



December 7, 2016

The Honorable Joseph Byrne, Chair  
California Water Commission  
PO Box 924836,  
Sacramento, CA 94236-0001

Submitted via email: [WSIPcomments@cwcc.ca.gov](mailto:WSIPcomments@cwcc.ca.gov)

Regarding: Draft WSIP Regulations, dated November 21, 2016

Dear Chair Byrne and Commission Members:

As a potential applicant under the voter-approved Water Storage Investment Program (“WSIP”), the Sites Project Authority (“Authority”) very much appreciates the Water Commission’s open process, which has allowed all stakeholders to provide comments during the development of the regulations that are required to then implement the requirements of Proposition 1, Chapter 8: Statewide Water System Operational Improvement and Drought Preparedness (“Prop 1”).

When the voters approved Prop 1, it created a unique opportunity whereby the State of California could participate in new water storage projects by providing up-front funding in exchange for receiving eligible public benefits whose primary purposes are to contribute to the long-term ecological health of the Delta. Developing the prerequisite set of regulations to implement such a unique concept has required creative thinking from all, but especially from the Water Commissioners and the Commission’s staff. The Authority believes the Proposed Revisions to Regulations, dated November 21, 2016, have addressed our concerns (refer to our letters dated September 29 and October 3) and have advanced Prop 1’s creative concepts into fair and implementable measures that align with the original intent of Prop 1. We therefore support the adoption of these regulations at the Water Commission’s next meeting.

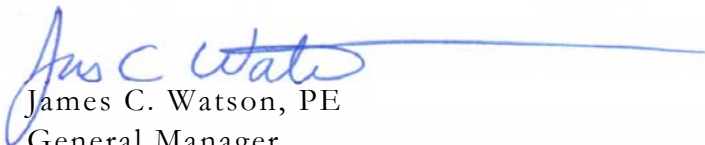
Once adopted, a critical milestone will have been achieved. The fact that it was completed on time demonstrates the commitment and dedication of the Water Commissioner’s and Commission’s staff that is commendable. But, this is the first major step in a process having many steps. The Authority encourages the Water Commission to take a moment to acknowledge this success and then focus, expeditiously, on the next, near-term steps, which are to (1) ensure the applications can be submitted by the proposed July 2017 milestone, (2) the applications can be

evaluated and scored to allow initial decisions to be made by December 2017, and (3) ensure that funding for successful projects, especially those requesting the State's participation to complete the environmental documentation and permitting, can begin before the middle of 2018. The Water Commission should continue to strive to meet the schedule and to not allow delays to occur; especially since the next drought is forthcoming, the ecological conditions in the Delta continue to decline, and the adverse effects of climate change are increasing.

In reviewing the Proposed Revisions to Regulations, dated November 21, 2016, the Authority identified some administrative items that Commission staff suggested be brought before the Commissioner's for their consideration before adopting the regulations. The items are intended to clarify and improve alignment with Prop 1 and are included in Attachment A. However, it is the Authority's position that incorporation of any of the listed items should not delay adoption of the regulations. The consequences associated with delay far outweigh the benefits of attempting to have a perfect set of regulations.

The Authority looks forward to working with the Commissioners and staff to complete the next steps in the WSIP process and would welcome additional opportunities to assist the Commissioners and staff to ensure continued, successful, implementation of the Water Storage Investment Program.

Sincerely,



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Cc: Taryn Ravazzini, Acting Executive Officer

## **Attachment A: Administrative Changes for the Commission’s Consideration**

The Authority believes the following administrative changes should be considered for inclusion *and do not constitute sufficient grounds to delay approval of the Proposed Revisions to Regulations* at the Commission’s December 14 meeting. We believe these changes provide greater clarity to both (1) the alignment with the intent of Proposition 1 as it has been codified into the California Water Code Section 75750 et. seq. and (2) the implementation and compliance with the regulations to support the Water Commission in fulfilling the mandate it has been tasked with to identify water storage projects the State of California can participate in; by providing up-front funding in exchange for receiving eligible public benefits, whose primary purposes are to contribute to the long-term ecological health of the Delta.

Proposed changes are shown below using redline-strikethrough format along with a note, as shown in blue font, to explain our rationale for incorporating the proposed change.

### Section 6001(a): Definitions

(1144) “Capital costs” means the costs of construction or acquisition of a tangible physical property with an expected useful life of 15 years or more. Capital costs include the following items:

(C) Costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, interest costs for financed work, architectural, and other design work, environmental impact reports and assessments, required environmental mitigation or compliance obligation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.”

NOTE: To estimate the total project costs, Section 6004(a)(5) requires the applicant, via use of the word “shall”, to include any interest costs.

(3239) “~~Existing~~ environmental mitigation or compliance obligations” means legally enforceable requirements or conditions in existing statutes, regulations, permits, contracts, licenses, or grants, or orders and decisions from courts or state or federal agencies intended to protect the human or natural environment.”

NOTE: As law, Water Code Section 79753(b) does not make any temporal distinction. It states: “Funds 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.”

(5366) “Non-public benefit” means a benefit provided by a proposed project other than the public benefits identified in Water Code section 79753 ~~-(a)(1-5).~~”

NOTE: Section 79753 includes subsections (a) and (b). Subsection (b) provides a clarification to the list of public benefits listed in subsection (a). The definition included in the regulations should not attempt to further narrow the definition developed in voter-approved Prop 1.

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(5874) “Planning horizon” means the future time period, in years, over which project costs will be paid ~~and or~~ public or non-public 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.”

NOTE: Storage projects can provide Prop 1-eligible public benefits that extend beyond the terms of the construction financing. To be consistent with how this term is used in Subsection 6004(a) to quantify public benefits, the “planning horizon” should be the duration that public benefits will be provided to the State, which is not limited to the repayment period.

(6784) “Recreational purposes” has the same meaning as Water Code section 79753(a)(5) which means a public benefit that provides recreation activities typically associated with water bodies (such as rivers, streams, lakes, wetlands, and the ocean) and wildlife refuges that are accessible to the public. Recreational benefits must be directly affected by the proposed project and be open to the public, and may provide interpretive, educational, health, or intrinsic value.”

NOTE: The four other public benefits are defined and include the reference to the applicable section of the Water Code (refer to definitions 28, 29, 33, and 87). Adding the reference to the Water Code makes his definition consistent with all the other four public benefits.

### Section 6004(a)(1): Quantification of Benefits (pages 20 & 21)

(B) “The without-project future conditions shall include the water infrastructure, population, land use, water use, water operations, laws, regulations and other characteristics relevant to the analysis of the project, including all existing environmental mitigation or compliance obligations.”

NOTE 1: Given the word “shall”, limiting the type of infrastructure that will be used by the Water Commission and staff to evaluate an applicant’s proposal reduces the applicant’s effort. It is unlikely that evaluation will include future estimates of infrastructure for transportation, communications, and the electric grid.

NOTE 2: Change is intended to be consistent with Definition provided in 6001(a)(32).

(B)(2) With-Project Future Conditions. The applicant shall define and assess the with-project future conditions for the years 2030 and 2070 ~~with the proposed project~~. The with-project future conditions shall be based on the without-project future conditions and include all additions or modifications specific to the proposed project. Additions or modifications include proposed changes in water infrastructure, population, land use, water use, water operations, laws, ~~and~~ regulations, and other characteristics that describe the with-project future condition....”

NOTE: To be consistent with proposed change in Section 6004(a)(1)(B)

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### Section 6010: Funding for Environmental Documentation and Permits (page 42)

(b) “The following conditions apply to funding for completing environmental documents and permits:”

(b)(2) “The funds are not available for reimbursement until a separate agreement between the State and the applicant for these funds is executed.”

NOTE: Section 6013 defines the Funding Agreement, which can only be executed *after* all conditions of Proposition 1 (specifically those in section 79755(a)) have been satisfied. Should the Water Commission elect to provide early funding to support completion of the environmental document and acquisition of permits, a separate agreement is needed to avoid creating a ‘chicken-and-egg’ scenario should the need for the agreement specified in (b)(2) be construed to be the same as the Funding Agreement defined in Section 6013.

### Section 6011: Commission Maximum Conditional Eligibility Determination (page 46)

(a) “Staff shall provide to the Commission all component scores including appealed public benefit ratio, pursuant to section 60098, and technical review comments for the Commission’s deliberation. The Commission and public shall have a minimum of 30 days and a maximum of 60 days to consider the information before any Commission meeting regarding decisions on application component scores.”

NOTE: Creating a reasonable window of time for reviews to occur helps to prevent unintended delays from occurring such as when an open-ended condition is inadvertently created. Sixty days is suggested and the Commissioner’s should establish a reasonable duration that fits within the overall schedule.

### Section 6013: Funding Agreements (page 52)

(f)(6) Funds will not be disbursed until the applicant enters into a Funding Agreement with the Commission ~~and has met all relevant disbursement conditions.~~

### Section 6015(a): Confidentiality (page 64)

(2)(A) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency and other culturally significant resources as determined by the State Historic and Preservation Office;

NOTE: The extent of cultural resources that should be kept confidential should extend beyond those listed in the Nov 21 draft regulations. Allowing the applicant to have SHPO concurrence to not disclose such locations aligns with existing statutes regarding the need to preserve and protect these resources.