

TO: Water Storage Exploratory Committee
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FROM: Chris Hakes, Deputy
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SUBJECT: Distribution of Additional Proposition 1
Water Storage Investment Program Funding

DATE: April 5, 2021

During the Water Storage Exploratory Committee on 2/28/21 there were questions raised about the timing of withdrawal decisions by proponents of projects funded by the Proposition 1 Water Storage Investment Program (WSIP). As you know, the Pacheco Reservoir Expansion Project (Pacheco Project) has qualified for WSIP funding in the amount of \$496,663,750, which includes a recent 2.5% inflation adjustment. This memo discusses the law and regulations governing WSIP grant funding, what would happen to a project's WSIP funding should that project not proceed, and scenarios under which that funding may be redistributed.

Withdrawal of WSIP Funded Projects

Not All WSIP Funded Projects Will Meet Statutory Deadline

Under [California Water Code Section 79757](#), all WSIP funded projects must comply with the following by 1/1/22: 1) all feasibility studies are completed and draft environmental documentation is available for public review; 2) the California Water Commission (CWC) has made a finding that the project is feasible and will help restore the ecological health and improve water management for the beneficial uses of the Delta; and 3) the Director of the California Department of Water Resources has received commitments for not less than 75 percent of the nonpublic benefit cost share of the project. Any projects that cannot meet this deadline will become ineligible; and the WSIP funds allocated to the project will revert to the state. Last October, the Temperance Flat Reservoir Authority informed the CWC, the administrator of the WSIP program, that their project will not achieve the 75% non-state funding requirement by the statutory deadline, thereby reverting to the state the \$171 million allocated to the Temperance Flat Reservoir Project.

Screening for a Second WSIP Grant Solicitation

In the months following the Temperance Flat Reservoir Authority's announcement, the CWC voted to allocate \$46 million of the reverted funding to two groundwater recharge projects that were not funded to their full eligibility amount in the first round of allocations. The CWC also approved the allocation of \$61 million for a 2.5% inflation adjustment for all WSIP funded projects, including the Pacheco Project. Finally, the CWC has held in reserve \$64 million to be allocated to new projects through a screening process for which applications are due on 10/22/21. The CWC must make a finding, not later than its December 2021 meeting, as to which projects have met the requirements of the 1/1/22 deadline; however, a determination of a grant amount for new projects would come in 2022. If the CWC moves forward with additional regulations and a second solicitation, only projects successful in the screening process would be eligible to apply.

At this time, it is unclear if the CWC screening for a second solicitation will yield projects that can meet the tight 1/1/22 deadline for completing draft environmental documents, submitting a feasibility study, and securing 75% of non-state funding. Another factor for prospective applicants is the relatively small amount of funds available for additional grants, currently only \$64 million. Water storage projects typically have costs measured in the hundreds of millions of dollars. The CWC could decide to split the funds available among several projects, making the grants smaller for individual projects.

Impacts and Timing of Withdrawals

If Valley Water decided not to move forward with the Pacheco Project by May or June of 2021, the potential applicants for the second WSIP grant solicitation may be more motivated to apply because the total funds available would grow from \$64 million to \$560 million. A delay beyond June 2021 in deciding not to proceed with the Pacheco Project increases the chances that the CWC would be left with too few qualified projects to fully use the additional funds made available by the withdrawal of the Pacheco Project, perhaps leaving hundreds of millions unallocated and unspent because no project could meet the statutory deadlines. It also is possible other projects with WSIP funding may fail to meet the statutory requirements in the final months or weeks before the 1/1/22 deadline.

Statutory Changes Require Approval by the Voters

[Water Code Section 79760 \(a\)](#), enacted by Proposition 1, requires that any amendments to Chapter 8 relating to WSIP must first pass both houses of the Legislature with a 2/3 vote and then appear on the statewide ballot for approval by a majority of California voters. If a decision to not proceed with Pacheco left hundreds of millions in state bond authorization in a legal limbo, the most viable way to resolve the issue is to amend Proposition 1 through another bond measure that would go to the voters on a 2022 statewide ballot or later.

Statutory Changes Both an Uncertainty and a Threat

The only option for statutory change to the Water Code provisions of Proposition 1 is adding language to a future statewide bond measure. While this is technically possible, there are numerous interests that would want to consume the unused Proposition 1 funds into the purposes of the new bond, which may or may not include a new round of applications for water storage projects. While [Water Code Section 79750 \(b\)](#) currently prohibits the repurposing of WSIP funds, that could be changed by the voters in another bond measure. Additionally, the threat of the unused funds being consumed by a future bond for other purposes is real. Including water storage funding in a bond makes 2/3 vote passage in the Legislature more difficult. There are numerous interests competing to be included in a statewide bond and few issues are as politically challenging as funding for dam construction.

Could the Pacheco Project Qualify for Additional Funding in the Second Solicitation?

Pacheco's Maximum Conditional Eligibility Determination

Both the statutory language and CWC regulations require that state funds only be spent on public benefits as defined in the statute and that a maximum of 50% of project costs can be paid by the state. The public benefits of the Pacheco project were already determined by the CWC and a Maximum Conditional Eligibility Determination (MCED) has been assigned to Pacheco of \$496,663,750. That is the maximum amount of funding that can be provided to the Pacheco project pursuant to the statute and the regulations as they are in place today.

CWC Reconsideration of Pacheco's MCED

One question that comes to mind is if the CWC could reconsider the MCED for the Pacheco Project based on a higher project cost, a revised requested amount, and qualifying public benefits not previously considered by the CWC. It is our understanding that the emergency water supply and environmental benefits scored for the project were higher than needed to get to the 50% funding limit. Recreation also has not been considered as a public benefit of the Pacheco Project. If reconsideration happens, Pacheco also might qualify for dual designation in more than one funding category, namely a "reservoir reoperation project," in addition to its existing designation as a "surface storage project." Our review of the Proposition 1 statute (Attachment 1) found no reason why the CWC could not adopt new regulations that would allow for a reconsideration of the MCED based on updated project information, especially if that reconsideration were requested by the project applicant. However, currently there is just \$64 million in funds available, not enough to address the Pacheco Project's cost increase issue.

Could Anderson Dam Qualify in the Second Solicitation?

Public Benefits and Timely Environmental Documents

The WSIP funding requirements are based on the concept that the state is investing in public benefits as defined in Proposition 1. Those public benefits include ecosystem improvements, water quality improvements, flood control benefits, emergency response, and recreational purposes. WSIP funded projects also must provide measurable improvements to the Delta ecosystem or to a tributary to the Delta. Valley Water's Anderson Dam Seismic Retrofit Project (Anderson Project) could possibly yield some of the required public benefits, but those benefits need to be above and beyond the existing obligations. Anderson Reservoir is south of Delta storage and may need to commit to some benefit to the Delta (e.g., for refuges). Finally, based on the current projected

release in 2021 of draft environmental documents for the Anderson Project, meeting the WSIP statutory requirements needed by the 1/1/22 deadline is possible should Valley Water pursue it.

An additional consideration is that Anderson Dam and its operations are paid solely by water rate payers. If Valley Water wants to use the reservoir to provide additional benefits not related to water supply and groundwater management, then another monetary source must be used to pay for those benefits. A one-time WSIP grant that would pay for additional, non-water supply benefits such as environmental enhancements, recreation, or flood protection, may need an additional funding source for the operation and maintenance of those facilities.

No Guarantee of Funding

Whether the Anderson Project could qualify for WSIP funding will be an uncertainty until the CWC decides on the award of funding. However, staff recommends further investigation into this possibility, with or without the Pacheco Project proceeding.

Key Conclusions

Risks in Delaying Decision Not to Proceed

If Valley Water decides to not proceed with the Pacheco Project in the second half of the 2021 calendar year or later, there is a risk that hundreds of millions in Proposition 1 WSIP funds would be trapped in a legal limbo, with the CWC unable to expend the funds on any project. Even if the Pacheco Project proceeds, other WSIP funded projects may fail to meet the 1/1/22 deadline, possibly leaving the state with funds that cannot lawfully be spent. While this legal limbo can be resolved by another statewide bond measure, it unclear if such a resolution is politically or logistically viable.

\$64 Million Grant Program Not Enough for Pacheco

While the Pacheco Project might qualify for additional WSIP funding, the current available funding for additional grants is just \$64 million. While that amount or even less would be helpful, it is not enough to address the Pacheco Project's cost increases.

A WSIP Grant for Anderson Should be Explored

The Anderson Project may qualify for a lower dollar WSIP grant request that would fit into the current \$64 million second solicitation, or a higher dollar grant request under a scenario where Pacheco or another large WSIP funded project withdraws from the program. These options should be explored and developed for further consideration with an eye toward the 10/22/21 application deadline.



Deputy Operating Officer
Dam Safety & Capital Delivery Division



Assistant Officer
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Attachment 1: Chapter 8 of Proposition 1 Water Storage Investment Program Statute

cc: R. Callender, M. Richardson, R. Gibson, A. Baker, C. Hakes, R. McCarter, M. Ozbilgin

BB
(2021-03-12 Memo on Timing of WSIP Withdrawals - Final)



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WATER CODE - WAT

DIVISION 26.7. Water Quality, Supply, and Infrastructure Improvement Act of 2014 [79700 - 79798] (*Division 26.7 added by Stats. 2014, Ch. 188, Sec. 8.*)

CHAPTER 8. Statewide Water System Operational Improvement and Drought Preparedness [79750 - 79760] (*Chapter 8 added by Stats. 2014, Ch. 188, Sec. 8.*)

79750. (a) Notwithstanding Section 162, the commission may make the determinations, findings, and recommendations required of it by this chapter independent of the views of the director. All final actions by the commission in implementing this chapter shall be taken by a majority of the members of the commission at a public meeting noticed and held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) Notwithstanding Section 13340 of the Government Code, the sum of two billion seven hundred million dollars (\$2,700,000,000) is hereby continuously appropriated from the fund, without regard to fiscal years, to the commission for public benefits associated with water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions, in accordance with this chapter. **Funds authorized for, or made available to, the commission pursuant to this chapter shall be available and expended only for the purposes provided in this chapter, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose.**

(c) Projects shall be selected by the commission through a competitive public process that ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided, pursuant to criteria established under this chapter.

(d) Any project constructed with funds provided by this chapter shall be subject to Section 11590.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79751. Projects for which the public benefits are eligible for funding under this chapter consist of only the following:

(a) Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, except for projects prohibited by Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code.

(b) Groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits.

(c) Conjunctive use and reservoir reoperation projects.

(d) Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79752. A project shall not be funded pursuant to this chapter unless it provides measurable improvements to the Delta ecosystem or to the tributaries to the Delta.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79753. (a) Funds allocated pursuant to this chapter may be expended solely for the following public benefits associated with water storage projects:

(1) Ecosystem improvements, including changing the timing of water diversions, improvement in flow conditions, temperature, or other benefits that contribute to restoration of aquatic ecosystems and native fish and wildlife,

including those ecosystems and fish and wildlife in the Delta.

(2) Water quality improvements in the Delta, or in other river systems, that provide significant public trust resources, or that clean up and restore groundwater resources.

(3) Flood control benefits, including, but not limited to, increases in flood reservation space in existing reservoirs by exchange for existing or increased water storage capacity in response to the effects of changing hydrology and decreasing snow pack on California's water and flood management system.

(4) Emergency response, including, but not limited to, securing emergency water supplies and flows for dilution and salinity repulsion following a natural disaster or act of terrorism.

(5) Recreational purposes, including, but not limited to, those recreational pursuits generally associated with the outdoors.

(b) 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.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79754. In consultation with the Department of Fish and Wildlife, the state board, and the Department of Water Resources, the commission shall develop and adopt, by regulation, methods for quantification and management of public benefits described in Section 79753 by December 15, 2016. The regulations shall include the priorities and relative environmental value of ecosystem benefits as provided by the Department of Fish and Wildlife and the priorities and relative environmental value of water quality benefits as provided by the state board.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79755. (a) Except as provided in subdivision (c), no funds allocated pursuant to this chapter may be allocated for a project before December 15, 2016, and until the commission approves the project based on the commission's determination that all of the following have occurred:

(1) The commission has adopted the regulations specified in Section 79754 and specifically quantified and made public the cost of the public benefits associated with the project.

(2) The project applicant has entered into a contract with each party that will derive benefits, other than public benefits, as defined in Section 79753, from the project that ensures the party will pay its share of the total costs of the project. The benefits available to a party shall be consistent with that party's share of total project costs.

(3) The project applicant has entered into a contract with each public agency identified in Section 79754 that administers the public benefits, after that agency makes a finding that the public benefits of the project for which that agency is responsible meet all the requirements of this chapter, to ensure that the public contribution of funds pursuant to this chapter achieves the public benefits identified for the project.

(4) The commission has held a public hearing for the purposes of providing an opportunity for the public to review and comment on the information required to be prepared pursuant to this subdivision.

(5) All of the following additional conditions are met:

(A) Feasibility studies have been completed.

(B) The commission has found and determined that the project is feasible, is consistent with all applicable laws and regulations, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(C) All environmental documentation associated with the project has been completed, and all other federal, state, and local approvals, certifications, and agreements required to be completed have been obtained.

(b) The commission shall submit to the Legislature its findings for each of the criteria identified in subdivision (a) for a project funded pursuant to this chapter.

(c) Notwithstanding subdivision (a), funds may be made available under this chapter for the completion of environmental documentation and permitting of a project.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79756. (a) The public benefit cost share of a project funded pursuant to this chapter, other than a project described in subdivision (c) of Section 79751, shall not exceed 50 percent of the total costs of any project funded under this chapter.

(b) No project may be funded unless it provides ecosystem improvements as described in paragraph (1) of subdivision (a) of Section 79753 that are at least 50 percent of total public benefits of the project funded under this

chapter.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79757. (a) A project is not eligible for funding under this chapter unless, by January 1, 2022, all of the following conditions are met:

(1) All feasibility studies are complete and draft environmental documentation is available for public review.

(2) The commission makes a finding that the project is feasible, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(3) The director receives commitments for not less than 75 percent of the nonpublic benefit cost share of the project.

(b) If compliance with subdivision (a) is delayed by litigation or failure to promulgate regulations, the date in subdivision (a) shall be extended by the commission for a time period that is equal to the time period of the delay, and funding under this chapter that has been dedicated to the project shall be encumbered until the time at which the litigation is completed or the regulations have been promulgated.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79758. Surface storage projects funded pursuant to this chapter and described in subdivision (a) of Section 79751 may be made a unit of the Central Valley Project as provided in Section 11290 and may be financed, acquired, constructed, operated, and maintained pursuant to Part 3 (commencing with Section 11100) of Division 6.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79759. (a) The funds allocated for the design, acquisition, and construction of surface storage projects identified in the CALFED Bay-Delta Record of Decision, dated August 28, 2000, pursuant to this chapter may be provided for those purposes to local joint powers authorities formed by irrigation districts and other local water districts and local governments within the applicable hydrologic region to design, acquire, and construct those projects.

(b) The joint powers authorities described in subdivision (a) may include in their membership governmental partners that are not located within their respective hydrologic regions in financing the surface storage projects, including, as appropriate, cost share participation or equity participation. Notwithstanding Section 6525 of the Government Code, the joint powers agencies described in subdivision (a) shall not include in their membership any for-profit corporation or any mutual water company whose shareholders and members include a for-profit corporation or any other private entity. The department shall be an ex officio member of each joint powers authority subject to this section, but the department shall not control the governance, management, or operation of the surface water storage projects.

(c) A joint powers authority subject to this section shall own, govern, manage, and operate a surface water storage project, subject to the requirement that the ownership, governance, management, and operation of the surface water storage project shall advance the purposes set forth in this chapter.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)

79760. (a) In approving the Water Quality, Supply, and Infrastructure Improvement Act of 2014, the people were informed and hereby declare that the provisions of this chapter are necessary, integral, and essential to meeting the single object or work of the Water Quality, Supply, and Infrastructure Improvement Act of 2014. As such, any amendment of the provisions of this chapter by the Legislature without voter approval would frustrate the scheme and design that induced voter approval of this act. **The people therefore find and declare that any amendment of the provisions of this chapter by the Legislature shall require an affirmative vote of two-thirds of the membership in each house of the Legislature and voter approval.**

(b) This section shall not govern or be used as authority for determining whether the amendment of any other provision of this act not contained in this chapter would constitute a substantial change in the scheme and design of this act requiring voter approval.

(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)