

California Legislature

Sent electronically to: WSIPComments@cwcc.ca.gov

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

Re: Comments on the California Water Commission Draft Water Storage Investment Program (WSIP) Quantification Regulations dated September 2, 2016

Dear Chairman Byrne and Members of the California Water Commission:

As members of the California State Legislature San Joaquin Valley Caucus, we have significant interest in the Commission's progress toward awarding the bond's Chapter Eight water storage funds. We appreciate the opportunity to provide the Commission with our comments and concerns regarding the recently revised Water Storage Investment Program.

The State of California has invested millions of dollars over the past several years to determine the technical, environmental, economic, and financial feasibility of major storage projects identified in the 2000 CALFED Record of Decision (ROD). Three of these projects, Sites Reservoir, Los Vaqueros Reservoir Expansion, and Temperance Flat Reservoir, were envisioned for Chapter Eight funding. At the time Proposition 1 was drafted, we were aware that the California Department of Water Resources and the U.S. Bureau of Reclamation had established a set of assumptions and methods to evaluate project feasibility, including the quantification of public benefits. It was our expectation that the results from those processes would be directly applicable to the evaluation of projects under Chapter Eight, thereby minimizing the financial burden that would be placed on project sponsors to prepare applications.

California's water infrastructure is outdated and needs investment to adapt to the realities of today and the future. We continue to rely on the same water infrastructure that was developed when California had only 16 million residents. Our population has since grown to over 39 million and, at the same time, the operation of the water system has been significantly altered to address environmental needs. The State of California must continue to protect the environment but must also ensure a reliable water delivery system. This is the perspective which guided our drafting of Proposition 1 and Chapter 8 in particular.

Chapter 8 has several provisions that make it different from other sections of Proposition 1 and other state-wide water bond measures. The most significant is the principle that the State of



California will invest in the public benefits of water storage projects. This approach is a departure from traditional grant funding approaches and relies on partnerships between the State of California and other entities. It is an investment program that requires mutual commitments between the State and other project investment parties.

As Federal work on the CALFED storage projects nears completion, your staff is in the process of defining storage project evaluation regulations for the award of Proposition 1 funds. We are concerned that the draft regulations depart from the original state/federal partnership expectations in several important and significant ways. In particular, we believe that the processes defined in the draft regulations will prevent the Commission from making use of information already developed for the CALFED storage projects and instead will require new work or otherwise invalidate the information already developed through significant public investment. This departure will place significant financial burdens on local applicants that could be avoided by properly utilizing the information already provided through the CALFED planning process.

In exploring this matter, we find that there are consistent concerns regarding the scope of work required under the process proposed in the draft regulations. As a result of our review, we offer the following comments:

Climate Change Analysis Requires Unnecessary Work

As an investor, the State of California has a fiduciary responsibility to determine if the public benefits provided by storage projects can be sustained into the future in light of climate change. Therefore, it is appropriate that a review be conducted to evaluate the sensitivity of project performance under variable future conditions. The method proposed in the draft regulations, however, require that proponents assume specific climate change conditions as a basis of their own financial decision-making. This approach does not provide necessary flexibility to project proponents to demonstrate how projects in different geographic locations can adapt to changing conditions in California's complex water system.

The United States Bureau of Reclamation (USBR) has submitted a detailed explanation to the Commission about the commonly used and accepted process for major storage project feasibility reports, of which the State of California was a partner. The USBR also provides a detailed explanation of how the new and unproven process proposed by the Commission not only will result in uncertain results but will also place new and significant financial burdens on the project proponents to produce information that is no more precise than results available from completed and nearly-completed feasibility studies. The process described in the draft guidelines effectively penalizes projects that have completed feasibility studies by requiring new work that could have been anticipated had the guidelines been provided earlier.

We ask that the Commission follow the recommendations that the USBR, the San Joaquin Valley Water Infrastructure Authority, the Sites Joint Powers Authority and the Association of California Water Agencies (ACWA) provide to resolve this issue.

Environmental Mitigation Measures and Compliance Obligations

The draft regulations include language regarding environmental mitigation measures that is inconsistent with language in Chapter Eight. ACWA has submitted a detailed rationale for the Water Commission to be consistent with the language and intent of Chapter 8. Commission staff originally proposed that approach, but later deviated from the legislative language. We are concerned that language that does not match the legislation will lead to misunderstandings that could cause projects to not qualify or result in unnecessary litigation.

We ask that the Commission adopt language that is consistent with the intent of the language found in the legislation, and support the recommendations articulated by ACWA.

Limited Discretion by the Water Commissioners to select Projects

When we as State legislators developed the project selection process for Chapter 8, it was recognized that the process needed to be very different than the more common Department of Water Resources grant programs. Major water storage projects would be collaborative investments requiring partnerships between the State of California, the project proponents and, in some cases, the Federal Government. Our view of the intended process anticipated a much different method to evaluate these projects, much like approaches taken by business partners where risk and reward are involved, not merely a score card that is limited to a few factors and assembled through a bureaucratic process. However, the current draft regulations are strictly prescriptive and relegate your deliberations to rubber stamping the outcome from a checklist process.

We ask that the Commission use the proposed scoring system as an informative part of assessing the qualifications of a project but that the Commission retain the discretion to consider a more holistic view of projects as they relate to California's water systems operations so as to meet overall future needs.

Project Application Submittal Timing

Chapter 8 does not specify a deadline for application submittals and only provides for the following:

- 1.) Section 79755(a) qualifies that no projects will be allocated funds before December 15th, 2016 except for as provided in subdivision 79755(c).

2.) Section 79757 (a) qualifies that a project is not eligible for funding under Chapter 8 unless, by January 1, 2022, all of the conditions found in 79757 (a) (1), (2) and (3) are met.

However, the proposed regulations require completion and submittal of all projects (large or small) by June of 2017. The current schedule calls for adoption of final guidelines in January 2017, leaving a mere 5 months to prepare complex applications. When applied to the onerous requirements proposed in the draft regulations, this compressed time frame will impose much more work and unexpected costs to all project applicants.

We ask that the Commission establish timeline for project submittals that is compatible with the amount of work that will be required of project applicants, so long as it complies with the two Chapter 8 specified requirements. Such a timeline would allow for the submittal and consideration of the meaningful storage projects envisioned when Proposition 1 was approved by California voters.

In closing, we strongly support the comments and recommendations of the San Joaquin Valley Water Infrastructure Authority, the Sites JPA, the USBR, and ACWA. Our offices would welcome the opportunity to discuss our comments with the Commission if desired and can be available to assist the Commission with a complex and very important mission for the State of California.

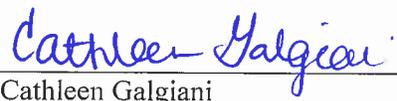
Sincerely,



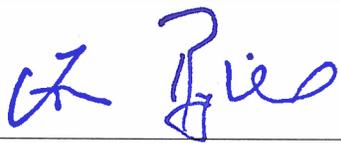
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Assemblymember, District 21



Anthony Cannella
Senator, District 12



Cathleen Galgiani
Senator, District 5



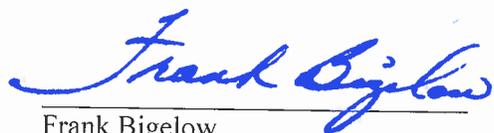
Tom Berryhill
Senator, District 8



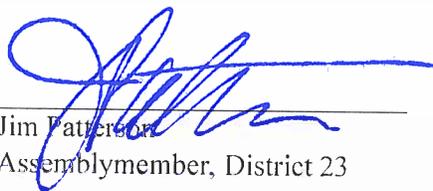
Joaquin Arambula
Assemblymember, District 31



Kristen Olsen
Assemblymember, District 12



Frank Bigelow
Assemblymember, District 5



Jim Patterson
Assemblymember, District 23



Devon Mathis
Assemblymember, District 26

cc: John Laird, Secretary, California Natural Resources Agency
Camille Wagner, Legislative Director, Office of the Governor
Martha Guzman-Aceves, Deputy Legislative Secretary, Office of the Governor