

TITLE 23
DIVISION 7. CALIFORNIA WATER COMMISSION
CHAPTER 1 WATER STORAGE INVESTMENT PROGRAM

NOTICE OF PROPOSED RULEMAKING

The California Water Commission (Commission) will conduct a public hearing at the time and place noted below to consider the adoption of regulations regarding the Water Storage Investment Program. The proposed regulations would allow the State of California to invest funds in public benefits associated with water storage, pursuant to Water Code section 79750 *et seq.*

OPPORTUNITY FOR PUBLIC COMMENT

- Public Hearings. The hearing will be held in accordance with the requirements set forth in Government Code section 11346.8. The hearing details are as followings:

Date: March 16, 2016

Time: 9:30 a.m.

This item may be considered at any time during the regularly scheduled meeting of the Commission. Please consult the agenda, which will be available at least ten (10) days before March 16, 2016, to confirm the time at which this item will be considered. The agenda will be posted at <http://cwc.ca.gov>.

Location: California Resources Building
1416 Ninth Street, First Floor Auditorium
Sacramento, CA 95814

Sections Affected: Proposed adoption of California Code of Regulations, title 23, new article 1, which contains new sections 6000, 6001, 6002, 6003, 6004, 6005, 6006 and 6007.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on January 29, 2016. To be considered by the Commission, written comments not physically submitted

at the hearing, must be submitted on or after January 29, 2016 and received **no later than 5:00 pm on March 14, 2016** and must be addressed to the following:

Jennifer Marr
California Water Commission
901 P Street, Room 314
P.O. Box 924836
Sacramento, CA 94236
916-651-0156
Jennifer.Marr@water.ca.gov

Please note that under the California Public Records Act (Government Code §6250 et seq.), written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

The Commission requests, but does not require, that written and email statements on this item be filed at least 10 days prior to the hearing so that Commission staff and Commissioners have additional time to consider each comment. The Commission encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

Additionally, the Commission requests, but does not require, that persons who submit written comments to the Commission reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

Water Code Section 79754 authorizes the Commission to adopt the proposed regulations. The proposed regulations implement, interpret, and make specific sections 79705, 79707, 79711, 79712, 79750, 79751, 79752, 79753, 79754, 79755, 79756, 79757, 79758 and 79759 of the Water Code. The proposed regulations make references to: sections 79705, 79707, 79711, 79712, 79750, 79751, 79752, 79753, 79754, 79755, 79756, 79757, 79758 and 79759 of the Water Code;

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference in the regulations.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE 11346.5(a)(3)

Background and Effect of the Proposed Rulemaking

The Water Quality, Supply, and Infrastructure Improvement Act of 2014 ("Proposition 1") was approved by the voters in November 2014. Proposition 1 is codified as Division 26.7 of the Water Code. The purposes of Proposition 1 include funding the public benefits of water storage projects. In particular, Chapter 8 of Proposition 1 allocates \$2.7 billion to the Commission to implement a competitive investment program to fund public benefits and directs the Commission to develop and adopt regulations specifying the methods for the quantification and management of public benefits. The broad objective of these regulations is to facilitate the implementation of the Water Storage Investment Program authorized under Chapter 8 of Proposition 1.

The proposed regulations provide the application process and requirements applicants must follow to quantify the public benefits of their proposed water storage projects. Additionally, the proposed regulations include the ecosystem and water quality priorities, as provided by the California Department of Fish and Wildlife (CDFW) and the State Water Resources Control Board (State Water Board), to be considered by the Commission when evaluating projects that have applied for funding pursuant to Proposition 1.

Objectives, Benefits, and Policy Statement Explaining the Specific Benefits Anticipated from the Proposed Regulatory Action

This proposed regulation is the first step to establish a program that evaluates public benefits associated with water storage projects and funds up to 50% of the capital costs of those projects (the maximum cost share is dictated by Water Code sections 79756(a) and (b)). The proposed regulation implements the Legislative and voter directives and provides the following benefits:

- The proposed regulations describe consistent standards for quantifying public benefits. The standards allow the Commission and other state review agencies to evaluate and compare projects cost-effectively.
- The proposed regulations provide for a fair, competitive application and evaluation process that allows the Commission to evaluate the magnitude of public benefits associated with water storage projects and rank storage projects based on the return on public investment and other criteria.
- The proposed regulations explain to potential applicants how information should be developed and presented to be eligible for funding.

- The proposed regulations define how projects will be selected based on the magnitude of benefits and the relative environmental values of CDFW and the State Water Board.
- The proposed regulations help to implement a key goal expressed in the California Water Action Plan¹, to expand water storage capacity and improve groundwater management.
- The proposed regulations improve the likelihood that the projects funded and built will provide the greatest net public benefits for the State.

Determination of Inconsistency and Incompatibility with Existing State Regulations Pursuant to Government Code 11346.5(a)(3)(D)

The proposed regulations establish a novel methodology for quantifying public benefits of a new California water storage investment program and guidance for a state program to fund certain water storage projects. None of the proposed regulations are inconsistent or incompatible with existing state regulations. The Commission has developed these regulations in alignment with existing state law and regulations that govern state grant programs.

The Commission developed the proposed regulations to be consistent with the following sections of the Water Code: Sections 79700 through 79716 specifying the general objectives of Proposition 1 and Sections 79750 through 79760 outlining the specific requirements of Chapter 8 of Proposition 1 which funds the public benefits of certain types of water storage projects.

The proposed regulations are uniquely applicable to the implementation of the Water Storage Investment Program newly established by Sections 79750 through 79760 of the Water Code. In addition to the consistency of the regulatory policies with the implementing statute, the policies are also consistent with existing laws and regulations that relate to the specific policies discussed below.

During the process of developing the proposed regulatory action, Commission staff has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

¹ California Natural Resources Agency, California Department of Food and Agriculture, and California Environmental Protection Agency, 2014. California Water Action Plan. Available at: http://resources.ca.gov/california_water_action_plan/

Mandated by Federal Law or Regulations

The proposed regulations are not mandated by federal law or regulations.

Comparable Federal Regulations

The proposed regulation implements a new state investment program that does not have a federal counterpart and does not impact, duplicate, or conflict with Federal regulations or statutes. The Commission has reviewed federal regulations and standards specifically regarding quantification of benefits for water storage projects, and has striven to develop methods consistent with those (see Water Resources Council, 1983, incorporated by reference into the Code of Federal Regulations, Title 43, Subtitle B, Chapter 1, §404.4) . Differences between the proposed regulation and the federal regulations occur where required by provisions of Proposition 1 or other state law, or where required to evaluate benefits from the state's perspective rather than the federal perspective.

Summary of Existing Laws and Regulations Related Directly to the Proposed Rulemaking

Chapter 8 of Proposition 1, codified in Sections 79750 through 79760 of the Water Code, charges the Commission with implementing a competitive program to fund public benefits associated with water storage projects. Specifically, the Commission is directed in Section 79754, to develop by regulation, methods for the quantification and management of the public benefits described in Section 79753.

Other Statutory and Legal Requirements

- Executive Order B-10-11: Establishes administrative policy that every state agency and department subject to executive control shall encourage communication and consultation with California Indian tribes and provide the opportunity for meaningful input into the development of legislation and regulations, rules, and policies on matters that may affect tribal communities.

The Commission has included tribal representatives in its Stakeholder Advisory Committee and regularly consulted with the Department of Water Resources' (DWR's) tribal advisor, who has twice briefed the Commission. The Commission has complied with the California Natural Resources Agency's tribal consultation policy and in June 2015 organized, in conjunction with DWR, CDFW and State Water Board, a two-day forum on Tribal Government Consultation on Proposition 1 Water Bond, exploring funding opportunities for tribal governments.

- Executive Order B-30-15 (Climate Change): Governor Jerry Brown's Executive Order B-30-15 and AB1482 require State agencies to take climate change into

account in project planning and investment decisions. To comply with these directives, climate change is required in the analyses and quantification of public benefits of water storage projects for the Water Storage Investment Program. Several methods and approaches of incorporating climate change in water resources planning were considered. Climate change analysis options for the Storage Investment Program were developed to draw on the same suite of climate change projections as will be used for the forthcoming 4th California Climate Change Assessment.

- Human Right to Water (HRTW): Section 106.3(a) of the Water Code codifies the state policy that “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes” (the human right to water). Section 106.3 (b) of the Water Code requires that state agencies consider this policy when adopting regulations or grant criteria if the regulations or criteria are “pertinent to” the domestic uses of water enumerated in subsection (a). Section 6005(b)(9) of the proposed regulations includes HRTW as a priority established under Section 79754 of the Water Code.

FISCAL IMPACT DETERMINATION REGARDING THE PROPOSED ACTION (Government Code sections 11346.5(a)(5)(6)&(7))

Local Mandate (Government Code 11346.5(a)(5))

Pursuant to Government Code sections 11346.5(a)(5) and (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs to covered State agencies. The proposed regulatory actions would not create costs or savings in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, title 2, division 4, part 7 (commencing with section 17500) or other nondiscretionary costs of savings to State or local agencies.

The regulation does not impose a mandate on any private individual, business or local government. Participation in a WSIP funding request is entirely voluntary. Participation is open to local public agencies, and certain private organizations including mutual water companies and non-profit organizations as defined in the Act.

The determinations of the Commission’s Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below:

- Cost to any Local Agency or School District Requiring Reimbursement Pursuant to Government Code section 17500 et seq.: None.
- Cost or Savings for State Agencies: None.
- Other Non-Discretionary Costs or Savings on Local Agencies: None.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, Commission staff evaluated the potential economic impacts on representative private persons or businesses. The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the projects that would apply for funding under these proposed regulations do not meet the qualifications of a small business.

Business Reporting Requirements

The administrative requirements of the proposed regulations do not apply to business or private individuals. Therefore, there is no reporting requirement that applies to business.

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b)

Effect on Jobs/Businesses

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Regulation

The objective of the proposed regulations is to invest in public benefits associated with water storage. The benefit of this investment will support the statutory purposes associated with the program and promote ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreational purposes associated with water storage.

A detailed explanation of the benefits of the proposed regulation is in the Initial Statement of Reasons, under "Purpose of Proposed Regulations" on page 3.

DISCLOSURES REGARDING THE PROPOSED ACTION

The proposed regulation satisfies the Legislative and voter direction to develop and adopt a regulation on methods to quantify and manage public benefits of water storage projects. It also describes the process the Commission will use to solicit applications, review applications, and award bond funds to projects.

The proposed regulation does not authorize the \$2.7 billion of funding; nor does it specify when or where in the State the funds will be spent. The location and timing of spending will depend on what projects choose to apply for funds, are deemed eligible according to Proposition 1, and are chosen through the competitive process required by Water Code 79750(c). Spending of bond revenues is not expected until fiscal year (FY) 2018/19. Considering the requirements of the Act and other planning and permitting requirements, funding and construction of projects could begin in FY 2018/19 or FY 2019/20, or even later depending on the size or complexity of funded projects.

The regulation itself does not initiate a mandate for planning studies for eligible projects. Rather, most planning studies, feasibility studies and environmental documentation in particular, are required by the legislation and California Environmental Quality Act. Feasibility studies normally include a quantification of benefits, project costs, and a cost allocation. Therefore, even costs of quantifying public benefits cannot all be assigned to the regulation alone. However, because feasibility studies vary in their degree of detail, the Economic and Fiscal Impact Analysis considers all potential quantification costs.

The following summarizes the sections of the proposed regulation and the potential categories of economic and fiscal impact:

- Section 6000. Definitions clarify how words and phrases are used in the regulation.
- Section 6001. General Provisions describe eligibility criteria.
- Section 6002. General Selection Process includes evaluation considerations and the Commission's review and selection process.
- Section 6003. Funding Commitments describes how the Commission will provide funding to selected projects.
- Section 6004. Requirements for the Quantification of Benefits describes how public benefits and project costs should be quantified in physical and monetary terms.
- Section 6005. Priorities provides the ecosystem priorities developed by CDFW and the water quality priorities developed by the State Water Board.
- Section 6006. Relative Environmental Values provides the factors that will be used by CDFW and the State Water Board to determine the relative environmental value of the ecosystem and water quality benefits.
- Section 6007. Managing Public Benefits describes what assurances should be provided and the plan for monitoring, assurances, and reporting the public benefits provided by a project.

Costs potentially resulting from the Water Storage Investment Program regulation are:

- Costs to local agencies and other applicants to prepare information, submit applications, and respond to requests for further information
- Costs to local agencies and other applicants to attend meetings and workshops, and, if selected, to meet requirements for successful applicants
- Costs to the Commission and its staff to prepare and conduct the application solicitation
- Costs to the Commission and its staff to review applications.
- Costs to DWR, the State Water Board, CDFW, and other State agencies participating in the review process.
- The application and review process may indirectly result in costs to some private individuals and businesses through assessments, user fees, rates, or other mechanisms that the local proposing agencies use to fund application activities.

The following are conclusions of an economic and fiscal impact analysis for the proposed regulations:

- Costs will depend on the number of applicants that choose to participate in the Water Storage Investment Program. Based on an estimate of the probable range of applicants, costs to applicants resulting from the regulation could range from under \$3 million to nearly \$6 million over a four year period, and costs to state agencies for review of applications and interactions with applicants would be about \$5 million.
- The proposed regulation will not result in a significant or permanent change in the number of jobs within the state.
- No creation or elimination of businesses within the state would occur as a result of this proposed regulation.
- The proposed regulation would not affect the competitive advantages or disadvantages of businesses within the state.
- The proposed regulation would not significantly affect investment in the state.
- Incentives for innovation in business products, materials, or processes would not be affected.

ALTERNATIVES STATEMENT

The Commission must determine that no reasonable alternative considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

Commission staff has prepared an ISOR for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled "Initial Statement of Reasons."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the Commission's website listed below, or may be obtained from Elizabeth Perkins, California Water Commission, 901 P Street, Sacramento, California, 95814, (916) 651-7501.

The following materials are available for public review:

- Text of Proposed Regulation
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Materials Relied Upon
- Form 400
- Form 399
- Final Statement of Reasons (upon completion)
- Final Text of Regulation (upon completion)

These materials may be viewed in two ways:

- Visiting the Commission's website (<http://cwc.ca.gov>)
- Arranging an in-person review. Please contact Elizabeth Perkins (contact information is provided below).

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on the Commission's website (<http://cwc.ca.gov>).

Agency Contact Persons

Inquiries concerning the substance of the proposed regulatory action may be directed to:

Jennifer Marr
California Water Commission
901 P Street, Room 314
P.O. Box 924836
Sacramento, CA 94236
916-651-0156
Jennifer.Marr@water.ca.gov

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to:

Elizabeth Perkins
California Water Commission
901 P Street, Room 314
P.O. Box 924836
Sacramento, CA 94236
916-651-7501
Elizabeth.Perkins@water.ca.gov

The Commission staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the ISOR, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Commission's website for this rulemaking at <https://cwc.ca.gov/Pages/DocumentLibrary.aspx>.

HEARING PROCEDURES

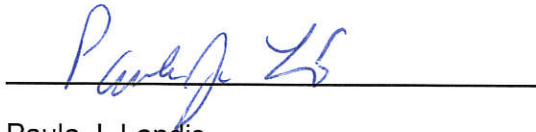
The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (beginning with section 11340).

Following the public hearing, the Commission may adopt the regulatory text as originally proposed, or with non-substantial or grammatical modifications. The Commission may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified text from the Commission contact persons listed in this notice.

The hearing location is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

CALIFORNIA WATER COMMISSION



Paula J. Landis
Executive Officer

Date: January 19, 2016