



Water Storage Investment Program: Notice of Proposed Emergency Rulemaking Regarding Use of Uncommitted Funding (Action Item)

Introduction

The California Water Commission (Commission) administers the Water Storage Investment Program (WSIP) to fund the public benefits associated with water storage projects. These projects use funds from Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), codified at Water Code section 79750 et seq, and supplemented by funds from Proposition 4, the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clear Air Bond Act of 2024 (Proposition 4). Currently, the Commission has approximately \$638 million of uncommitted funding available to support the public benefits associated with existing WSIP projects. At its October meeting, the Commission directed staff to explore modifying the WSIP regulations to use the remaining, uncommitted WSIP funds. At this meeting, Commission staff will present a proposed emergency rulemaking action for using uncommitted funds.

WSIP is governed by regulations that were adopted by the Commission in 2016 and codified in 2017, at the start of the program. The regulations direct the Commission on how to award funding to Water Storage Investment Program projects. The WSIP regulations specify that a project be assigned a maximum conditional eligibility determination (MCED), described as “a ‘not to exceed’ amount of potential funding, contingent on the applicant meeting the conditions of section 6013 [requirements for final funding] necessary for the commission to make a funding allocation” (California Code of Regulations, Division 23, Title 7, Section 6011). At this time, to adjust an MCED, the Commission is limited to considering pro rata ministerial increases to all projects’ MCEDs, as it has done several times to account for inflation.

In 2025, the Commission assessed the viability of all existing approved WSIP projects, considering each project’s progress toward meeting the WSIP final funding requirements and its ability to deliver WSIP-required public benefits. The Commission expressed a desire to administer WSIP funds as quickly as possible within the statutory limitations of the program, before costs escalate further, to maximize the public benefits that California is getting for their investment. This stated desire echoes the will of the legislature and the voters, who, with the passage of Proposition 4 in 2024, specified that priority for Proposition 4 funds “and any funds returned to the commission shall be to support *timely completion of existing approved projects* by providing supplemental grants to reflect the increase in costs due to inflation since the original grant applications and any increase in public benefits” (Public Resources Code, Division 50, Chapter 2, Section 91015) (emphasis added).

To support timely completion of existing approved projects and maximize the public benefits of these projects for all Californians, Commission staff propose an emergency regulation that will allow the Commission to consider making supplemental funding determinations. In making such supplemental funding determinations, the proposed emergency regulation authorizes the Commission to consider, in its discretion, additional or new public benefits provided by an existing project, additional inflationary costs incurred by an existing project, and a project's progress in satisfying criteria required for a final funding award. Accordingly, this proposed regulation is necessary to effectuate the Legislature's and voters' direction in Proposition 4, Public Resources Code section 91015.

This proposed regulation makes clear that the Commission may make a supplemental funding determination for applicants that do not yet have a final award or final funding agreement, as well as for funding recipients that already have a final funding agreement.

The Commission's consideration of making supplemental funding determinations would be informed by existing WSIP regulations, would require transparent substantiation and approval, and would—in the case of new or additional benefits—require the approval of the agency responsible for administering that benefit. Furthermore, the ability to make a supplemental funding determination or award final funding in excess of an MCED would only be available if there are uncommitted funds available.

If the Commission votes to approve the proposed emergency regulation at this meeting, staff will file the proposed emergency regulation with the Office of Administrative Law (OAL) on or about December 1, 2025. If OAL approves the emergency regulation, OAL will submit the approved regulation to the Secretary of State and the regulation will become effective upon submission.

Background

Currently, there are five projects that are eligible to receive WSIP funding. One project received a final award at the June 2023 Commission meeting. Four WSIP projects are working to complete the statutory requirements necessary to secure WSIP final funding. When the applicant completes the WSIP statutory requirements, they will return to the Commission for a final award hearing, at which time the Commission will decide whether to award final funding. As currently written, WSIP regulations give the Commission discretion to award less than the project's MCED, but not more than the MCED.

Over the past year, the passage of Proposition 4 (\$72.6 million), and the withdrawal of the Los Vaqueros Reservoir Expansion Project (\$453.6 million) and Pacheco Reservoir Expansion Project (\$479.9 million) from WSIP resulted in \$1,006.1 million of WSIP funding for potential use for the remaining WSIP projects. In March 2025, the Commission awarded an additional \$73 million to the Harvest Water Program's final funding award for inflationary increases. In August 2025, the Commission committed an additional \$295.1 million to the Sites Project's, Chino Basin Program's, and Kern Fan Groundwater Storage Project's MCEDs for pro rata inflationary

increases. With these commitments, \$638 million of uncommitted funding (comprised of new Proposition 4 funding and returned funding from the Los Vaqueros Reservoir Expansion and Pacheco Reservoir Expansion Project) is available for existing, approved projects.

This agenda item is related to Goal One of the [Commission's Strategic Plan](#), which calls on the Commission to implement the WSIP to achieve public benefits.

Opportunity for Public Review and Comment

Because this regulatory action is being pursued as an emergency regulation, pursuant to Government Code section 11346.1, the opportunity for public review and comment is narrower than under a traditional rulemaking effort.

For those who wish to provide comment on the Commission's consideration of the proposed emergency regulation, members of the public may provide written comment before or on November 19, 2025. Members of the public may also provide oral comment, either remotely or in person, at the Commission meeting on November 19, 2025.

If the Commission approves the proposed regulation on November 19, staff will file the emergency rulemaking file with the Office of Administrative Law (OAL) on or about December 1, 2025 (to avoid public comment scheduling conflicts with the Thanksgiving holiday). Once OAL receives the file, OAL will publish a notice of submission on its website and the public comment period (available under OAL's emergency regulation review process) opens. The public has five calendar days (from the date the notice is published on OAL's website) to submit written comments on the Commission's proposed emergency regulation to OAL. For more information about OAL's public comment process for emergency rulemaking actions, please visit their webpage at https://oal.ca.gov/emergency_regulations/.

Commission Decision

The Commission may vote to adopt the emergency regulation, after which staff will complete the requirements for emergency regulations and submit the rulemaking package to OAL for approval.

The Commission may request that staff make changes or provide more information and return at a later meeting for Commission consideration. This would delay rule-making and could prevent projects from receiving supplemental funding determinations for increased costs due to inflation or increases in public benefits.

The Commission may decline to approve the regulation. Not approving the regulation would mean that the Commission may not make supplemental funding determinations and the Commission may not award final Program cost shares that exceed a project's MCED. This will limit the Commission's ability to utilize the current uncommitted funding of \$638 million.

Uncommitted funding could only be applied to all projects evenly on a pro rate basis, which fails to incentivize timely completion of existing approved projects and would frustrate the intent underlying Proposition 4. Without the flexibility permitted by the proposed emergency

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regulation, the Commission could strand funding and impede the timely completion of existing approved projects.

Staff recommends that the Commission vote to adopt the emergency regulation.

Meeting Overview

At the November meeting, the Commission's legal counsel, Anthony Austin, will provide an overview of the proposed regulation, including the background as to why staff recommend the regulation change. Following Tribal and public comment and Commission discussion, the Commission will vote on whether to adopt the regulation.

This is an action item.

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