



Action Item: Commission Consideration of WSIP Site Visits and Applicant Presentations

BACKGROUND

In June 2017 the Commission adopted an *ex parte* policy (available at https://cwc.ca.gov/Documents/2017/WSIP/WSIP_ExPartePolicy.pdf) for the Water Storage Investment Program (WSIP), with the intent of protecting the fairness and integrity of the Commission's decision-making process. The policy emphasizes the importance of Commissioners remaining neutral and treating all applicants equally. Different *ex parte* rules apply in different phases of the WSIP. During the Application Period, which ended on August 13, 2017, *ex parte* communications and site visits were permissible, as long as Commissioners disclosed them at the next meeting of the Commission or by using the Commission's disclosure form. During the Application Review Period, which began August 14, 2017, until the Final Award,¹ *ex parte* communications (including site visits) are not allowed for projects with submitted applications. The policy for the application review period states:

- The Commission shall act as a body of State government with regard to WSIP applications, which means that *ex parte* communications regarding any application for WSIP funding may not occur.
- The Commission shall determine the consequences, possibly including recusal, of engaging in *ex parte* communications related to an application.
- The Commission shall decide, at a public meeting, if it will visit the site of any proposed project as a body of State government, what information would be obtained, how that information would be used in the evaluation of the application for that project, and how the information would be consistent with the regulations.
- The Commission shall conduct any site visits as public meetings, consistent with the requirements of the Bagley-Keene Open Meeting Act.

When the Commission discussed the *ex parte* policy at the June 2017 meeting, it considered the possibility of applicant presentations, as well as site visits, to obtain a better understanding of proposed projects. The Commission deferred any decision on site visits or applicant presentations until after applications were received.

On August 14, 2017, the Commission received 12 applications for projects located throughout California, including six surface storage projects, five conjunctive use projects, and one

¹ The Final Award is specified in the regulations (Cal. Code Regs. Title 23, section 6013).

groundwater storage project Each application is publicly available at <https://cwc.ca.gov/Pages/WSIP.aspx> and consists of many files and attachments, with most applications consisting of approximately 45 files. Each application includes an Executive Summary, which describes the facilities and operations, as well as the claimed public benefits of each project. This may be the most useful and descriptive document for the general, non-technical reader.

Currently, the Commission's staff and technical team is reviewing the applications. We anticipate releasing the public benefit ratios (PBRs) in January 2018, with the Commission's determination of PBRs likely to occur at the March Commission meeting. This schedule offers a window of opportunity from October through February (weather permitting) for site visits and/or applicant presentations.

SITE VISITS

Policy Considerations:

To be consistent with the *ex parte* policy, several questions should be considered in determining whether the Commission wishes to visit one or more proposed project sites:

- Should site visits occur prior to the resolution of all eligibility issues?
- Is there a need for site visits?
- What information would be obtained that is not included in the application?
- How will that information be used in evaluating the project?
- Would that information be consistent with the regulations?
- What are the implications for fairness if all commissioners do not participate in all scheduled site visits?

Logistical Considerations:

Site visit(s) would need to be conducted as a public meeting, consistent with the Bagley-Keene Open Meeting Act, which requires a 10-day advance public notice and provisions for the public to attend and participate in the site visits. Other site visit logistics include:

- travel and lodging arrangements for commissioners and staff;
- resolving site access constraints, and
- the possibility of inclement weather if visits occur late in the year.

APPLICANT PRESENTATIONS

As an alternative to site visits, the Commission may wish to consider inviting all applicants to make presentations during Commission meetings in October, November, and December. As with site visits, the Commission would need to determine what information would be provided at such presentations, how that information would be used, and how the information is consistent with the regulations.

Applicant presentations could assist the Commission in understanding the projects as explained in the applications. In the interests of fairness, the Commission would need to adopt some parameters governing the content and length of the presentations. To be consistent with the regulations governing the evaluation of the applications, presentation content would be limited to that which is in the application.

CONCLUSION

This first commission meeting after the close of the Application Period presents an opportunity for the Commission to revisit the question of whether to make site visits or invite applicants to present their projects to the Commission. The Commission may wish to discuss the various options described above for site visits and applicant presentations. The Commission may adopt a program of site visits or applicant presentations. Alternatively, the Commission may defer its decision until further evaluation of eligibility and technical analysis of the proposed projects.

Contact

Joseph Yun
Executive Officer
California Water Commission
(916) 651-9220