

CALIFORNIA WATER COMMISSION

NOTICE OF PROPOSED EMERGENCY RULEMAKING ACTION

Emergency Action Regarding Use of Uncommitted Funds

California Code of Regulations

Title 23. Waters

Division 7. California Water Commission

Chapter 1. Water Storage Investment Program

Date of Notice and Finding of Emergency: November 7, 2025

NOTICE IS HEREBY GIVEN that the California Water Commission (Commission) proposes this emergency regulation, and provides this notice and finding of emergency, pursuant to Government Code section 11346.1, in order for the Commission to re-commit new funds authorized by Proposition 4 and returned funds from withdrawn projects.

Section 48 Statement: Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

This regulation will be submitted to the Office of Administrative Law (OAL) on or around December 1, 2025, with an intended effective date of approximately December 11, 2025.

If you wish to comment on the proposed emergency action, please submit your comment directly to both OAL and the Commission within five calendar days of OAL's posting of the proposed emergency regulations on the OAL website. You may submit comments to OAL and the Commission at the following addresses:

OAL Reference Attorney
300 Capital Mall, Suite 1250
Sacramento, CA 95814
staff@oal.ca.gov

California Water Commission
Attn: Paul Cambra
715 P Street, 8th Floor
Sacramento, CA 95814
paul.cambra@cwcc.ca.gov

OAL will confirm that the Commission has received each comment before considering it. Pursuant to California Code of Regulations, title 1, section 55, subdivision (b)(1) through (4), the comment must state that it is about an emergency regulation currently under OAL review, and include the topic of the emergency.

Adoption of emergency regulations does not require response to submitted comments. If the Commission responds to any comments, such responses will be submitted to OAL within eight calendar days following the date of submission of the proposed emergency regulations to OAL, unless specific exceptions are applicable.

I. Deemed Emergency

A description of specific facts demonstrating the existence of an emergency is not required because the Legislature has deemed this situation an emergency. The Commission is proposing this regulation pursuant to the emergency rulemaking authority granted by AB 149, which amended Public Resources Code, section 90135, and deemed the proposed regulation to be addressing an emergency and is necessary for the immediate preservation of public peace, health, safety, and general welfare:

A regulation for the purpose of developing and adopting program guidelines and selection criteria needed to effectuate or implement the programs included in Chapter 2 (commencing with Section 91000) to Chapter 9 (commencing with Section 94500), inclusive, of this division may be adopted as an emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, safety, and general welfare, and a state agency is hereby exempted from the requirement that it describe facts showing the need for immediate action.

II. Necessity Statement

A. Water Storage Investment Program Background & Summary

Under existing law (Water Code, sections 79750-79760), the Commission administers the Water Storage Investment Program (WSIP) to fund the public benefits associated with water storage projects. These projects use funds from the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1), codified at Water Code section 79750 et seq., and supplemented by the Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clear Air Bond Act of 2024 (Proposition 4).

The WSIP is governed by regulations that were adopted by the Commission in 2016 and codified in 2017. The current WSIP regulations direct the Commission on how to award funding to WSIP projects. The 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, section 6011).

Five projects are currently part of the WSIP. One project, the Harvest Water Program, received final funding and is currently under construction. The project proponent for a sixth project, the Pacheco Reservoir Expansion Project, recently decided to suspend the project and withdrew from the WSIP. Prior to withdrawing, the Pacheco Expansion Project had received an MCED—a commitment of funds—of approximately \$504 million and spent \$24,200,000 on early funding activities. In November 2024, a seventh project proponent, the Los Vaqueros Reservoir Expansion Project, also decided to suspend the project and withdraw from the WSIP. Prior to withdrawing, the Los Vaqueros Expansion Project had received an MCED of over \$477 million and spent approximately \$24 million on early funding activities. The unspent funds committed to the Pacheco and Los Vaqueros projects were returned to the Commission.

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 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 direction of the legislature and the voters, who, with the passage of Proposition 4 in 2024, ordered 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 account for rising costs due to inflation, the Commission approved, in 2025, approximately \$369 million in pro rata inflationary increases to the MCEDs for four of the existing WSIP projects.

B. Availability of Uncommitted Funds and Need for Emergency Regulation

The Commission has approximately \$638 million in uncommitted funds available to further support the public benefits associated with existing WSIP projects. The \$638 million in uncommitted funds includes (a) \$75 million that was approved by Proposition 4, and (b) the funds returned to the Commission after the Pacheco Expansion and Los Vaqueros Expansion projects withdrew from WSIP (taking into account pro rata inflationary adjustments made in 2025 for the other five existing approved projects). Under existing WSIP regulations, however, there is no process or mechanism to allow the Commission to award a final funding that exceeds a project’s MCED or otherwise recommit uncommitted funds. Currently, the Commission may only increase a project’s funding through ministerial changes applied evenly across all projects and may not award funding that exceeds a project’s MCED. Accordingly, this proposed regulation is necessary to effectuate the Legislature’s and voters’ direction in Proposition 4, Public Resources Code section 91015: to prioritize new Proposition 4 funds and returned funds for the timely completion of existing approved projects by providing supplemental funds to address increased costs and increases in public benefits.

1. Proposed Section 6020(a) – Definitions

Proposition 4 provided a directive to the Commission to use new and returned funds to provide supplemental funding to address increased costs and the availability of additional public benefits. Yet, Proposition 4 did not provide specific direction or guidance on how to carry out this directive. To that end, the proposed regulation provides definitions for specific, yet undefined, terms used in Proposition 4. Specifically, Proposition 4 uses or references, but does not define, “returned funds,” “increased public benefits,” and “existing approved projects.” These terms are not defined in existing WSIP regulations. Accordingly, this subsection is necessary because it defines and provides clarity about these specific terms.

2. Proposed subsection 6020(b) – Applicants & Supplemental Funding

Proposition 4 directed the Commission to prioritize funds made available under Proposition 4 and any returned funds “to support timely completion of existing approved projects....” Proposition 4 further provided that supplemental funding should address increases in costs due to inflation and any increases in—or the addition of—public benefits. Proposition 4 did not, however, explain or provide how the Commission should award these supplemental funds. Therefore, this proposed regulation, specifically subsection 6020(b), would give the Commission the discretion to make, upon a showing of good cause, supplemental funding determinations for existing WSIP projects that have not yet received a final award.

In determining whether good cause is shown, the proposed emergency regulation authorizes the Commission to consider additional or new public benefits provided by an existing project, additional inflationary costs incurred by an existing project, and adjustments to the monetization of existing public benefits. In determining whether to make a supplemental funding determination at all, the Commission may consider a project’s progress in satisfying criteria required for a final funding award and the ability of the collective suite of projects to advance the Program goals and purposes described in Water Code, section 79750(b).

Under current WSIP regulations (section 6010), applicants may apply for and receive early funding to complete environmental documentation, permitting applications, and other planning and design activities before receiving their final award. Pursuant to section 6010(b)(4), early funding is capped at five percent of the applicant's MCED. Proposed subsection 6020(b)(4) makes clear that if an applicant receives a supplemental funding determination under 6020(b), then the five percent early funding cap would include such supplemental funding. Without this clarification, applicants would likely inquire whether they could apply for additional early funding in light of supplemental funding.

Accordingly, this subsection (b) is necessary because it describes the factors upon which the Commission will determine if good cause exists—and thus whether an existing approved project needs supplemental funding. This subsection further describes other factors the Commission may consider in determining whether to award the supplemental funding at all.

3. Proposed subsection 6020(c) – Applicants & Increases to Final Award at the Hearing

Under current WSIP regulations, the Commission may not make a final Program award that exceeds the project's MCED. To reiterate, Proposition 4 directed the Commission to “support timely completion of existing approved projects by providing supplemental [funds] to reflect the increase in costs due to inflation since the original ... applications and any increase in public benefits.” Subsection 6020(c) of the proposed regulation provides that the Commission, upon a finding of good cause, has the discretion to make a final award that exceeds the project's MCED and whatever supplement funding amount made prior to the final award hearing.

In determining if there is good cause to increase a project's final Program cost share, the Commission may consider any changes that have occurred to the project since the maximum eligibility determination was made, including but not limited to the availability of additional public benefits, increases in costs due to inflation, and adjustments to the monetization of existing public benefits. In determining whether to increase a final Program cost share at all, the Commission may consider the recipient's progress toward timely completing the project and the ability of the collective suite of projects to advance the Program goals and purposes described in Water Code, section 79750(b).

Accordingly, this subsection (c) is necessary because it describes the factors upon which the Commission will determine if good cause exists—and thus whether an existing approved project needs an increase to its final Program cost share. This subsection further describes other factors the Commission may consider in determining whether to increase final cost share at all.

4. Proposed subsection 6020(d) – Recipients & Supplemental Funding

This proposed regulation, specifically subsections 6020(d), would give the Commission the discretion to make, upon a showing of good cause, supplemental funding determinations for existing WSIP projects that have already received a final award (as opposed to projects that have not yet received a final award; see subsection (b)).

In determining whether good cause is shown, the proposed emergency regulation authorizes the Commission to consider additional or new public benefits provided by an existing project and additional inflationary costs incurred by an existing project. In determining whether to make a supplemental funding determination at all, the Commission may consider a project's progress in satisfying criteria required for a final funding award and the ability of the collective

suite of projects to advance the Program goals and purposes described in Water Code, section 79750(b).

Accordingly, this subsection (d) is necessary because it describes the factors upon which the Commission will determine if good cause exists—and thus whether an existing approved project needs supplemental funding. This subsection further describes other factors the Commission may consider in determining whether to award the supplemental funding at all.

5. Proposed subsection 6020(e) – Limitations to Supplemental Funding Determinations

The Commission may not make a supplemental funding determination or increase a final Program cost share if—for the consideration of additional public benefits—the applicable administering agency does not agree to include the additional public benefits in the contract for public benefits under section 6013(c)(2), or if uncommitted funds are unavailable.

6. Proposed subsection 6020(f) – Exceedances of MCED

Current WSIP regulations (at section 6011) prohibit final funding awards that exceed a project's MCED. Subparagraph (f) addresses this limitation and makes clear that a final funding award (inclusive of whatever supplemental funding amount made under this proposed regulation) may exceed a project's MCED.

7. Proposed subsection 6020(g) – Notwithstanding Good Cause

The proposed regulation provides the Commission with discretion to make supplemental funding determinations or to increase a project's final Program cost share beyond an MCED and whatever supplemental funding amount made. Such discretion may be exercised upon the finding of good cause to support the supplemental funding determination or increased Program cost share. However, even if good cause may be found, this subsection makes clear that the Commission will not to make a supplemental funding determination or increase a final Program cost share if (1) the Commission determines that reserving uncommitted funds for the other existing approved projects supports the goals of the Program and outweighs the need for supplemental funding; or (2) the Commission determines that the supplemental funding will not support the timely completion of the existing approved project.

C. Conclusion

Without the authority prescribed in the proposed regulation, the Commission will be unable to distribute uncommitted funds beyond rare and limited pro rata inflationary adjustments, unable to invest in any potential additional public benefits provided by the existing projects, and unable to provide inflationary increases on a case-by-case basis to individual projects.

III. Documents Relied Upon

The Commission has not relied on any outside documents in drafting this proposed regulation.

IV. Documents Incorporated by Reference

There are no documents incorporated by reference in this proposed regulation.

V. Gov. Code, section 11346.5(a)(2)-(6) Items

A. Authorities

The Commission's authority to promulgate this regulation arises under Proposition 4, Public Resources Code sections 90135(e) (as amended by AB 149) and 91015, as well as Proposition 1, Water Code sections 79705 and 79754.

The Commission proposes this regulation to implement, interpret, and make specific Public Resources Code section 91015, as well as Water Code sections 79750, 79753, and 79754.

B. Informative Digest

In 2014, California's voters passed Proposition 1, which provided \$2.7 billion to the California Water Commission to invest in 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. Under this effort, the Commission created the Water Storage Investment Program (WSIP).

Proposition 4, which the voters approved in November 2024, provided additional funding for the WSIP. Proposition 4—section 91015 of Chapter 2 of Division 50 of the Public Resources Code—specifically provides that \$75 million of the voter-approved funding “shall be available...to the California Water Commission for projects under the Water Storage Investment Program.” Proposition 4 further requires that “priority for these 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.”

The Commission's primary role with WSIP is to determine how to make approved bond funding available to the five current projects that are part of WSIP, once each project meets the statutory requirements. Of the five projects currently in WSIP, one, the Harvest Water Program, has received final funding. The other four projects have not yet received final funding; they each have a maximum conditional eligibility determination (MCED), which is the amount of WSIP funding presently available for the Commission to award to the project when it meets all necessary statutory requirements.

To support timely completion of existing approved projects and maximize the public benefits of these projects for all Californians, the Commission proposes modifying the WSIP regulations to allow the Commission to consider increasing the amount of WSIP funding committed to a project on a case-by-case basis, as projects approach a final funding hearing, to account for inflation and increased benefits. This proposed regulation would give the Commission the discretion to make supplemental funding determinations and to increase a project's final Program cost share for the existing WSIP projects.

With this new ability to make supplemental funding determinations or increase in final cost share, the Commission will be able to invest in additional public benefits. Public benefits are the ways in which water storage projects provide benefits to Californians broadly, such as cleaner water, new recreational opportunities, and improvements to the land and water fish and wildlife need to survive. Providing supplemental funding will also help address rising costs due to inflation and ensure that these projects are completed sooner rather than later; two priorities expressly identified in Proposition 4.

C. Consistency with Federal or State Regulations or Statutes

This proposed regulation is intended to implement specific provisions, direction, and requirement under Proposition 4. The proposed regulation is not inconsistent or incompatible with federal statutes or regulations. Moreover, this proposed regulation was carefully and deliberately crafted to be part of, and to ensure that it is consistent with, the Commission's existing WSIP regulations. No other state agency has authority

or regulations related to the WSIP. Therefore, this regulation is not inconsistent or incompatible with existing state regulations.

D. Commission-Specific Statutory Requirements

There are no other matters prescribed by statute applicable to the Commission or to any specific regulation or class of regulations that apply to this proposed regulation.

E. Mandates on Local Agencies or School Districts

The Commission has determined that the proposed regulatory amendments will not impose a mandate on local agencies or school districts.

F. Estimate of Costs or Savings

Pursuant to Government Code, section 11346.5(a)(5) and consistent with the State Administrative Manual (SAM) 6611 and 6612, the Commission has determined that this proposed regulation will not result in any costs or savings incurred by other state agencies.

Pursuant to Government Code, section 11346.5(a)(5) and consistent with SAM 6613, the Commission has determined that this proposed regulation will not have a fiscal impact on federal funding of state programs.

Pursuant to Government Code, section 11346.5(a)(5) and consistent with SAM 6608 and 6609, the Commission has determined that this proposed regulation will not result in any costs or savings incurred by local agencies.

VI. Additional Information

The proposed regulation may be accessed through our website at:
<https://cwc.ca.gov/WSIP-Notice-of-Proposed-Rulemaking>.

If you have questions regarding this proposed emergency action, please contact Anthony Austin at (916) 952-1637 or anthony.austin@water.ca.gov.