

WSIP Future Considerations

Summary

In July, the Commission made conditional commitments (called Maximum Conditional Eligibility Determinations or MCEs) to eight projects in the Water Storage Investment Program (WSIP). Applicants are now in the process of completing statutory requirements before returning to the Commission for their final award hearing. Each applicant drives its own timeline to complete requirements; no two applicants will have the same timeline. Some projects may be ready for their hearing in 1 to 2 years, with other projects taking longer. If one or more applicants do not complete the funding requirements, or the final award is less than the MCE, the Commission will have available WSIP funding.

The time frame for applicant activities prior to final award hearings allows the Commission time to consider future scenarios where an MCE amount is not met and whether it wishes to act on such potential scenarios. This staff report provides information regarding choices the Commission may make if funding becomes available. The Commission may act regarding this information at future meetings.

Background

The Commission made MCEs in July totaling \$2.581 billion, which would use all available WSIP funds. The July decisions are a milestone in the process that began with the passage of Proposition 1 in 2014. The Commission met the statutory deadline for developing and adopting program regulations and maintained a transparent process. Before returning to the Commission for a final award hearing, the applicants must now complete the Proposition 1 requirements, including:

- Completing final environmental documents;
- Obtaining the necessary permits;
- Entering into contracts for 100% of the non-program cost share; and
- Entering into contracts with administering State agencies for the administration of public benefits.

Depending on the complexity of the project, these efforts may take several years. However, all applicants must meet the interim statutory deadline of January 1, 2022 for:

- completed feasibility documents,
- public review draft environmental documents, and
- securing a 75% commitment for the non-program cost share,

Applicants may need time beyond January 1, 2022 to complete all requirements. Staff is working with applicants to establish accurate project implementation schedules.

The Commission's regulations are silent regarding what the Commission may do with funding if a project does not complete the statutory requirements or the Commission awards less than an MCED amount. Possible scenarios where returned funds may occur include:

- A project fails to meet the January 1, 2022 statutory requirements;
- The Commission revokes an MCED due to insufficient applicant progress toward statutory requirements (regulations section 6013 (f)(1)); or
- The Commission awards less than the MCED due to changes in the public benefits after the MCED decision (regulations section 6013(f)(4)).

These scenarios would occur in the future when current Commissioners, who are most familiar with recent WSIP decisions, may no longer be on the Commission. Commissioners may wish to provide future Commissions with advice regarding the use of WSIP funds that become available.

First Consideration – Whether to Advise Future Commissions

The Commission should first decide whether the current Commission should advise future Commissions on how to address potentially available WSIP funds.

The Commission may choose to take no action, and allow a future Commission to make WSIP decisions as issues arise. This approach would allow a future Commission to respond appropriately to circumstances and priorities that the current Commission cannot foresee. Advice or guidance from the current Commission could tie the hands of a future Commission. Such advice may not be necessary, as it is entirely possible that all eight projects proceed to final funding and all funds are utilized per current Commission decisions, rendering speculation about handling future scenarios unnecessary. One potential drawback of a no action approach is that a future Commission may not have the benefit of current Commissioners' WSIP experience or knowledge of program history. An additional drawback would be the uncertainty for applicants and stakeholders regarding how any future available funds would be handled. And finally, because individual project timelines will be different, the Commission may need to deal with funding becoming available at multiple points in time. By developing guidance or advice before those issues arise not only provides certainty, but also consistency and fairness from one instance to another.

If the Commission chooses to advise or guide a future Commission regarding future available funding, the Commission would then have to develop such advice, and determine the appropriate form of documentation.

Second Consideration – Commission Advice If Funding Becomes Available.

Advice to a future Commission should express the current Commission's priorities, and allow for flexibility for future circumstance.

Here is an example of how the Commission may express its priorities:

In the event WSIP funding becomes available because 2018 MCED amounts are not realized, the Commission would recommend using available funds in the following manner to the extent possible:

- 1) First priority would be to award funds toward Rank 3 projects to restore funding levels to the Applicant Request made in May 2018 (Table 1).
- 2) Second priority would be to award remaining funding to extend applicant funding to the Commission Approved Eligible Amount from May 2018 (Table 1).
- 3) After implementing priorities 1 and 2, consider conducting a new funding solicitation to support additional water storage projects.

Table 1. WSIP Maximum Conditional Eligibility Determination Summary

Project	Rank	Commission-Approved Eligible Amount (May 2018)	Applicant Request (May 2018)	Commission MCED (July 2018)
Pacheco Reservoir Expansion Project	2	\$484,550,000	\$484,550,000	\$484,550,000
South County Ag Program	2	\$280,530,000	\$280,500,000	\$280,500,000
Los Vaqueros Reservoir Expansion Project	2	\$459,000,000	\$459,000,000	\$459,000,000
Temperance Flat Reservoir Project	2	\$171,330,000	\$171,330,000	\$171,330,000
Chino Basin Conjunctive Use Program	2	\$206,900,000	\$206,900,000	\$206,900,000
Sites Project	3	\$1,008,280,000	\$916,620,000	\$816,377,686
Kern Fan Groundwater Storage Project	3	\$85,660,000	\$85,700,000*	\$67,537,315
Willow Springs Water Bank	3	\$123,290,000	\$123,290,000	\$95,405,999
Totals		\$2,819,540,000	\$2,727,890,000	\$2,581,601,000
Total Available				\$2,581,601,000

*amount needs to be capped at Approved Eligible Amount.

The Commission should bear in mind that because the Commission-Approved Eligible Amounts are based on values of public benefits consistent with the regulations, the Commission may not award funding beyond these amounts.

Also, if the Commission desires to change the regulations for a new solicitation, a rule-making process would be needed. The Commission would also need to balance the amount of funding available against the time and expense of the solicitation and rule-making process. Such concerns might be better addressed by a future Commission, rather than developing guidance to cover the wide range of possible situations.

Third Consideration –Documentation Options.

Should this Commission decide to provide advice on future WSIP issues, the Commission must consider how to document that advice.

The Commission could amend existing regulations to express its priorities. This approach would use the rulemaking process and take time to implement. If written with too much detail, this method could tie the hands of a future Commission. The benefit of using this method is that it would be the most effective way to implement the priorities. Written at the appropriate level, it would not overly restrict a future Commission and would maintain fairness and provide certainty.

Alternatively, the Commission could adopt a resolution stating the Commission's intent. This method would document intent without having the force of regulation. Future Commissions would have more latitude, but this method may provide less certainty for applicants and stakeholders.