



December 14, 2020

Teresa Alvarado, Chair
California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

Sent via email to cwc@water.ca.gov

RE: Water Storage Investment Program: Options for Available Funding

Dear Commissioner Alvarado and Members of the Commission:

On behalf of Defenders of Wildlife, Friends of the River, Natural Resources Defense Council, Sierra Club California, and Golden State Salmon Association, we are writing regarding the Commission's options for allocating the funds that are newly available to the Commission because of Temperance Flat Dam's inability to meet the statutory eligibility requirements for the Water Storage Investment Program ("WSIP"). We appreciate Commission staff's careful consideration of the available options and write to provide input regarding three aspects of the staff recommendation. In particular, we want to (1) express our agreement regarding the inappropriateness of increasing the MCED for the Sites Reservoir project; (2) caution that modifications to the regulations appear necessary to increase projects' MCEDs or to provide an "inflationary bump;" and (3) suggest that the Commission be explicit that a second solicitation will only be open to applications for projects that have not previously applied for WSIP funding.

First, we strongly support Commission staff's recommendation to not increase the MCED for the Sites Reservoir project. As you are aware, the Sites Project Authority is in the process of revising the project in a manner that proposes to significantly reduce the project's ecosystem benefits from those that were approved by the Commission. The project's WSIP eligible amount is based on an annual provision of 35 TAF for refuge water supply and 39 TAF of flow through the Yolo Bypass – a total of 74 TAF of water for ecosystem benefits. In contrast, materials from the Sites Project Authority show that the revised project proposes to provide a total of 40 TAF

annually for both refuges and flows through the Yolo Bypass.¹ This means Sites is now proposing to provide only 54% of the ecosystem water that is part of the basis for its total eligible amount and the WSIP's cost share.

The WSIP regulations clearly require that the Commission must adjust the program cost share if the amount of public benefits change after the Commission issues the MCED. WSIP Reg. § 6013(f)(4) (“the Commission shall consider any changes that have occurred to the project since the maximum conditional eligibility determination was made and determine the final Program cost share”). To the extent the Sites Project Authority ultimately pursues a project with less ecosystem water and therefore less public benefits than the project analyzed through the Commission's competitive public process, the Commission will be required to reduce the amount of money it offers to the project.

In light of the likelihood that the Commission is going to have to reduce the allocation for Sites *below* the current MCED amount, it does not make sense to increase the project's allocation above the MCED at this time. Doing so would send the wrong message regarding the project's eligibility and create unreasonable and unrealistic expectations.

Second, we want to express our doubts about the legality of increasing any project's MCED amount or providing an “inflationary bump” to the projects without modifying the regulations. With respect to the MCED amounts, the WSIP regulations set forth a detailed, rigorous process for quantifying and monetizing public benefits, ranking projects, and establishing MCEDs. Nothing in the regulations supports the Commission's ability to subsequently modify the MCED amounts that were established through the Commission's competitive public process. The proposed “inflationary bump” also appears contrary to the regulations. The regulations specify that monetization must occur in 2015 dollars across a planning horizon of up to 100 years without accounting for inflation. *See, e.g.*, WSIP Reg. § 6004(a)(4)(A)-(C). Providing a seemingly arbitrary “inflationary bump” to each project is contrary to the text of the regulations and to the spirit of the program, which has thus far appropriately focused on funding specific, monetized public benefits using the methodology prescribed by the regulations. If the Commission chooses to pursue one of these approaches, we recommend that it first seeks to modify the regulations to clearly authorize these changes.

Finally, we see several potential benefits to pursuing a second solicitation, but have suggestions regarding the process that staff has envisioned. With respect to benefits, we note that while the Commission is currently addressing the funds initially allocated to Temperance Flat Dam, it is likely that other funds will become available as WSIP projects continue to evolve—for example as a result of the downsizing of the Sites project. Setting up a second solicitation will enable the Commission to repurpose these and other funds to ensure they provide public benefits. Additionally, during the Commission's development of its WSIP

¹ *See* Sites Project Authority, July 2020 Presentation, available at <https://www.youtube.com/watch?v=4Cg7o8KLstY&feature=youtu.be>

regulations, we underscored that new groundwater projects may emerge once SGMA implementation is further along and encouraged a second solicitation. It is now an excellent time to test the waters and see if new groundwater projects that provide public benefits are able to compete for WSIP funds.

If the Commission chooses to pursue a screening for a second solicitation, we urge the Commission to be explicit that the second solicitation process is only available to projects that have not previously applied for WSIP funding. Allowing projects a second bite at the apple would undermine the competitive public process that the Commission has established and executed. We also see potential pitfalls with the currently proposed timeline and urge the Commission to outline the process in greater detail before moving forward. For example, the current timeline suggests that the Commission will determine whether there are commitments for 75% of the non-public cost share before quantifying a project's public benefits, which seems problematic.

Thank you for considering our comments, and we look forward to continuing to engage with the Commission on these important matters.

Sincerely,



Rachel Zwillinger
Defenders of Wildlife



Brandon Dawson
Sierra Club California



Doug Obegi
Natural Resources Defense
Council



Ronald Stork
Friends of the River



John McManus
Golden State Salmon
Association