

State of California
California Water Commission

California Code of Regulations, Title 23, Waters
Division 7. California Water Commission
Chapter 1. Special Application for Early Funding
Article 4. Conditional Eligibility and Funding Process

Initial Statement of Reasons

Background and Authority

The Water Storage Investment Program (WSIP) implements Proposition 1, Chapter 8, that provided \$2.7 billion for public benefits of water storage projects. The California Water Commission (Commission) is administering the WSIP to fund the public benefits associated with these projects. To implement WSIP, the Commission adopted program regulations, pursuant to California Water Code section 79755, on December 14, 2016, then proceeded with a solicitation and application review. The language in Water Code section 79755(a) prevents the Commission from making final funding awards until the applicant has finalized environmental documentation, completed permits, obtained 100 percent of the non-public cost share, and has executed contracts with applicable State agencies for the administration of public benefits. However, while section 79755(a) prevents a final funding award until the project is construction ready, section 79755(c) allows for early funding of projects to assist with work related to completion of environmental documentation and permits. Program regulations implemented the early funding provision by requiring applicants to request early funding in their initial applications. In July 2018, the Commission made maximum conditional eligibility determinations (MCEDs) for projects, which set the amount of Proposition 1 funding potentially available to each project. The Commission also made three early funding awards. Early funding is a portion of a project's MCED that applicants may spend prior to the final funding award. 23 CCR sections 6010 (b)(5) and (e)(1) limit the amount of early funding the Commission can award to WSIP projects to \$135 million, which is 5% of the \$2.7 billion that was allocated to the program. Per WSIP regulations, projects are capped at receiving 5% of their MCED as early funding (23 CCR § 6010(b)(4)).

Water storage plays a key role in California, where the quantity, timing, and location of water demand frequently do not match the natural water supply availability. Improving water supply reliability depends on the ability to capture and store water during peak flows and wet years. Water storage serves as a “water savings account” that allows water to be captured and stored until needed and can allow for more efficient water use when integrated with other water management tools, such as conservation and recycling. For example, water conserved through water use efficiency practices, such as reduced

irrigation losses, could be stored in water storage facilities and “saved” for use at another time or for another purpose.

Water storage is fundamental to managing variability in water supply for human and environmental purposes and is a critical tool for providing water management flexibility in California. New surface water or groundwater storage capacity can provide improvements to the operations of the state water system and to the water supply available to water users. These projects also offer a robust set of public benefits. Public benefits accrue to Californians more broadly, outside of the beneficiaries receiving water supply reliability through a water storage project. Proposition 1, Chapter 8 defines the public benefits of water storage for which WSIP funding can be used. To qualify for funding, projects are required to provide public benefits in the form of ecosystem improvements, water quality improvements, recreational benefits, flood control benefits, or emergency response. Every project is required to deliver an improvement to the ecosystem.

Since July 2018, two projects have withdrawn from the WSIP. Of the remaining projects, one has received its final funding award, and five have met the Proposition 1 interim requirements and are working to complete the remaining statutory requirements before seeking a final funding award.

Problem Statement

One of the projects that withdrew from the WSIP is the Los Vaqueros Reservoir Expansion Project (Los Vaqueros). Los Vaqueros was awarded and had spent its early funding award. Due to the dissolution of the Los Vaqueros Joint Powers Authority (JPA) and withdrawal of Los Vaqueros from the WSIP, the Commission may decide to allot the funds from Los Vaqueros’s MCED to other projects. Prior to withdrawing from the WSIP, Los Vaqueros spent all of the early funding to which it was awarded, approximately \$24 million, and those funds count toward the \$135 million early funding cap. If the Commission decides to redistribute Los Vaqueros’s potential funding to other WSIP projects, those projects may not have the opportunity to receive up to 5% of their updated MCED as early funding due to the \$135 million cap.

- Potential total MCEDs with Los Vaqueros funding redistribution ≈ \$2.63 billion

- Current early funding dollar cap: \$135 million
- Early funding spent by Los Vaqueros: - ≈ \$24 million
- Amount remaining: ≈ **\$111 million**

- Total early funding at 5% of potential updated MCEDs: ≈ \$132 million
- **Potential amount of early funding unavailable to projects with current dollar cap:** ≈ **\$21 million**

If the Commission redistributes Los Vaqueros's potential funding to other projects, those projects will be eligible for additional early funding per the 5% of project MCED cap specified in the regulations. It is possible the Commission could award additional early funding which would result in exceeding the \$135 million cap, as shown in the bullets above. Because Los Vaqueros has already spent its early funding award, 5% of the other projects' updated MCEDs may be greater than \$135 million, thus the \$135 million cap (23 CCR § 6010 (b)(5) and (e)(1)) would prohibit the projects from receiving 5% (23 CCR § 6010(b)(4)) of their updated MCED as early funding.

Purpose of Regulation

The purpose of the proposed regulation is to address the potential conflict between the \$135 million (23 CCR § 6010 (b)(5) and (e)(1)) and the 5% (23 CCR § 6010(b)(4)) early funding caps, by removing the dollar amount cap for early funding.

Summary of specific purpose of and rationale for adoption

This section provides a summary of the specific purpose of the proposed amendment and the rationale for staff's determination of why the proposed amendment is reasonably necessary to carry out the purpose of the provisions of law they are implementing and to address the problem as described above.

The proposed change would remove sections (b)(5) and (e)(1) of 23 CCR § 6010. Due to the dissolution of the Los Vaqueros JPA and withdrawal of Los Vaqueros from the WSIP, the Commission may decide to allot the funds from Los Vaqueros's MCED to other projects. If the Commission decides to redistribute potential funding to other WSIP projects, those projects may not have the opportunity to receive up to 5% of their MCED as early funding due to the \$135 million cap. This change would eliminate the \$135 million early funding cap. The proposed change is necessary to address the inconsistency of the \$135 million cap and the 5% of MCED cap for early funding. No change would be made to the 5% of MCED early funding cap.

Benefits of the Proposed Regulation

The regulation will ensure water storage project proponents in the Water Storage Investment Program have the opportunity to receive up to 5% of their MCED as early funding. The current regulations cap early funding at \$135 million (23 CCR § 6010 (b)(5) and (e)(1)). The dollar amount cap may potentially conflict with the 5% cap on early funding (23 CCR § 6010 (b)(4)). The proposed regulation would rectify the potential conflict. Early Funding is used by projects to assist with work related to completion of environmental documentation and permits which are necessary before the Commission can make a final award. The ultimate benefit is allowing projects to receive up to 5% of their MCED award for early funding to address water supply and storage issues in California.

Documents Relied Upon

There were no documents relied upon by Commission staff.

Description of Reasonable Alternatives

Alternative 1 – No Change

The Commission could opt to not amend the regulation and let the current regulation stand. This would cap early funding at \$135 million and not at 5% of the maximum eligible funding request for a project pursuant to section 6011. If, after the redistribution of the remaining Los Vaqueros funds, the receiving projects request early funding, those projects would be limited by the \$135 million cap. Projects may not be able to receive up to 5% of their MCED as early funding.

Economic Impact Assessment

In accordance with Government Code section 11346.3, staff has determined that the proposed regulatory action would not eliminate existing businesses within the State of California and would not affect the creation of new businesses or the expansion of existing businesses currently doing business in California. The proposed regulatory action would not eliminate jobs within the State of California and would not affect the creation of jobs within California.

Small businesses would not be subject to the proposed regulations because the proponents of the Water Storage Investment Program water projects are not small businesses.

The following findings support the proposed regulations:

- The proposed regulation will not result in a significant or permanent change in the number of jobs within the state.
- No creation or elimination of businesses within the state would occur as a result of this proposed regulation.
- The proposed regulation would not affect the competitive advantages or disadvantages of businesses within the state.
- The proposed regulation would not significantly affect investment in the state.
- Incentives for innovation in business products, materials, or processes would not be affected.

The objective of the proposed regulations is to address the potential conflict between the \$135 million cap on early funding and the 5% cap on early funding, by removing the dollar amount cap.

There are no significant adverse impacts directly affecting businesses.

Duplication of Conflicts with Federal Regulations

Government Code section 11346.2(b)(6) requires the Commission to describe its efforts to avoid unnecessary duplication or conflicts with federal regulations that address the same issues. No federal regulations address the same issues as the Commission's proposed regulations, so the proposed amendments do not conflict with nor duplicate any federal regulations.

Environmental Impact Assessment

The purpose of the regulations is to address the conflict between the \$135 million cap on early funding and the 5% cap on early funding, by removing the dollar amount cap. This will not have an impact on the state's environment. Specific environmental impacts resulting from evaluated projects will be subject to permitting and will be analyzed by each project's lead agency in accordance with applicable law. The Commission is not the lead agency for any project in the Water Storage Investment Program.