754

that this process be reinstated. The problems of a 3-month delay will be offset by improvement in the quality of proposals received.

- *Inappropriate analysis used to calculate the impact of climate change on public benefits*. The Union of Concerned Scientists in its comment letter identifies the problems of the proposed analysis in the draft regulations, not least of which is that it conflicts with the recommendations of DWR. Additionally, when climate change impacts are calculated in the manner laid out in the draft regulations, the advantages of groundwater are minimized. Yet groundwater storage is likely more resilient than surface storage because it is more insulated from higher temperatures and prolonged drought, and even has the ability to better store seasonal flood flows. Moreover, the discrepancy between groundwater and surface water storage increases over time; so the decision to truncate analysis of climate change impacts at 2085 provides an unwarranted advantage to surface storage projects
- *While cost-effectiveness and the use of a least-cost alternative are defined in Section 6001, this information is not utilized in scoring, ranking, or establishing cost allocations for project proposals*. Because groundwater projects tend to be more cost-effective than surface projects, the failure to apply a cost-effectiveness test to project proposals again places groundwater projects in an inequitable position. We also believe it is important for project costs to 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).

Scoring criteria minimizes the value of public benefits

As stated in the NRDC, Defenders of Wildlife, et al. letter, the scoring criteria do not accurately reflect the requirements in statute. We have several concerns about the calculations and appreciate staff taking the time to review them with us.

- *The Public Benefit Ratio is a critical piece of the calculation*, and is currently identified (6001 (a)(64)) as the ratio of monetized public benefits to the program funding request. This figure is then used to "normalize" scores to create a ranking system (6008 (c)(1)). This allows a comparison of cost effectiveness for providing public benefits between projects, but does not provide the Commission with an understanding of whether the projects are the most cost effective. We think the scoring systems should incorporate the least cost alternative that is required to be developed as part of the application (6004(a)(4)(E)). The funding request should not exceed the cost of the least-cost alternative.
- *The proposed scoring criteria inappropriately include water system improvements*. The statute does require that project "improve the operation of the state water system" but that is an eligibility requirement, not a fundable public benefit as identified in WC 79753. The 20 points set aside for this item should be distributed among the public benefit categories
- *It's not clear why water quality relative environmental value is scored at 30% and ecosystem relative environmental value is scored at 70%* (6008 (e)(1)). The statute requires that the

ecosystem value makes up at least 50% of funded public benefits; it would be helpful for staff to explain how the scoring criteria relate to the requirements of Proposition 1.

- *We think that implementation risk is a valuable ranking criterion, but as identified in the draft regulations (6008 (g)), it covers only the likelihood that the project will be built based on feasibility studies.* It does not identify the risk that public benefits will be delivered as promised.
- *We agree that resiliency is an important scoring criterion, but think it is inappropriate to merge it with "non-monetized public benefits."* We also agree with the Union of Concerned Scientists that the regulations provide an inadequate measurement of resiliency.

Public process is insufficient

The statutory language for which these regulations were developed was approved by voters in 2014, but has actually been in existence since 2009 in a prior bond package. Yet the revised regulations are being rushed through the public review process to meet the December 15, 2016 deadline. We have not had sufficient time to provide red-line edits to the draft regulations and voluminous documents that were incorporated into the regulations by reference, which creates a real concern that the final regulations will not sufficiently address our concerns.

Additionally, the regulations must lay out a schedule for public review and comment that allows sufficient time to analyze the significant proposals and accompanying technical documents that will be submitted. One way to improve the public's ability to process these documents is to reinstate the independent technical review committee that was part of the original draft regulations. It is common practice to have such an independent review body that can provide an objective analysis of project feasibility and benefits.

Finally, the Water Commission is tasked in the statute with ranking and approving funding proposals. While we want these decisions to be based on factual analysis, it is inappropriate for the Commission to vote to limit its own flexibility in evaluating and ranking projects, as laid out in Section 6011.

Requirements for managing public benefits are insufficient

As noted in the opening paragraph of this letter, regulations are required to provide methods for managing public benefits. Unfortunately, the recent draft continues the problem of the January draft regulations. Taxpayer dollars are mandated to fund public benefits; it is imperative that a process for reporting and ensuring public benefits is included in the final regulations. First, we think it is important that the agencies with regulatory authority over public benefits – the Department of Fish and Wildlife and the State Water Board – administer the public benefits. At a minimum, the contracts with the agencies charged with managing public benefits 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. 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.

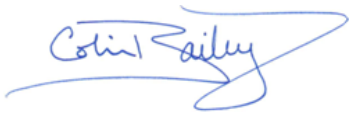
Sincerely,

Jennifer Clary
Water Program Manager
Clean Water Action/Clean Water Fund
jclary@cleanwater.org

Noe Paramo
Legislative advocate
California Rural Legal Assistance Foundation
nparamo@crlaf.org

Debi Ores
Attorney & Legislative Advocate
Community Water Center
deborah.ores@communitywatercenter.org

Helen L. Hutchison, President
League of Women Voters of California
lwvc@lwvc.org



Colin Bailey, J.D.
Executive Director
Environmental Justice Coalition for Water
colin@ejcw.org

Jonas Minton
Senior Water Policy Advisor
Planning and Conservation League

Phoebe Sarah Seaton, Executive Director
Leadership Counsel for Justice and Accountability
pseaton@leadershipcounsel.org

Steve Rothert
California Regional Director
American Rivers
srothert@americanrivers.org

ADAM SCOW
California Director
Food and Water Watch
ascow@fwwatch.org

Greg Suba
Conservation Director
California Native Plant Society
vern@cal.net

VERN GOEHRING
California Urban Streams Partnership
vern@cal.net

Ron Stork
Senior Policy Staff
Friends of the River
RStork@friendsoftheriver.org

Cecily Smith
Executive Director
Foothill Conservancy
cecily@foothillconservancy.org

Gary Bobker
Program Director
The Bay Institute
bobker@bay.org

SUSAN CORUM
Water Quality Coordinator
Department of Natural Resources
Karuk Tribe
skorum@karuk.us

NATALIE CARTER
Executive Director
Butte Environmental Council
natalie.carter@becnet.org

PATRICK KOEPELE
Executive Director
Tuolumne River Trust
patrick@tuolumne.org

Rachel Zwillinger
Water Policy Advisor
Defenders of Wildlife
rzwillinger@defenders.org

Carolee Krieger
California Water Impact Network
caroleekrieger7@gmail.com

Bill Allayaud
California Director of Government Affairs
Environmental Working Group