

INSTREAM FLOW WATER PURCHASE PROGRAM

GRANT GUIDELINES / PROCEDURAL GUIDE

**STATE OF CALIFORNIA
NATURAL RESOURCES AGENCY AND DEPARTMENT OF WATER
RESOURCES**

June 2023

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HOW TO SUBMIT REQUIRED DOCUMENTS

All documents are submitted using the Department of Water Resources Grants Review and Tracking System (GRanTS), which can be found at: <http://www.water.ca.gov/grants/>

The name of this Program in GranTS is “Instream Flow Water Purchase Program.” To access this PSP, applicants must have an account in GranTS or register if they have not already done so.

Applicants are encouraged to review the GranTS Quick Reference Guide and Frequently Asked Questions available at the above link and set up their GranTS account well in advance of the application deadline. If an applicant has issues with GranTS or questions related to the application, they may contact DWR at the phone number or e-mail listed below.

For technical assistance with GranTS, please contact the GranTS Help Desk.

Hours:

Monday: 8:00 am to 5:00PM

Tuesday-Friday: 8:00AM-6:00PM

Phone: (888) 907-4267

Email: Grantsadmin@water.ca.gov

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INTRODUCTION

These guidelines govern the administration of appropriations from the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 (Proposition 68) as well as general funds from budget appropriations for the same purpose to implement projects pursuant to Public Resources Code Section 80114 and Water Code Sections 79732 and 79736. Collectively, this set of guidelines shall set out the process for seeking funding under California Natural Resources Agency (CNRA) and/or the Department of Water Resources' (DWR) "Instream Flow Water Purchase Program (WPP)."

Voters and the Legislature have authorized funding of projects that measurably enhance streamflow at a time and location necessary to provide fisheries or ecosystem benefits or that improve upon existing flow conditions (Cal. Pub. Res. Code § 80114 and Chapter 240, Statutes of 2021 (Senate Bill 170)). To ensure the greatest environmental benefit, promote the recovery of species, and improve upon existing flow conditions, the WPP program shall focus on funding the acquisition of instream flows in the Sacramento-San Joaquin watershed provided January through June, with priority for flows provided in dry and critically dry water year types as further explained in these guidelines. The State¹ has determined that instream flows provided during this period will improve upon existing conditions in a manner that will promote species recovery and environmental enhancement.

The sole focus of this WPP program shall be on establishing financial instruments and agreements necessary to ensure water for beneficial instream flows is made available from those with legal rights to use or dedicate water. Eligible applicants include individuals, corporations, trusts and other legal entities that hold title to water rights, non-profits, and public local entities that meet minimum requirements set forth in these Guidelines.

Funding Allocation

The 2021 Budget Act included funding within the Water Resilience and Drought Response Package for Water Resilience Projects—of the total amount, up to \$125 million is available from the Protecting California's Rivers, Streams, and Watersheds Grant Program (Proposition 68) and up to \$235 million is available from the General Fund (excepting allowable State administrative costs).

OVERVIEW OF THIS SOLICITATION PROCESS

The process for obtaining an award of funding through this program shall be conducted in three phases, as described below.

As shall be further described in this solicitation, the minimum qualifications will require applicants to provide at least 2,000 acre-feet of water through sale, lease, license, dedication or other binding mechanism, including forbearance, for purposes of instream flow enhancement between January 1st and June 30th in every water year type in which the water right holder

¹ For purposes of administering these guidelines "State" means CNRA and DWR. For all other purposes State is defined in Appendix D.

proposes to provide water. These flows must be provided in the Sacramento-San Joaquin Delta Watershed for at least 10 water years (subject to negotiation if only provided in specific water year types), unless a proponent is seeking to act as a block grantee, in which case the required minimum volume of water provided will be 5,000 acre-feet or greater. In such cases, all other minimum qualifications shall remain the same.

PHASE 1- Statement of Preliminary Proposal

In Phase 1, applicants shall provide simple statements of their preliminary proposal to provide measurable enhancements to instream flows. A template has been provided as Appendix B that applicants should use to provide the information sought in this phase. Additional submissions may be included with the template, but the template must be filled out in its entirety. The State will evaluate those proposals to ensure they meet minimum qualifications and are potentially feasible. A preliminary feasibility assessment will include, but not be limited to the following factors:

1. Understanding full ownership of the rights for the proposed water supply.
2. The cost value of the proposed water supply.
3. Volume of water in acre-feet; total and per day/week/month, as applicable.
4. Location:
 - a. Water course (river/tributary, etc.).
 - b. Point of flow availability (existing diversion point, project discharge location, etc.).
 - c. River mile(s) of intended instream beneficial use, if extending beyond point of flow availability.
 - d. Water source (change in use, fallowing, pumping, etc.).
5. Water year types and seasonality (months, weeks, days). Flows must be provided between January 1st and June 30th.
6. Flexibility – inter-annual and seasonally.
7. Term of commitment. Minimum of 10 years, with preference given to 15-year or longer commitments. The term of commitment is subject to negotiation if only offered in specific water year types.
8. The feasibility of the mechanism the applicant proposes to provide the flows in-stream.
9. Timing and availability of the water (i.e., does it require additional permitting, change of use, or other regulatory approvals to be made available).
10. Risk of diversion by downstream water rights holders and the timing and feasibility of any proposed protective measures (Water Code §1707 petition, etc.).

The Phase 1 assessment will also include a preliminary assessment of alignment with State priorities, including the following:

1. Augmented flows in any water course (e.g., river or stream, etc.) within the Sacramento-San Joaquin Delta Watershed that can be made available below the furthest downstream storage reservoirs.
2. Flows expected to add to existing Delta Outflow during spring (e.g., March, April, and May) will be prioritized.
3. Flows that can be provided expeditiously (within the next 2 years) will be prioritized.

4. Relative benefits of ecosystem and other environmental enhancements provided by the proposed instream flow increases.
5. Seniority of the water rights used to implement the proposal.
6. Risk of lack of availability based on priority of right, including during dry and/or critically dry years and due to curtailment during drought.
7. Providing flows during dry and/or critically dry years.
8. Benefits to water quality in impaired water courses (303(d) listed).
9. Likelihood of resulting in increased Delta outflow in addition to any local water course streamflow improvements.

A list including these, and other State priorities can be found on page 9. The applicant does not need to demonstrate alignment with these priorities, but the State will consider these priorities when assessing each preliminary proposal and reserves the right to negotiate on cost or any other provision of a proposal.

To contribute to understanding the values of water offered for sale, the State will assess the simple cost value of each proposal by dividing the total cost of the proposed project by the acre-feet of water being provided over the course of the project's proposed life. The cost per acre foot of water will not be determinative of the best value water for purposes of funding under this program. The State may invite proposers to advance to Phase 2 with varying costs per acre foot, if their preliminary proposals meet other priorities, including those specified above.

The State also reserves the right to contact proposers to ask questions, test the offer being made, and seek adjustments during this phase. Statements of Preliminary Proposal and other information provided during this phase shall be confidential until such time as applicants affirmatively accept invitations from the State to apply to Phase 2.

PHASE 2- Proposal Development

Applicants with preliminary proposals that meet minimum qualifications, are deemed feasible, provide superior benefit, and are deemed best aligned with State priorities shall be invited to move into Phase 2.

During Phase 2, the State will analyze several factors and priorities when selecting and developing a proposal, in addition to those listed in Phase 1. The State will provide applicants with an opportunity to provide information relevant to the factors and priorities that will help it better evaluate the proposals. The State will have sole discretion to determine whether proposals are moved to Phase 3, in consideration of potential benefits and analysis of the factors and priorities.

Factors that the State will consider include, but are not limited to, the following:

1. Local and regional interests, including the relationship the proposal would have on surrounding land and water uses, tribal rights and communities, and environmental justice or disadvantaged communities.

2. Potential groundwater impacts. (e.g., compliance with the Sustainable Groundwater Management Act, impacts to conjunctive use systems that rely on recharge, etc.).
3. Land use constraints and other property right considerations.
4. Time required to secure any State, federal and local regulatory approvals necessary to implement the proposal.
5. Planning, execution and contracting considerations, including feasibility of implementation.
6. Impact on other public beneficial uses, such as recreation.
7. Scientific research opportunities.
8. Total project cost and cost value of comparable water sources.

The State may develop additional factors when evaluating proposals. The State may require applicants to provide additional information related to the above factors or potential project modification, to provide additional information to allow further analysis of factors considered in Phase 1, or to engage in further negotiation on specific elements of a proposal. This phase might also include State assistance in evaluating whether changes to storage and use can be made to ensure water availability during certain times; however, where applicable, applicants shall ultimately be responsible for obtaining agreements necessary to use stored water for instream flows.

Additional Funding Considerations

The State reserves the right to also consider other factors in the final grant awards such as, but not limited to, economic benefits, regional significance, and the geographic distribution of bond funds, particularly in areas of disadvantage. Partial funding may be considered in cases where other funding (e.g., grants, State, federal, or local, etc.) may be available.

PHASE 3 – Execution of Grant Agreements

Once proposals are fully developed, an evaluation shall be undertaken by the State to determine which proposals to award grant funding to and from which funding source the grant will be awarded (DWR or CNRA). The State shall include, where relevant, experts at the California Department of Fish and Wildlife and other agencies in this evaluation.

The State shall compare the proposals that best achieve its priorities and issue letters of intent to award to the proposals expected to contribute most toward the priorities and factors described above. It shall publish notices of intent to award that are sent to project proposers. If a proposer rejects the award, the State will evaluate whether it has sufficient funds to offer an award to the next best performing proposed project. Note, the State reserves the right to refrain from making subsequent offers if applicants who have received an intent-to-award letter withdraw.

Successful applicants who receive formal intent-to-award notices will then work with State staff to develop and execute grant agreements that memorialize their project's terms and conditions.

All grant agreements shall include detailed budgets, workplans, and timelines for instream flow provision, including any planning, permitting or other work that needs to be completed prior to full implementation. No funding for flows shall be provided until all assessment and evaluation work is completed. If planning, permitting, or water rights or place-of-use changes are required, project scope and budgets shall be organized into phases. The grant agreements shall identify the timelines and costs for completion of such phases.

Note, if for any reason projects cannot provide the full volume of proposed flows once all preliminary valuation and planning work is complete, the State shall work with the grantee to develop a plan to deliver the full amount or reduce the value of the grant according to pre-existing damage schedules outlined in the grant agreements, at the State's sole discretion. After project implementation, if monitoring demonstrates that the full volume of anticipated flows is not realized within the water year types and/or term of commitment specified in the grant agreement, grantee may be required to provide flows in additional water year types and/or extend the term of commitment. The State shall also reserve the right to terminate grants that cannot provide the proposed benefit.

Grant Amounts

The State shall not identify a cap on the maximum amount of award under this program and expects there to be variation in offers made relative to the cost per acre-foot of water depending on location and other factors. However, the State will favor greater volumes of water and longer time periods (all other considerations being equal), and all projects must provide a minimum of 2,000 acre-feet per year of water over 10 years between January and June in the Sacramento-San Joaquin Delta watershed (subject to negotiation if provided in only specific water year types).

PROJECT REQUIREMENTS

Statutory Authority

Per Section 80114 of the Public Resources Code, funds may be used for purposes of Sections 79732 and 79736 of the Water Code, and Chapter 240, Statutes of 2021 (Senate Bill 170).

Tribal Consultation

The State recognizes the need for meaningful consultation regarding projects that affect California Native American tribes and tribal communities that are affected by proposed projects. Where applicable, the State shall solicit tribal consultation for proposals that have been selected for invitation to Phase 2. In cases where the applicant is a public entity, it shall engage in consultation, using those lists required by Assembly Bill 52 (Chapter 532, Statutes 2014) and maintained by the Native American Heritage Commission, and consistent with CNRA consultation policy (https://resources.ca.gov/-/media/CNRA-Website/Files/Tribal-Policy/Final_Tribal_Policy.pdf).

Project Proposals

All Phase 1 statements of project preliminary proposals shall be submitted via GranTS (Grant Review and Tracking System). Applications will be accepted on a rolling basis until funds have been awarded. However, applicants are encouraged to apply before October 1, 2023. They shall provide the following information on the template in Appendix B:

- 1) The name and nature of the project applicant (individual, entity, organization).
- 2) The basis of project applicant's eligibility.
- 3) The water rights and/or water rights agreements held by or benefitting the applicant that will be used to implement the proposal. If the rights are not fully owned by the applicant, the applicant should specify how the applicant has or will have the right to purchase, transfer, lease, exchange, forebear, dedicate or otherwise control the offered water by the time of grant execution.
- 4) The volume of water being provided (per day/week/month, as applicable), which shall not be less than 2,000 acre-feet between January 1st and June 30th each year that water is being provided.
- 5) Water year types and seasonality (months, weeks, days). Flows must be provided between January 1st and June 30th.
- 6) Flexibility – inter-annual and seasonally.
- 7) Location:
 - a. Water course (river/tributary, etc.).
 - b. Point of flow availability (Existing diversion point, project discharge location, etc.).
 - c. River mile(s) of intended instream beneficial use, if extending beyond point of flow availability.
 - d. Water source (change in use, fallowing, pumping, etc.).
- 8) The term of commitment, which must be for a minimum of 10 years (with a preference for 15 years or more and subject to negotiation if only offered in specific water year types). If the applicant is offering water in perpetuity, it will identify the project as a perpetual dedication.
- 9) The modifications to infrastructure necessary to implement the proposal.
- 10) Whether the proposal, including any related dedications (Water Code §1707), would require a change-of-use petition or other formal process, authorization, or permit from any state or federal entity, and the current status of regulatory approvals and expected date of completion.
- 11) When the applicant believes the flows can be made available, including necessary operational and other infrastructure or storage allocation changes.
- 12) The total project cost sought by the applicant for all costs.

Statements of preliminary proposals and other information provided during Phase 1 shall be confidential until such time as applicants affirmatively accept invitations from the State to apply to Phase 2. If information is provided that requires confidentiality beyond that period, applicants will need to contact the State. The State will maintain confidentiality of information submitted subject to existing laws, including its obligations under the Public Records Act. However, it is

important for public transparency for the State to pay reasonable and fair market value and all final costs set forth in any executed Grant Agreements shall be made publicly available.

Eligible Applicants

Eligible applicants for General Funds include individuals, entities that hold water rights, including corporations and trusts (for example, limited liability corporations), public agencies, nonprofit organizations, public utilities (including water and irrigation districts), federally recognized Native American tribes, non-federally recognized California Native American tribes, and mutual water companies.

Proposition 68 limits eligibility as follows: public agencies, nonprofit organizations, public utilities (including water and irrigation districts), federally recognized Native American tribes, non-federally recognized California Native American tribes, and mutual water companies (Water Code section 79712).

For individuals, corporations, trusts and other legal entities not specified in Water Code section 79712, funding shall be provided only from General Fund sources, and the State encourages partnerships with public entities or non-profits where feasible and appropriate, given that limitation.

Applicants are not required to specify whether their project seeks General Funds or Proposition 68 funding. The State will determine the appropriate funding source for individual projects before issuing letters of intent to award.

Eligible Projects

Funds may be used for projects that provide, and are subject to, the following:

- A minimum of 2,000 acre-feet of water, that measurably enhances instream flows, unless a proposer is seeking to offer a block grant program, in which case a minimum of 5,000 acre-feet of water must be made available
- Augmented flows in any water course (e.g., river or stream, etc.) within the Sacramento-San Joaquin Delta Watershed that can be made available below the furthest downstream storage reservoirs.
- The water must be provided during the months of January through June during all years the project is making water available.
- All proposals must be for a minimum of 10 years (with a preference for 15 years or more and subject to negotiation if only offered in specific water year types).
- Grants may fund the purchase of water rights or contractual rights to use water without associated land. Applicants shall have the option of seeking a formal dedication via Water Code section 1707 but may also use other mechanisms to protect instream flows. However, permanent water right dedications require formal dedication via section 1707 and the State may require the grantee to include proposed water right terms and conditions in any related petition to the State Water Board to assure the dedication in perpetuity for the intended purpose. No matter how a grantee intends to ensure the flows are provided instream, all grant agreements shall require annual State Water Board

diversion and use reporting, as applicable, and access by State staff for measurement purposes.

- Offers may include forbearance of riparian use. However, such forbearance must include information on how such water will be made available during January through June, how water will be protected from diversion by downstream diverters, and how such water will be an additive instream flow contribution (e.g., grantee cannot forebear riparian use and divert the same volume of water under another type of water right [permit, license, etc.]).
- Valuation of offered water shall be required by the State to show the cost value of the flows provided are reasonable. The State reserves the right to use internal technical staff for this review, or to require grantee to pay a third party for such valuation. Third-party valuation work may be funded by the grant and must be complete prior to any funding released for implementation, and within a time frame agreed upon by the State and the grantee. Failure to timely submit such valuations shall be grounds for termination of the grant at the State's discretion.
- Project types that may be eligible include, but are not limited to:
 - Water transactions such as lease, purchase, transfer, dedication, or exchange;
 - Change-of-use petitions to benefit fish and wildlife;
 - Forbearance of use of water rights including but not limited to fallowing irrigated lands, refraining from pumping contract supplies, or otherwise reducing consumptive uses;
 - Water that requires infrastructure improvements that allow for provision of water to be dedicated to measurably enhancing stream flows;
 - Reservoir reoperations both at existing and new storage sites that allow for provision of water to be dedicated to measurably enhancing stream flows.
- No funds may be expended for existing mitigation obligations imposed on any party under law.
- If activities such as a formal instream dedication pursuant to Water Code section 1707, or modifications to a water storage or water conveyance system, are included in the proposed project, the acquisition and implementation activities must be clearly differentiated as separate tasks in the work plan, budget, and budget justification. All offers should demonstrate how they will verify water has been made available in those years it is required by the grant agreements.

Block Grants

Block grants may provide a lump sum of funding to an entity which will then disburse those funds as smaller grants to other eligible entities. The purpose of block grants is to fund numerous smaller projects that collectively result in stream flow benefits, reducing the staff capacity needed to manage numerous small grants. A block grant agreement would specify any requirements for the ultimate recipients of the funds. The entity shall need to be eligible under the terms of either fund source to participate in the block grant program and will ultimately be responsible for delivery of the water, so will need to demonstrate an unconditional legal ability to offer it for sale to the State. However, for purposes of block grants, project proponents must establish they can provide no less than 5,000 acre-feet of water for a minimum of 10

years, with preference given to 15-year or longer commitments. The term of commitment is subject to negotiation if the proposal offers water only in specific water year types. All other eligibility requirements remain the same.

PROJECT PRIORITIES

The following are funding priorities and factors for Instream Flow Water Purchase Program projects that shall be considered by the State in a factored evaluation of value as specified above for Phases 1 and 2, but which may be evaluated during all phases:

- Augmented flows in any water course (e.g., river or stream, etc.) within the Sacramento-San Joaquin Delta Watershed that can be made available below the furthest downstream storage reservoirs.
- Flows expected to add to existing Delta Outflow during spring (e.g., March, April, and May) will be prioritized.
- Flows that can be provided expeditiously (within the next 2 years) will be prioritized.
- Relative benefits of ecosystem and other environmental enhancements.
- Hierarchy and seniority of the water rights used to implement the proposal and low relative risk of lack of availability based on priority of right, including due to curtailment during drought.
- Availability of water during dry and/or critically dry years.
- Benefits to water quality in impaired water courses (303(d) listed).
- Likelihood of resulting in increased Delta outflow in addition to any local water course streamflow improvements.
- Local and regional interests, including the relationship the proposal would have on surrounding land and water uses, tribal rights and communities, and environmental justice or disadvantaged communities.
- Potential groundwater impacts (e.g., compliance with the Sustainable Groundwater Management Act, impacts to conjunctive use systems that rely on recharge, etc.).
- Land use constraints and other property right considerations.
- Schedules of State, federal and local regulatory approvals necessary to implement the proposal.
- Planning, execution and contracting considerations, including feasibility of implementation.
- Impact on other public beneficial uses, such as recreation.
- Scientific research opportunities.
- Total project cost and relative cost value of comparable water sources.
- Projects that leverage other funding.
- Projects that meet multiple state priorities.

Compliance with Existing Applicable Laws

Grantees are required to comply with all applicable state and federal laws.

Prior to approval and distribution of grant funds, every proposed project shall comply with the California Environmental Quality Act, Division 13 (commencing with section 21000; 14 California Code of Regulations section 15000 *et seq.* ["CEQA"]). Where CNRA or DWR are

lead agency, they shall work with applicants to identify appropriate CEQA compliance and allow those costs to be submitted via the grant. Where grantee is a public agency, it or other local entities shall act as lead agency and shall work with the State to establish appropriate CEQA review, which might also result in an exemption. The State reserves the right to seek project modifications based on the results of CEQA review. Projects providing anticipated environmental benefits may meet the requirements for CEQA exemptions, such as the exemption in Public Resources Code 21080.56, and the State shall work to ensure “green tape” is cut for applicants to the extent possible. The State reserves the right to seek project modifications based on the results of CEQA review.

Eligible Costs

The State shall pay for the value of the water to be produced instream. All costs directly related to producing water instream are eligible. Planning and other preliminary costs, including CEQA and environmental/regulatory compliance, are considered costs of the project; however, the State reserves the right to modify or terminate the grant upon completion of those processes where necessary. All eligible project costs must be supported by appropriate documentation and included in the overall cost requested for the project.

The State is funding the production of a volume of water instream as specified in the grant agreement. Subject to compliance with the grant agreement, these Guidelines, and State, Federal and local law, the grant may fund all direct costs incurred to produce, measure and monitor said water. The allocation of costs to specific cost categories will generally be up to the grantee to determine, although the overall cost value of the water produced must be reasonable and the State will consider the types and amounts of cost allocations when analyzing the feasibility of a specific proposal.

Direct project-related cost categories that are eligible for funding include, but are not limited to:

- Personnel or employee services directly related to project execution.
- Water Acquisition – Costs of acquiring water rights or contractual rights to water that will lead to a direct and measurable stream flow enhancement.
- Construction (if applicable) – All necessary labor and construction activities, from site preparation (including demolition, excavation, grading, soil/water testing, monitoring during construction, on-site/field supervisor, etc.) to the completion of the project.
- CEQA and other environmental/regulatory compliance.
- Water measurement to confirm production of instream flow.
- Monitoring to confirm flows remain instream as intended.
- Costs related to Statements of Diversion and Use of Water and other State Water Board compliance requirements.
- Costs related to applications or petitions filed with the State Water Board necessary for project implementation.

As applicable, projects must comply with all provisions of Section 1771.5 of the California Labor Code. Include prevailing wages in the cost estimates, as applicable. Refer to the Department

of Industrial Relations' Division of Labor Statistics and Research Web site at (<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>) for general prevailing wage determinations.

Conflict of Interest

All applicants and individuals who participate in the review of submitted applications are subject to state and federal conflict of interest laws. Any individual who has participated in planning or setting priorities for a specific solicitation over and above the public comment process or who will participate in any part of the grant development and negotiation process on behalf of the public is ineligible to receive funds or personally benefit from funds through that solicitation. Failure to comply with conflict-of-interest laws, including business and financial disclosure provisions, will result in the application being rejected and any subsequent grant agreement being declared void.

Other legal actions may also be taken. Applicable statutes include, but are not limited to, California Government Code section 1090 and Public Contract Code sections 10365.5, 10410, and 10411.

SUBMITTALS

Statements of Preliminary Proposals and all documents are required to submit an online Project Information Package in GrantTS (DWR's Grant Review and Tracking System). No hard copies of the Project Information Package are required.

Phase 2 Invitation to Apply – SUPPORTING DOCUMENTATION THAT WILL BE REQUIRED OF ALL APPLICANTS

Those applicants invited to submit a full project proposal shall provide the following documentation in addition to any other information requests sought by the State or its partner experts:

For All Projects –

- 1. Location Map** – Provide directional map, with enough detail to allow a person unfamiliar with the area to locate the project site. Include any other maps or aerial photographs as appropriate. Streets and other notable landmarks should be clearly marked to allow for easy identification. Alternatively, provide a map detailing the river or stream system intended to benefit from enhanced instream flows. For projects utilizing existing water rights, also provide any place of use maps associated with the water rights including any official maps on file with the State Water Board.
- 2. Signed Authorizing Resolution Where Applicable** – Provide a signed authorizing resolution from grantee's governing board authorizing or delegating authorization to accept the terms and conditions of a grant agreement (Appendix A).
- 3. Eligibility for Nonprofit Grantees** – If applicable, provide evidence that:

- a. The corporation is qualified under Section 501(c)(3) of the Internal Revenue Service Code. An IRS 501(c)(3) Determination Letter or printout from the IRS tax-exempt organization search tool on the official IRS website is sufficient. See <https://apps.irs.gov/app/eos/>; and
 - b. The corporation has an active status with the Secretary of State. A printout from the Secretary of State business search web page showing the corporation is Active is sufficient. See <https://bizfileonline.sos.ca.gov/search/business>; and
 - c. The corporation is current with the Attorney General's Registry of Charitable Trusts. A printout from the Department of Justice Registry verification search page showing the corporation's registration is Current is sufficient. See <https://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>
- 4. Funding Plan** – Provide a detailed plan with specific information about the status of other funding needed to complete the project, including status of arrangements with each funder and a timeline for funding decisions, if relevant.
 - 5. Proof of Ownership** – Provide verification via declaration under penalty of perjury of current ownership of each water right or contractual right to water being relied upon and ability to commit the rights to project implementation. All documents verifying ownership must be supported by recorded documents, court decrees, permits or licenses issued by the State Water Board, or contracts with water right holders for which such documents are available. Also provide copies of Statements of Water Diversion and Use filed with the State Water Board for a minimum of the last five (5) years, or an explanation of why these are not available (e.g., the right is new or less than five years old, etc.).
 - 10. Evidence of Willing Participant** if brokering the transaction– Provide a letter from each water rights owner indicating they are a willing participant in the proposed transaction. The letter should clearly identify rights owned by each participant and state that if grant funds are awarded, the participant is willing to enter into an agreement for the use and/or sale of the water rights at a specified purchase price (not to exceed fair market value). If applicable, include a copy of the fully executed purchase option agreement.
 - 11. Timeline** – Provide timeline for major project milestones and budget necessary to achieve them.
 - 12. Project Permit/Approval Status** – Indicate the types of permits and approvals necessary to complete the project, permitting submittal and acquisition status, and potential project delays due to permitting.
 - 13. Sustainable Groundwater Management Act** – Potential groundwater impacts known to the applicant, including any necessary Sustainable Groundwater Management Act compliance requirements and impacts to conjunctive use systems that rely on recharge.
 - 14. Environmental Compliance** – If applicant will be CEQA lead agency, at a minimum, provide a copy (One copy only) of any draft Categorical or Statutory Exemption proposed to be filed upon intent to award or otherwise specify the status and intended process of CEQA review.

Changes to Approved Project

Grantees seeking changes or amendments to an approved project must obtain the State's approval. Changes in project scope must continue to meet the need cited in the original proposal. Grantees who make changes without prior notice to and approval by the State may jeopardize funding.

Payment of Grant Funds

Funds cannot be disbursed until there is a fully executed Grant Agreement between the State and the grantee. It generally takes 6-8 weeks to receive payment once a complete Payment Request has been submitted.

For projects that require no construction or physical modification of water storage or delivery infrastructure, payment will generally be made upon a determination by the State that the Grantee has secured all rights, permissions and/or approvals necessary to provide instream flows as required by the Grant Agreement, including, but not limited to, water rights, contractual rights, and environmental compliance permits.

For projects that require construction or physical modification of water storage or delivery infrastructure, the State will pay for such work on a reimbursement basis (i.e., the grantee **pays** for services, products or supplies, submits invoices and proof of payment and is **then reimbursed** by the State). Ten percent (10%) of such amounts submitted for reimbursement may be retained and issued as a final payment upon completion of the construction and/or physical modification.

If an advance is required by grantee, that grantee will need to demonstrate a compelling need. Note, advances shall not exceed 25% of the award, are subject to applicable statutory authority, and shall require additional fiscal protocols as further determined by the State at the time of authorization.

Monitoring and Reporting

The State shall expect monitoring and reporting to ensure flows have actually been dedicated or left in the water course (stream, river, etc.), or other evidence that a measurable flow benefit has been provided in all relevant water year types for the term stated in a grant agreement. Grantee should be prepared to undertake this reporting requirement. Grantee will need to confirm the annual filing of Statements of Diversion and Use with the State Water Board for any water rights used, and to provide copies to the State upon request.

Loss of Funding (not a complete list)

The following are examples of actions that may result in a grantee's loss of funding:

1. Grantee fails to execute a grant agreement.
2. Grantee withdraws from the grant program.
3. Grantee fails to submit required documentation within the time-period specified in the grant agreement.
4. Grantee fails to submit evidence of CEQA compliance as applicable.
5. Grantee changes project scope without prior approval from the State.
6. Grantee fails to complete the project.

7. Grantee fails to demonstrate due diligence and/or timely implementation of the project.
8. Grantee lacks site control or ownership over water at issue or land at issue.
9. Grantee fails to obtain operational changes or approvals needed to dedicate or otherwise supply the water at issue

STATE AUDIT AND ACCOUNTING REQUIREMENTS

Audit requirements

All projects are subject to audit by the State annually and for three (3) years following the final payment of grant funds. If the project is selected for audit, the grantee will be contacted in advance. The audit shall include all books, papers, accounts, documents, or other records of the grantee, as they relate to the project for which the funds were granted.

Grantee must have project records, including the source documents and canceled checks, readily available, and provide an employee with knowledge of the project to assist the auditor. Grantee must provide a copy of any document, paper, record, or the like requested by the auditor.

Accounting requirements

The grantee must maintain an accounting system that:

- Accurately reflects fiscal transactions, with the necessary controls and safeguards;
- Provides a good audit trail, including original source documents such as purchase orders, receipts, progress payments, invoices, timecards, canceled checks, etc.;
- Provides accounting data so the total cost of each individual project can be readily determined.

Records Retention

Project records must be retained for a period of three (3) years after final payment is made by the State. All project records must be retained by grantees at least one (1) year following an audit. Grantees are required to keep source documents for all expenditures related to each grant for at least three (3) years following project completion and one year following an audit. A project is considered complete upon receipt of final grant payment from the State.

Ongoing Project Reporting

Grantees are required to report on the status of the funded project periodically through the life of the project as requested. Grantees will be provided a list of required report elements during Phase 3 (grant execution). Where applicable, the project should include adaptive management strategies and performance metrics (i.e., include measurable criteria that indicate whether the project has the expected benefits).

APPENDIX A – RESOLUTION TEMPLATE

Resolution No: _____

RESOLUTION OF (*GOVERNING BODY OF GRANTEE*)
APPROVING THE APPLICATION FOR GRANT FUNDS FOR THE
INSTREAM FLOW WATER PURCHASE PROGRAM

WHEREAS, the Legislature and Governor of the State of California have provided funds for the program shown above; and

WHEREAS, the State, acting by and through CNRA and DWR has been delegated the responsibility for the administration of this grant program and establishing necessary procedures; and

WHEREAS, said procedures established by the State require a resolution certifying the approval of application(s) by the Applicant's governing board before submission of said application(s) to the State; and

WHEREAS, the Applicant, if selected, will enter into an agreement with the State of California to carry out the project.

NOW, THEREFORE, BE IT RESOLVED that the _____ (*Governing Body*)

1. Approves the preliminary proposal for the (*name of the project*); and
2. Certifies that ____ [entity and its governing board] Applicant understands the assurances and certification in the application; and
3. Certifies that ____ [entity and its governing board] Applicant or title holder will have sufficient funds to implement the project consistent with any grant requirements or will secure the resources to do so; and
4. Certifies that where relevant ____ [entity and its governing board] will comply with all provisions of Section 1771.5 of the California Labor Code; and
5. If applicable, certifies that the project will comply with any laws and regulations; and
6. Certifies that Applicant will work towards the State Planning Priorities intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety as included in Government Code Section 65041.1; and
7. Appoints the (*designate position, not person occupying position*) _____, or designee, as agent to conduct all negotiations, execute and submit all documents including, but not limited to, applications, agreements, payment requests and so on, which may be necessary for the completion of the aforementioned project.

Approved and adopted the _____ day of _____ 20____. I, the undersigned, hereby certify that the foregoing Resolution Number _____ was duly adopted by the _____.

(*Governing Body*)

Following Roll Call Vote: Ayes: _____

Nos: _____
Absent: _____

Clerk/Secretary for the Governing Board

APPENDIX B – PROJECT DETAILS TEMPLATE

Project Overview
<i>Define the name and nature of the project applicant (individual, entity, organization).</i>
<i>Define the basis of project applicant's eligibility.</i>
<i>Provide a description of the water right type.</i>
<i>Define the total cost of water, including the cost to deliver it, in proposal (in whole dollars).</i>
<i>Define the term of commitment (minimum of 10 years, with preference given to 15- year or longer commitments).</i>

Describe the volume of water (in acre-feet) by water year types and seasonality (e.g., months, weeks, days), and water year. Indicate water year type classification basis (Sacramento or San Joaquin Valley). Flows must be provided between January 1st and June 30th and shall not be less than 2,000 acre-feet each year that water is provided.

(Example—Critical: 2,000 acre-feet available throughout May, Sacramento Valley Classification).

Critical:

Dry:

Below Normal:

Above Normal:

Wet:

Indicate Water Year Type Classification Basis: *Sacramento Valley* or *San Joaquin Valley*

Describe the flexibility (inter- annual and seasonally) of the proposal.

Location

Define the water course (tributary, river, etc.).

Define the point of flow accessibility (existing diversion point, project discharge location, etc.).

Define the river mile(s) of intended instream beneficial use, if extending beyond point of flow availability.

Define the water source (change in use, fallowing, pumping, etc.).

Feasibility

Describe the risk of diversion by downstream water rights holders and the timing and feasibility of any proposed protective measures.

Describe any modifications to infrastructure necessary to implement the proposal (indicate "NA" if not applicable).

Describe the availability of the water (e.g., define any additional permitting, change-of-use petitions, or other regulatory approvals necessary to make the water available).

Describe when the flows can be made available, including necessary operational and other infrastructure or storage allocation changes.

APPENDIX C – AVAILABLE RESOURCES

California Department of Industrial Relations Prevailing Wage Determination

<https://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>

Governor's Office of Planning and Research CEQA Documents

<http://opr.ca.gov/clearinghouse/ceqa/document-submission.html>

Proposition 68 Statute

https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB5

Water Code Section 79736

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WAT§ionNum=79736

A Practitioners Guide to Instream Flow Transactions in California

<http://www.calinstreamguide.org/>

APPENDIX D – DEFINITIONS

Unless otherwise stated, the terms used in these grant guidelines have the following meanings:

California Native American Tribe – means a federally recognized Native American tribe or a non-federally recognized California Native American Tribe.

CEQA – means the California Environmental Quality Act, Public Resources Code Section 21000 et seq.; Title 14, California Code of Regulations, Section 15000 et seq.

Fund or Funds – means the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access for All Act of 2018 and the General Fund.

Grant Agreement – means a contractual arrangement between the State and Grantee specifying the payment of funds by the State for the performance of specific project objectives within a specific project performance period by the Grantee.

Grantee – means an entity that has an agreement for grant funding with the State.

In-Kind – means non-cash donations, from governmental or private sources, and includes volunteers, materials, and services.

Local Public Agency – means any political subdivision of the State of California, including but not limited to any county, city, city and county, district, joint powers authority, local community conservation corps agency, or council of governments.

Long Term – With regards to in-stream flow dedications and other water transfers, a long-term transfer is any transfer longer than one year.

Nonprofit Organization – means any nonprofit corporation qualified to do business in California and qualified under Section 501 (c) (3) of the Internal Revenue Code.

Other Sources of Funds – means cash or in-kind contributions that are required or used to complete the project beyond the grant funds provided by the Instream Flow Water Purchase Program.

Performance Metrics – means measurable criteria that indicate whether the project has the expected benefits.

Planning – means specific preparations necessary to execute eligible Instream Flow Water Purchase Program projects.

Project – means the water acquisition or water development activity to be accomplished with Instream Flow Water Purchase Program grant funds, and other funds, if necessary, that meets eligibility requirements.

Project Performance Period – refers to the beginning and ending dates of the grant agreement. Eligible costs incurred during this period may be funded from the grant.

Project Scope – means the description or activity of work to be accomplished by the project.

Public Agency – means any State of California department or agency, a county, city, public district, or public agency formed under California law. Also see definition for local public agency.

State – means a political subdivision of the State of California.

Water Year Type - means the Water Year Hydrologic Classification for the subject watercourse as published in DWR's Bulletin 120. The date of determining the water year type based on a specific exceedance forecast may vary by project and the nature of the water right used to provide flows.

END OF GUIDELINES