

**CALIFORNIA CODE OF REGULATIONS**

**TITLE 23. WATERS.**

**DIVISION 7. CALIFORNIA WATER COMMISSION**

**CHAPTER 1. WATER STORAGE INVESTMENT PROGRAM**

**Updated December 2025**

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## Article 1. Purpose and Definitions

### Section 6000.

Chapter 2 of Proposition 1, Water Code section 79701(e), declares the will of Californians that funding within Proposition 1 is provided to obtain three objectives of the California Water Action Plan: more reliable water supplies, restoration of important species and habitat, and more resilient and sustainably managed water infrastructure. Chapter 8 of Proposition 1, Water Code section 79750 *et seq.* requires the Commission to adopt regulations governing the investment of public funds for public benefits associated with water storage. The regulations in this chapter describe the application process to obtain public funding for water storage projects that would provide public benefits, and the methods and criteria to be used by the Commission to evaluate those proposed projects. Commission actions and meetings are performed in accordance with the Bagley Keene Open Meeting Act (Government Code sections 11120–11132) (Bagley-Keene). Decisions made by the Commission for the Water Storage Investment Program shall be made by majority vote in a public meeting after the Commission has heard public comment. Staff informs the Commission decisions by providing technical comment and preliminary recommendations for the Commission's consideration. Supporting information shall be made available to the Commission in advance of the meeting, consistent with Bagley-Keene.

Note: Authority Cited: Water Code section 79750.

Reference: Water Code section 79750.

### Section 6001. Definitions

(a) As used in this Chapter, the terms below shall have the meanings noted:

- (1) "Adaptive management" has the same meaning as provided in Water Code section 85052.
- (2) "Agricultural water supplier" has the same meaning as provided in Water Code section 10608.12.
- (3) "Applicant" means the entity(ies) that formally submits an application for funding.
- (4) "Application" means the information submitted to the Commission that is outlined in the application process in section 6003 of these regulations.
- (5) "Attraction flow" means water with appropriate chemistry, velocity, quantity, and location to attract fish migrating upstream.
- (6) "Avoided cost" means the reduction in a without-project future condition cost that would occur as a result of a proposed project.
- (7) "Beneficial uses of the Delta" means the beneficial uses identified in the State Water Board's "Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary" (December 2006).
- (8) "Beneficiary(ies)" means a person, organization, or group of persons or organizations that receives public or non-public benefits from a proposed project.
- (9) "Best available science" means the use of the high-value information and data, specific to the decision being made and the time frame available for making that decision, to inform and assist management and policy decisions.
- (10) "CALFED surface storage projects" means projects meeting the requirements of Water Code section 79751(a). For the purposes of this Program, this means Los Vaqueros Reservoir Expansion, In-Delta Storage Project, Sites Reservoir, and Temperance Flat.
- (11) "Capital costs" means the costs of construction or acquisition of a tangible physical property with an expected useful life of 15 years or more. Capital

costs include the following items:

- (A) Major maintenance, reconstruction, or demolition for purposes of reconstruction, reoperation, or retrofitting of facilities.
- (B) Equipment with an expected useful life of two years or more.
- (C) Costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and assessments, required environmental mitigation or compliance obligation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.

(12) "CEQA" means the California Environmental Quality Act (Public Resources Code section 21000 et seq.).

(13) "CDFW" means the California Department of Fish and Wildlife.

(14) "Commission" means the California Water Commission.

(15) "Conjunctive use project" means the coordinated and planned management of existing surface water and groundwater resources in order to maximize the efficient use of both resources. Conjunctive use projects may include development of new operational agreements and construction of appurtenant infrastructure. To be considered for a maximum project cost share exception, pursuant to Water Code section 79756(a), these projects shall use existing facilities and resources to the maximum extent practicable. Conjunctive use projects do not include those that meet the definition of groundwater storage projects.

(16) "Construction period" means the time during which construction occurs, normally stated as the first year and the last year of construction.

(17) "Cost-effective(ness)" means a demonstration that a proposed project's cost is the least-cost feasible means of providing the same or greater amount of benefit. Cost- effectiveness can apply to the project as a whole (total costs to provide the full set of public and non-public benefits) or to an individual public benefit relative to the Program cost share for that public benefit.

(18) "Cost allocation" means the process for assigning costs to beneficiaries.

(19) "Cost share" means the portion of total project cost that is paid by a specific beneficiary or funding source. It may be expressed in dollars or as a percent of total cost.

(20) "Current conditions" means the existing conditions as presented in an applicant's CEQA document.

(21) "Delta" means the Sacramento-San Joaquin Delta as defined in Water Code section 85058.

(22) "Delta outflow" means the Net Delta Outflow Index as identified in the State Water Board's "Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary" (December 2006).

(23) "Department" means the Department of Water Resources.

(24) "Dewatering" means a condition when water surface elevation drops below bed elevation exposing redds to ambient conditions or stranding juvenile salmonids.

(25) "Disadvantaged communities" has the same meaning as Water Code section 79505.5.

(26) "Discount rate" means the real interest rate (i.e., the rate without inflation) used to adjust constant dollar public or non-public benefits received or costs incurred during the planning horizon to dollars at a common point in time.

(27) "Duration of improvement" means the length of time an improvement is expected to exist or provide intended public benefits.

(28) “Ecosystem improvements” means a public benefit that includes changing the timing of water diversions, improvement in flow conditions, temperature, or other public benefits that contribute to the restoration of aquatic ecosystems and native fish and wildlife, including those ecosystems and fish and wildlife in the Delta, per Water Code section 79753(a)(1). Ecosystems include both aquatic and terrestrial habitats and natural communities.

(29) “Emergency response” has the same meaning as Water Code section 79753(a)(4) which is a public benefit that provides an amount of water storage or supply for emergency response purposes that are outside of normal facility operations or average water supply for all other purposes (i.e., water supply is reduced for the expected (average) amount of water used for emergency purposes). For the purposes of this Program, emergency response water supplied for human health and safety purposes during declared emergencies will be considered a public benefit under this category.

(30) “Entrainment” means fish being transported along with the flow of water into unnatural or harmful environments.

(31) “Environmental documentation” means documentation required for compliance with CEQA as defined in California Code of Regulations, Title 14, section 15361.

(32) “Existing environmental mitigation or compliance obligations” means legally enforceable requirements or conditions in existing statutes, regulations, permits, contracts, licenses, grants, or orders and decisions from courts or state or federal agencies intended to protect the human or natural environment.

(33) “Flood control benefit” has the same meaning as Water Code section 79753(a)(3) which is a public benefit that reduces or prevents the extent or magnitude of the expected detrimental effects of flooding as a result of new, expanded, or reoperated storage projects.

(34) “Flow regimes” means flow conditions that retain specific process-based components that support hydrogeomorphic or ecological functions for the streams and rivers. Ecological functions are the biological, chemical, and physical structural components of an ecosystem and how they interact with each other.

(35) “Funding agreement” means an agreement between the Commission and the funding recipient to implement the proposed project.

(36) “Funding recipient” means an applicant who receives a letter of maximum conditional eligibility and enters into a funding agreement through the Program.

(37) “Geographic scope” means the area covered by a model or analysis used to calculate physical changes resulting from a proposed project.

(38) “Groundwater contamination prevention project” means a project that provides water storage benefits and prevents groundwater contamination by eliminating or reducing sources of contamination; prevents seawater intrusion through the use of seawater or hydraulic barriers; prevents the migration of contaminants into down gradient groundwater basins or aquifers; or otherwise prevents groundwater contaminant plumes from expanding or spreading. Contamination means an impairment of the quality of the groundwaters of the State.

(39) “Groundwater dependent ecosystem” has the same meaning as California Code of Regulations, Title 23, section 351(m).

(40) “Groundwater remediation project” means a project that provides water storage benefits and removes or reduces one or more constituents resulting from a discharge or release of waste that has degraded groundwater quality or impaired beneficial uses, or a project that restores groundwater basin storage or storage capacity by reducing constituent concentrations below levels that impair

beneficial uses of the groundwater.

(41) "Groundwater storage project" means a designed project that captures, infiltrates, injects, or recharges (direct or in-lieu) water supplies into a groundwater basin for later use or to avoid or address undesirable groundwater results.

(42) "Groundwater Sustainability Agency (GSA)" has the same meaning as Water Code section 10721(j).

(43) "Groundwater Sustainability Plan (GSP)" has the same meaning as Water Code section 10721(k).

(44) "Immediacy of improvement action" means the amount of time that will elapse between the initiation of an improvement action that will result in a measurable improvement and the completion of that action.

(45) "In-river rearing" means when a fish holds in a river to feed, grow, or survive prior to upstream or downstream migration.

(46) "Local surface storage project" means a project that stores water above ground in a natural or artificial impoundment that improves the operation of water systems in the state and provides public benefits. Local surface storage projects are not wholly owned or operated by the Department or U.S. Bureau of Reclamation but rather by a local agency.

(47) "Magnitude of improvement" means the quantity of the improvement.

(48) "Measurable improvements" means changes in physical, chemical, or biological conditions that provide public benefits and can be quantified at a specific location and time.

(49) "Mutual water company" has the same meaning as Public Utility Code section 2725.

(50) "Net improvement" means the gain or enhancement of a resource condition determined by comparing the with- and without-project future conditions less any negative outcomes of a proposed project.

(51) "Non-natal tributary" means any waterway that is not the stream or river where an anadromous fish was born.

(52) "Nonprofit organization" has the same meaning contained in Water Code section 79702(p).

(53) "Non-public benefit" means a benefit provided by a proposed project other than the public benefits identified in Water Code section 79753(a).

(54) "Operations" means any decision or action, purposeful or incidental, to control or regulate the free flow of water by diverting to, impounding in, or releasing from a surface water or groundwater storage or other facility(ies).

(55) "Permits" means any federal, state, or local approvals, certifications, or agreements required to construct, implement, or operate a project.

(56) "Physical benefit" means a desired improvement in a good or service that is provided by a proposed project, measured in a physical, non-monetary unit.

(57) "Physical change" means expected change in: surface water or groundwater conditions; water flow, Delta and riverine conditions; surface water or groundwater quality; aquatic and terrestrial biological resources; energy resources; recreation resources; or other resources affected by the change in diversion, storage, or use of water provided by a proposed project.

(58) "Planning horizon" means the future time period, in years, over which project costs will be paid and public or non-public benefits received, normally based on the expected project life plus the construction period. The planning horizon may not exceed the expected life of the project facilities plus the construction period, or 100 years, whichever is less.

(59) "Present value" means the monetary value of future costs or future public or non-public benefits of a proposed project, converted to a common point in time using the discount rate. As used in this regulation, present values of costs or benefits

of a project are expressed at the start of a proposed project's operation, unless otherwise specified.

(60) "Program" means the Water Storage Investment Program.

(61) "Project life" means the expected time period in which a project physically performs its intended function.

(62) "Public agency" shall have the same meaning provided in Water Code section 79702(s).

(63) "Public benefit(s)" are those public benefits associated with water storage projects outlined in Water Code section 79753(a).

(64) "Public Benefit Ratio" means the ratio of the monetized public benefits to the Program funding request.

(65) "Ramping rate" means a progressive change in the discharge of water to a stream or river channel, measured as flow per unit time.

(66) "Realization of benefit" means the amount of time that would elapse before an improvement will achieve measurable outcomes.

(67) "Recreational purposes" means a public benefit that provides recreation activities typically associated with water bodies (such as rivers, streams, lakes, wetlands, and the ocean) and wildlife refuges that are accessible to the public. Recreational benefits must be directly affected by the proposed project and be open to the public, and may provide interpretive, educational, health, or intrinsic value.

(68) "Redd" means a gravel nest, excavated by a spawning female salmonid, for the deposition of eggs.

(69) "Regional surface storage project" means a project that stores water above ground in a natural or artificial impoundment that improves the operation of water systems in the state and provides public benefits.

(70) "Reservoir reoperation project" means a project that involves the modification of the operations of an existing surface storage reservoir to achieve public benefits. A reservoir reoperation project may include construction of appurtenant infrastructures such as spillways, radial gates, tunnels, or conveyance facilities necessary for the improved operation of the existing reservoir. Such projects must result in long-term operational changes that provide public benefits, and the operational changes must be documented in a facility's operating permits and the contracts with entities responsible for administering and monitoring the public benefits, pursuant to Water Code section 79755.

(71) "Resiliency" for the purposes of the component score in section 6009(g) means the ability of a project to provide public benefits by accounting for flexibility and integration to the State water system and response to sources of uncertainty as described in section 6004(a)(8).

(72) "Spatial distribution" means the geographical arrangement of a habitat, phenomenon, or species in a given area.

(73) "Spatial resolution" means the minimum length, area, or volume of an affected physical resource necessary to demonstrate and describe public benefits or impacts.

(74) "Spatial scale" means the geographical extent of an improvement.

(75) "Staff" means the employees of the Commission, other state agencies, and contractors designated by the Commission to assist in the preparation and review of applications and administer the Program, including evaluating the technical aspects of a proposed project.

(76) "State Water Board" means the State Water Resources Control Board.

(77) "State water system" means all of the state's water systems collectively, including local, regional, state, and federal systems that provide water resources benefits within California, regardless of whether the benefits are public or

private.

(78) "Straying" means an anadromous fish migrating into a non-natal waterway.

(79) "Temporal scale" means the time in the calendar year during which an improvement would be realized.

(80) "Threshold" means, in the context of adaptive management, a numerical value for a specific metric that is a boundary between acceptable and unacceptable situations or conditions, or a specific metric that must be exceeded for a certain reaction, result, or condition to occur.

(81) "Time-step" means the amount of time for which equations in a time-sequential model are recalculated; normally hourly, daily, monthly or annually.

(82) "Tributaries to the Delta" means all river systems that make up the Sacramento River watershed and the San Joaquin River watershed (i.e., the topographic hydrologic basins). Tributaries to the Delta include areas upstream of dams or other impoundments. Tributaries to the Delta do not include the Trinity River watershed or the Tulare Lake Basin.

(83) "Tribe" means a federally-recognized Indian tribe or Indian tribes/groups listed on the Native American Heritage Commission's California Tribal Consultation List.

(84) "Trigger" means, in the context of adaptive management, an event, situation, or measurement that initiates or requires a management action.

(85) "Undesirable result(s)" with respect to groundwater, has the same meaning provided in Water Code section 10721(x)(1-6).

(86) "Urban water supplier" has the same meaning as Water Code section 10617.

(87) "Water quality improvements" means a public benefit that includes water quality improvements that provide significant public trust resources in the Delta or in other river systems, or water quality improvements that clean up or restore groundwater resources, per Water Code section 79753(a)(2). Public trust resources related to water quality improvements, for the purposes of this Program and quantifying public benefits, mean fishery protection, fish and wildlife conservation, preservation of waterways in their natural state, and recreation. Water quality improvements in the Delta, or in other river systems, that provide these public trust resources are public benefits.

(88) "Willingness to pay" means a monetary measure of what Californians would be willing to relinquish for a quantity of a good or service if there was no alternative means of obtaining that same quantity.

(89) "With-project future conditions" means a quantitative and qualitative description of the conditions assumed at the future condition years 2030 and 2070 with a proposed project; it is based on the without-project future conditions and includes additions or modifications specific to the proposed project's facilities and operations.

(90) "Without-project future conditions" means a quantitative and qualitative description of the infrastructure, population, land use, water use, water operations, agreements, laws, regulations, climate and sea level conditions, and other characteristics relevant to the proposed project that are assumed at the future condition years 2030 and 2070 without a proposed project.

Note: Authority cited: Water Code sections 79705, 79750, and 79754.

Reference: Water Code sections 79712, 79750, 79751, 79752, 79753, 79755, 79756, and 79757.

## Article 2. Application Process

## Section 6002.

This article describes the information that shall be included in the application, including how the applicant quantifies the public benefits and the information necessary for the Commission to make an evaluation of the application and supporting information.

Note: Authority cited: Water Code sections 79705, 79750, and 79754.

Reference: Water Code sections 79750, 79754, 79755 and 79756.

## Section 6003. Application Submittal

(a) The Commission shall notify the public when applications will be accepted through its website and its electronic mailing list. Alternatively, if requested by a potential applicant, notice shall be provided by regular mail. The application solicitation shall be open for a minimum of five months from the date the notice is published. Applicants shall complete and submit an application, using the Department's Grants Review and Tracking System (GRaNTS) on-line application submittal tool, by the close of the application solicitation period. Staff shall post all applications received on the Commission's website within 30 days of the close of the solicitation period, with the exception of potentially confidential documents subject to the process described in section 6015.

(1) The application shall consist of the following:

(A) Maximum 20 page executive summary describing:

1. The project facilities and operations;
2. How the project is integrated into one or more state water systems, including use of new water sources such as recycled water or storm water capture. The summary must include information such as the project's inclusion in an integrated regional water management plan, other integrated planning documents, or interactions with existing projects and operations that support the description of integration;
3. How the project increases the flexibility of the water system(s) it is integrated with, including references to analyses, data, documents, or studies included in other parts of the application that support the added flexibility;
4. How the added quantity of water in the water system due to the project, or other metric, is important to increasing water system reliance and achieving public benefits;
5. The project's ability to contribute to sustainable groundwater management;
6. The project's ability to expand beyond its current capacity including any planned phases of expansion and explain the current status of any expansion described;
7. Physical and economic magnitude of public and non-public benefits; and
8. Other relevant information the applicant deems necessary to inform the Commission.

(B) Project name and objective, county, latitude, longitude, water source, watershed, groundwater basin, hydrologic region, senate district, assembly district, congressional district, project description, and maps, schematics, and engineering drawings to

- (C) support the project description;
- (D) Signed resolution from the authorized representatives or governing authority of the applicant designating an authorized representative to submit the application and execute an agreement with the State for Program funding;
- (D) Contact information, including the name of organization, the point of contact and position title at the organization, email address, entity address and phone number;
- (E) Explanation of eligibility, including which specific subsection of Water Code section 79712 or 79759 qualifies the applicant to apply and the subsection of Water Code section 79751 which qualifies the project type;
- (F) Amount of Program funding requested, total capital costs, estimated total project cost, benefit and cost analysis, and cost allocation;
- (G) Estimated project schedule that presents the anticipated timeline until the initial year of project operation;
- (H) A preliminary operations plan or documentation describing, at a minimum, the following items:
  - 1. Project operations and public benefits under a range of hydrologic conditions, including wettest and driest years and multiple dry years;
  - 2. The actions that will be taken to meet the desired public benefit objectives;
  - 3. How operations will be monitored to ensure public benefit outcomes; and
  - 4. Preliminary adaptive management strategies, including:
    - a. Process through which an adaptive management and monitoring program will be developed for approval by the agency administering the public benefit;
    - b. Potential uncertainties that may impact project operations in the future;
    - c. Potential measurable objectives, performance measures, thresholds, and triggers to monitor project performance and achievement of desired outcomes;
    - d. Decision making process for changes in project operations, including potential management or corrective actions, if conditions fall outside the range of anticipated conditions or if public benefits are not provided as anticipated in the application; and
    - e. Funding sources and financial commitments to develop and implement an adaptive management and monitoring program.
- (I) Explanation that the project does not adversely affect any river afforded protection pursuant to the California Wild and Scenic Rivers Act or the federal Wild and Scenic Rivers Act;
- (J) Where an urban water supplier or agricultural water supplier is the applicant, verification from the Department that the urban or agricultural water supplier is in compliance or is working with the Department toward compliance with the requirements of Water

Code section 10608.56;

(K) If applicable, identify affected groundwater basins, as defined by Water Code section 10722 *et seq.*, and how the project would be integrated with future GSP(s). Explain how the project would reduce, eliminate, or have an effect on undesirable results within the affected groundwater basin(s). Describe how the applicant would work with GSA(s) or adjudicated participants of the basin.

(L) Documentation, analytical methods and results that support, substantiate, and quantify all public and non-public claimed physical benefits, as further defined in section 6004, including measurable improvements to the Delta ecosystem or to the tributaries to the Delta. If a project is not within the watershed of the Delta, the applicant shall identify specific water rights or water contracts that would be created or amended to ensure public benefits to the Delta ecosystem and shall provide supporting documentation of the parties' willingness to enter into such contracts or amendments including an explanation of how these changes would assure measurable improvements to the Delta ecosystem;

(M) Explanation of how the project improves the operations of the state water system;

(N) Physical and Economic Benefits Summary tables incorporated by reference herein (November 2016) and documentation that supports the quantification and monetization requirements listed in subsection 6004(a)(4) of these regulations;

(O) Documentation that demonstrates the project's engineering, environmental, economic, and financial feasibility as specified in the Water Storage Investment Program Technical Reference Document (Technical Reference) (November 2016), incorporated herein by reference, including draft feasibility studies (if available);

(P) Summary of how the applicant is coordinating with the owners and operators of facilities of water systems not owned or operated by the applicant or project partners that may be affected by the project;

(Q) For each ecosystem and water quality public benefits quantified pursuant to section 6004, the applicant shall identify at least one Program ecosystem or water quality priority in section 6007(c). For each identified Program ecosystem or water quality priority, the applicant shall submit the appropriate Ecosystem Priorities Application Worksheets (August 2016), incorporated herein by reference, or Water Quality Priority Application Tables (November 2016), incorporated herein by reference;

(R) Applicant's supporting documentation and explanation of how the project advances the long-term objectives of restoring ecological health and improves water management for beneficial uses of the Delta;

(S) Most recent version of publicly-available environmental documentation for the project;

(T) Summary of how the project may impact environmental or cultural resources and how the project will mitigate or minimize impacts to those resources;

(U) If applicable, evidence of Tribal Cultural Resource consultation

- under CEQA;
- (V) A discussion of how the applicant will ensure that the proposed project will comply with and be consistent with all applicable local, state and federal laws and regulations, including existing environmental mitigation or compliance obligation requirements;
- (W) A list of permits known to be necessary for construction and operation of the proposed project, along with a description of the status of and time to obtain each permit
- (X) If applicable, request for early funding for completion of environmental documentation and/or permitting, the amount requested, associated schedule, budget, and scope of work for requested activities per section 6010;
- (Y) Statement, under penalty of perjury pursuant to the laws of the State of California, attesting that the information provided in the application is true and correct to the best of the applicant's knowledge;
- (Z) A summary of public benefits that cannot be monetized in the quantification of public benefits and does not address an ecosystem or water quality priority;
- (AA) A listing of quantified net public benefits claimed and the existing environmental mitigation or compliance obligations that are accounted for in each net public benefit as of the date of the CalSim-II model product in section 6004(a)(1). Projects defined section 6004(a)(1)(E) can indicate "within model" for those existing environmental mitigation and compliance obligations contained in the model. If applicable to their claimed net public benefit such projects shall also list and account for the non-flow related mitigation and compliance obligations of the State Water Project and Central Valley Project;
- (BB) A description and assumptions of the with-project conditions, as defined in subsection 6004(a)(2) as well as a description of the with and without project current conditions;
- (CC) If the applicant does not use the model products and assumptions per subsection 6004 (a)(1), a description of the assumptions the applicant used to determine the without-project future conditions; and
- (DD) The applicant's uncertainty analysis required by subsection 6004(a)(8).

Note: Authority cited: Water Code sections 79705, 79710, 79750, and 79754.

Reference: Water Code sections 79705, 79710, 79750, 79751, 79753, 79754, 79755 and 79756.

## Section 6004. Requirements for the Quantification of Benefits

- (a) The applicant shall quantify the physical and economic magnitude of public and non-public benefits that would be provided by the proposed project. The applicant shall indicate whether a benefit is public or non-public to provide an accurate cost allocation to determine allowable Program funding. The net public and non-public physical benefits shall be calculated using the physical, chemical, or biological change in each benefit resource condition that is created by or caused by the proposed project, less any negative impacts of similar physical units, location, and timing, created or caused by the proposed project as compared to the without-project conditions at the same reference point (i.e. 2030 future conditions, 2070 future conditions). To comply with this section,

the applicant shall select the most appropriate method described in the Technical Reference to quantify the physical and economic magnitude of the net public and non-public benefits of the proposed project. Pursuant to the Technical Reference, an applicant may also select a method not included in the Technical Reference if the method is scientifically sound, appropriate for the project, and adequately described and documented. The quantification of public and non-public benefits shall include the following:

- (1) Without-Project Future Conditions. Except as provided in subsection (E), all applicants shall use the Climate and Variable Infiltration Capacity (VIC) model results data for the two without-project future conditions (2030 future conditions and 2070 future conditions) provided by the Program on September 9, 2016 incorporated by reference herein. In addition, applicants defined in subsection (E) shall use the CalSim-II and DSM2 model products provided by the Program on November 2, 2016 incorporated by reference herein. If the model products provided by the Program do not adequately describe the without-project future conditions relevant to the project, applicants may also use other tools or models to complete the description of the without-project future conditions.
  - (A) The without-project future conditions shall be defined for surface water and groundwater operations and physical, chemical, biological, economic, and other resource conditions; and include information relevant to quantifying the potential public and non-public physical and economic benefits and costs of the proposed project for the planning horizon.
  - (B) The without-project future conditions shall include the infrastructure, population, land use, water use, water operations, laws, regulations and other characteristics relevant to the analysis of the project, including all existing mitigation or compliance obligations. The without-project future conditions shall be developed using best available information on current conditions and include projects, programs, and water management actions that would be reasonably expected to occur in the foreseeable future. To be included in the without-project future conditions, projects, programs, and water management actions must be under construction or approved and permitted. Potential sources of uncertainty in future conditions are addressed in section 6004(a)(8).
  - (C) The applicant's analysis of without-project future conditions shall include any watershed(s) or region(s) that would affect or would be affected by the proposed project. If the project affects State Water Project or Central Valley Project operations or both, the analysis must include the watersheds where the affected State Water Project or Central Valley Project facilities and water uses, as applicable, are located.
  - (D) The without-project future conditions shall represent the change in climate and sea level conditions for California at the years 2030 and 2070. The level of change in climate and sea level conditions for 2030 and 2070 is defined in Section 2.12 of the Technical Reference.
  - (E) Applicants for the following categories of proposed water storage projects shall use the model products provided, as described in section 6004(a)(1):
    1. CALFED surface storage projects, as defined in section 6001(a)(10); and
    2. All projects requesting funding for quantified benefits within the Delta or resulting from Delta improvements.
  - (F) Applicants that quantify flood control benefits using hydrologic and hydraulic modeling of future flood events may provide such modeling

analysis using one of the following. If 6004(a)(1)(F)1. or 2. is used, applicants must explain how benefits might be different under the provided future climate and sea level conditions. In all cases, monetization of flood control benefits must be consistent with this section.

1. Modeling provided in their feasibility studies;
2. New modeling using historical flood events or historical hydrology; or
3. New modeling using the climate change hydrology data set provided.

(2) With-Project Future Conditions. The applicant shall define and assess the with-project future conditions for the years 2030 and 2070. The with-project future conditions shall be based on the without-project future conditions and include all additions or modifications specific to the proposed project. Additions or modifications include proposed changes in infrastructure, population, land use, water use, water operations, laws, regulations, and other characteristics that describe the with-project future condition.

(3) Calculation of Physical Changes and Resulting Benefits. The applicant shall quantify and describe the physical changes, including public and non-public physical benefits. The physical changes are the difference between the with-project future conditions and without-project future conditions at the same reference points. The determination of potential public and non-public physical benefits (i.e., positive or beneficial physical changes) shall account for any negative physical changes or impacts that are not fully mitigated.

(A) To calculate the physical changes, the applicant shall:

1. Use a geographic scope, spatial resolution, and time-step that are sufficient to accurately quantify the physical benefits claimed.
2. Document how calculations of expected physical changes are derived and show the relationship between the proposed project, its operations, and the expected physical changes, including public and non-public physical benefits created or caused by the proposed project. The operations of the proposed project shall be described in detail. Any changes in the project's water operations and related physical benefits during the planning horizon shall be disclosed.

(B) The applicant shall disclose and quantify, where possible, any impacts or negative effects the proposed project would impose on the ecosystem, water quality, uses and storage of water, or resources relative to the without-project future condition during the planning horizon, to the extent that those impacts are less than fully mitigated. If the analysis used to quantify the negative effects is different from that shown in the applicant's CEQA or other environmental documents, the applicant shall describe how and why they are different and the implications of those differences.

(4) Monetization of the Public and Non-Public Physical Benefits. The applicant shall estimate the monetary value of the public and non-public physical benefits in accordance with subsections 6004(a)(4)(A)–(K). Applicants shall provide monetized benefits at the 2030 condition. Applicants have the option of providing a separate monetization analysis for the 2070 condition, or applicants may apply the resulting monetized value per unit of physical benefit derived from the 2030 analysis to the physical changes at the 2070 condition. The appropriate level of analysis for monetizing each public and non-public physical benefit depends on the magnitude of that benefit compared to the total magnitude of public and non-public physical benefits and the size of the proposed project. If public physical benefits cannot be monetized, the applicant

shall provide justification why and include a qualitative description of the importance of the benefits; primarily, who is affected, how, and how often, and provide other evidence to show how the physical change is beneficial and important to Californians.

- (A) The analysis shall be conducted in constant 2015 dollars as described in the Technical Reference section 5.2.5. All future economic benefits shall be displayed in constant dollars for each year of the planning horizon. Economic benefits estimated prior to 2015 shall be escalated to 2015 values using the yearly average Consumer Price Index for California as described in section 5.2 of the Technical Reference. Applicants may use other index values to update older benefit estimates if justification is provided.
- (B) The planning horizon is the expected life of the proposed project in years plus the construction period, or 100 years, whichever is less.
- (C) A 3.5 percent real (inflation-free) discount rate shall be used for all calculations that convert a constant dollar monetary value of benefit or cost into an equivalent value at another point in time.
- (D) Where future population levels are relevant to physical and/or economic benefits calculations, the applicant shall use the most current population forecasts published by the California Department of Finance.
- (E) The applicant shall determine the cost-effectiveness of the proposed project by calculating, displaying, and justifying the cost of the least-cost alternative means for providing the same amount or more of the total public and non-public physical benefits as provided by the proposed project, if there is at least one feasible alternative means of providing the same amount or more of the total public and non-public physical benefits. If alternatives were considered as part of the feasibility study or other published document (such as a plan formulation study), applicants need not re-analyze the alternatives within the application. Applicants shall provide the document containing the analysis of alternatives and provide within the application a brief summary of the cost of the least-cost feasible alternative and the reasons for rejecting the alternatives in favor of the proposed project.
- (F) The applicant shall calculate, display, and justify, for each public and non-public benefit, the benefits monetized using each of the following approaches, to the extent it is applicable to the proposed project:
  1. Avoided cost;
  2. Cost of feasible alternative means that provide at least the same physical benefit. If alternative ways of providing a public benefit were evaluated but dismissed as infeasible in the feasibility study or other published document (such as a plan formulation study), applicants shall briefly summarize the results of that analysis. If one or more feasible alternative ways of providing a public benefit exist, the applicant shall estimate the lowest cost of such feasible alternatives; and
  3. Willingness to pay for the benefit, if it can be justified and documented. If multiple, reasonable economic methods exist to estimate willingness to pay, the applicant shall justify the method selected.
- (G) The monetized benefit of the proposed project shall be calculated as the avoided cost (if any) plus, for any portion of the physical benefit not monetized as an avoided cost, the minimum of the feasible alternative

cost value (if any) and the willingness to pay value (if any).

(H) Where applicable, monetized public and non-public benefits shall consider how the dollar value of the public and non-public physical benefits varies by the hydrologic conditions.

(I) The applicant shall tabulate, for each future condition, the dollar amount of public and non-public physical benefits monetized using each of the applicable approaches in section 6004(a)(4)(F). When the dollar amounts vary by hydrologic condition, the tabulated value at each future condition shall be the expected dollar value considering the frequency of hydrologic conditions in the datasets used to calculate physical changes.

(J) To calculate the present value of the economic net public and non-public benefits for a project, the economic analysis requires dollar net benefits to be calculated for each year within the planning horizon. To calculate the net benefits from the start of project operations until 2030, applicants may interpolate between current conditions benefits and 2030 future conditions benefits. If current conditions benefits estimates are not available, applicants shall extrapolate from the quantification under 2030 future and 2070 future conditions to obtain quantified benefits and impacts for the years of operation before 2030. To calculate the economic net benefits for years between 2030 and 2070, applicants shall interpolate using a linear trend between 2030 future and 2070 future conditions benefits. If there are other important changes in monetary benefits in other years during the planning horizon, applicants may also include those years as points for interpolation. To calculate the economic net benefits from 2070 until the end of the planning horizon (as applicable to projects with an expected project life extending beyond 2070), applicants shall assume 2070 economic benefits.

(K) The applicant shall monetize any impacts or negative effects the proposed project would have on the ecosystem, water quality, uses and storage of water, or resources relative to the without-project conditions, in the planning horizon, to the extent that those impacts are less than fully mitigated. For each benefit category, the applicant shall display the net benefit (monetized benefit minus monetized unmitigated impact).

(5) Estimate of the Total Project Costs. The applicant shall include the total project costs, including construction cost, interest during construction, land acquisition, monitoring, environmental mitigation or compliance obligations, operations and maintenance, repair, and replacement costs during the planning horizon using methods described in Technical Reference section 6.

(A) All cost estimates shall be in 2015 dollars.

(B) All cost estimates shall be less than or equal to five (5) years old at the time of the submission of the application and costs estimated prior to 2015 shall be escalated to 2015 dollars using U.S. Bureau of Reclamation Construction Cost Trends.

(C) Interest during construction is the interest that accrues on capital costs expended during project construction. It shall be calculated as the interest an applicant pays between the time the construction cost is incurred and the start of project operations.

(D) Project cost estimates shall be reviewed, approved and signed by an engineer licensed by the California Board for Professional Engineers, Land Surveyors, and Geologists.

(6) Comparison of Net Benefits to Total Project Costs. The applicant shall display and compare the present value of economic net public and non-public benefits and total project costs.

(A) For each public benefit category, the applicant shall provide the following items:

1. The present value of the expected value of economic net public benefits over the planning horizon, expressed in 2015 dollars, discounted to the first year of project operations; and
2. The estimated Program cost share for each public benefit category, in present value dollars at the first year of project operation, and an explanation of how the cost share was calculated, consistent with Technical Reference section 8.

(B) For monetized public benefits, the applicant shall calculate the expected public benefit ratio pursuant to the Program as the ratio of the present value of the economic net public benefits to the total requested Program cost share.

(7) Cost Allocation to Beneficiaries. The applicant shall provide a proposed allocation of total project costs to all project beneficiaries, including the Program, and an explanation of how the allocation was calculated, consistent with Technical Reference section 8.

(A) Public benefit cost shares for the five public benefit categories may be allocated to the State of California, the United States, local governments, or private interests. The total requested Program cost share is the portion of the public benefit cost shares allocated to the Program, and:

1. Shall consider the share of public benefits received by Californians;
2. Shall not exceed 50 percent of the total capital costs of any funded project;
3. Shall be at least 50 percent ecosystem improvements;
4. Shall not be associated with environmental mitigation or compliance obligations except for those associated with providing the public benefits as stated in Water Code section 79753.
  - a. For projects defined in section 6004(a)(1)(E), flow related environmental mitigation or compliance obligations are those set out in the model products defined in section 6004(a)(1). Costs associated with these environmental mitigation or compliance obligations shall not be included in the Program cost share. Costs associated with other environmental mitigation or compliance obligations as listed and accounted for pursuant to section 6003(a)(1)(AA) shall not be included in the Program cost share.
  - b. For projects not defined in section 6004 (a)(1)(E), costs associated with environmental mitigation or compliance obligations as listed and accounted for pursuant to section 6003(a)(1)(AA) shall not be included in the Program cost share.
  - c. Costs of activities imposed as environmental mitigation or compliance obligations triggered by, or applicable to, the proposed project providing public benefits may be funded.

(B) The cost allocation developed in subsection (A) shall be used to determine the requested and eligible Program funding for public benefits. An applicant is not required to modify the costs allocated to non-public benefits determined in its feasibility study, except as needed to demonstrate overall project feasibility as required by Water Code

section 79757(a).

(8) Sources of Uncertainty Analysis. The applicant shall disclose how the expected public physical benefits that would be provided by the proposed project are expected to change due to the following sources of uncertainty:

(A) Climate change. The applicant shall describe how extreme levels of climate change could affect the public physical benefits claimed. The level of change in climate to be explored is provided in Section 2.12 (Climate Change and Sea Level Rise) of the Technical Reference. Applicants shall describe how operations of the proposed project could be adapted to sustain public physical benefits claimed. The applicant shall provide documentation or calculations and assumptions used to support the conclusions.

(B) Future projects and water management actions. Applicants shall disclose how other potential future projects and water management actions, as may be included in the applicant's CEQA cumulative impact analysis, could affect the public physical benefits claimed. Applicants shall describe how operations of the proposed project could be adapted to sustain public physical benefits claimed. The applicant shall provide documentation or calculations and assumptions used to support the conclusions.

(C) Other sources of uncertainty identified by the applicant. Applicants shall disclose any other potential sources of uncertainty and describe alternative operational strategies or adaptations the proposed project could be adapted to sustain public physical benefits claimed or to maintain the level of public physical benefits provided by the project if future conditions differ from the with-project future conditions described in subsection 6004(a)(2).

(D) Project performance during a drought. The applicant shall describe and quantify the amount of water stored in the water system due to the project that could be used for public benefits at the beginning and end of a five-year drought. The five-year drought shall be defined as five consecutive dry or critical years in the hydrologic data used in the analysis for the 2070 conditions. The applicant shall specify the drought period within the hydrologic data set used and describe the significance of the amount of water in the water system due to the project to system flexibility and maintaining public benefits during the drought period.

(9) Documentation. The applicant shall provide the data, assumptions, analytical methods and modeling results, calculations, and sources of information used to quantify the public benefits of the project. The applicant shall use sources of information that are publicly available, whenever possible, and other information submitted with the application.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

### **Article 3. Commission Methodology and Evaluation Criteria**

#### **Section 6005.**

The Commission shall evaluate information provided in the application to assess, score and rank potential projects pursuant to the criteria established in this article. All projects must

satisfy the following conditions:

- (a) Each project is required to meet the basic eligibility requirements outlined in subsection 6006 (c)(1) of this regulation.
- (b) Each project is required to meet the additional eligibility requirements outlined in subsection 6006 (c)(2) of this regulation.
- (c) Each application is required to meet the completeness requirements outlined in subsection 6006 (c)(3) of this regulation.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

## Section 6006. Eligibility and Completeness

- (a) Staff shall review each application for completeness and basic eligibility within 45 days of the end of the solicitation period.
- (b) If any completeness or basic eligibility deficiencies are identified, Staff shall notify the applicant in writing at the email address provided in the application and provide a list of the identified deficiencies.
- (c) The applicant shall be provided a 14-day period to submit the required information that addresses the identified deficiencies to Staff. Staff shall inform the Commission of any project which may have failed completeness or basic eligibility. The Commission shall determine if the project is ineligible based on Staff's recommendation and in compliance with these regulations.
  - (1) Basic Eligibility
    - (A) Staff shall review the following information to determine the basic eligibility of the application:
      - 1. The project must meet the criteria in the following Water Code sections:
        - a. Water Code sections 79712 or 79759; and
        - b. Water Code section 79751.
      - 2. The Program cost share is less than or equal to 50 percent of the proposed project's total capital costs, unless the project is a conjunctive use or reservoir reoperation project; and
      - 3. The monetized ecosystem improvement benefits comprise at least 50 percent of the monetized public benefits for which funding is requested from the Program.
    - (2) Additional Eligibility. Once basic eligibility is established under subsection 6006(c)(1), as part of the technical review, Staff shall review information contained in the application to identify the project's additional eligibility for Commission consideration. If a project does not meet the following criteria, the Commission shall determine if the project is ineligible:
      - (A) Does not adversely affect, including its free-flowing character, any river afforded protection pursuant to the California Wild and Scenic Rivers Act, Public Resources Code section 5093 *et seq.*, or the Federal Wild and Scenic Rivers Act pursuant to 16 U.S.C. §1271 *et seq.*, as required by Water code sections 79711(e) and 79751(a);
      - (B) Provides measurable improvements to the Delta ecosystem or to the tributaries to the Delta. If a project is not within the watershed of the Delta, Staff shall review and evaluate the information regarding assurances to provide ecosystem

- improvement benefits described in the application;
- (C) Improves the operation of the state water system;
- (D) Is cost effective;
- (E) Provides a net improvement in ecosystem and water quality conditions; and
- (F) Advances the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(3) Completeness.

(A) The application shall be considered complete if it includes all of the following:

1. Project description and location;
2. Contact information;
3. Signed resolution or intent to pass resolution from the authority of the submitting entity;
4. Program funding request, total capital costs, total project cost, benefit and cost analysis, and cost allocation;
5. Estimated project schedule;
6. Environmental documentation;
7. Urban water supplier or agricultural water supplier requirements, if applicable;
8. Groundwater requirements, if applicable;
9. Preliminary operations plan;
10. Description of claimed ecosystem and water quality priorities and accompanying data and information;
11. Physical and Economic Benefits Summary tables;
12. Analytical methods and results used to quantify public benefits;
13. Permits list, status, and schedule; and
14. Feasibility study components.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79754, 79755, 79756, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79754, 79755, 79756, 79757.

## Section 6007. Technical Review

(a) The following project components shall be evaluated and scored by Staff and provided to the Commission. The sum of the components' score shall be considered the expected return for public investment:

- (1) Public benefit ratio and non-monetized public benefits;
- (2) Relative environmental value;
- (3) Resiliency; and
- (4) Implementation risk

(b) Public benefit ratio and non-monetized public benefits.

(1) Staff shall evaluate information provided in the application to assess a project's public benefit ratio as follows:

(A) The monetized public benefits must be public benefits defined in Water Code section 79753. Staff shall review and evaluate the supporting information for the following components and consider the reasonableness of the assumptions, completeness and quality of analysis, and appropriate use of data and analytical methods to calculate the public benefit ratio pursuant to section 6004:

1. Preliminary operations plan;
2. Analytical methods and results;
3. Magnitude of physical, biological, or chemical benefit that could be monetized; and
4. Cost allocation.

(B) Staff shall rely on information supplied by the applicant and may perform independent calculations. If a public benefit ratio component is not supported by the information submitted in the application, Staff may adjust it. If the methods used or values supplied are not supported and Staff cannot adjust the public benefit ratio, the public benefit value shall be removed from the public benefit ratio calculation. Adjustments made to the public benefit ratio shall result in adjustments to the project's Program cost share. Following this review, Staff shall publish on the Commission's website the public benefit ratio and Program cost share approved or modified by Staff for each application with comments indicating the reasons for any modifications.

(C) Staff's revised value for the public benefit ratio may be greater than or less than the value stated in the application, based on Staff's evaluations. If Staff revised the public benefit ratio, the applicant may appeal, pursuant to section 6008 of these regulations.

(D) Public benefits claimed that were not monetized will be evaluated using the operations plan, modeling and analytical methods and results, magnitude of benefits claimed, and quality of analysis. Staff shall note if the claimed benefit is supported or if the claim lacks supporting information or documentation.

(c) Relative environmental value.

(1) Based on information supplied in the application, CDFW and the State Water Board shall each calculate a relative environmental value for the ecosystem improvements and water quality improvements, respectively. These two scores will be combined, pursuant to section 6009, and become the total relative environmental value. Relative environmental value criteria outlined in Tables 2 and 4 for ecosystem and water quality improvements, respectively, shall be used to determine a project's relative environmental value for each of the CDFW and State Water Board priorities (shown in Tables 1 and 3, respectively) claimed by the applicant.

(A) Ecosystem Improvements Relative Environmental Value.

1. CDFW shall determine the relative environmental value for ecosystem improvements provided by a project. CDFW shall consider information supporting ecosystem benefits including the analytical methods, modeling results, and physical, chemical, or biological information.

**Table 1. Ecosystem Priorities**

In accordance with Water Code section 79754, CDFW has identified ecosystem priorities that could be realized by water storage projects. These priorities, which are not listed in rank order and are considered equal, are presented below:

**Flow and Water Quality**

1. Provide cold water at times and locations to increase the survival of salmonid eggs and fry.
2. Provide flows to improve habitat conditions for in-river rearing and downstream migration

|  |
|--|
| <p>of juvenile salmonids.</p> <ol style="list-style-type: none"> <li>3. Maintain flows and appropriate ramping rates at times and locations that will minimize dewatering of salmonid redds and prevent stranding of juvenile salmonids in side channel habitat.</li> <li>4. Improve ecosystem water quality.</li> <li>5. Provide flows that increase dissolved oxygen and lower water temperatures to support anadromous fish passage.</li> <li>6. Increase attraction flows during upstream migration to reduce straying of anadromous species into non-natal tributaries.</li> <li>7. Increase Delta outflow to provide low salinity habitat for Delta smelt, longfin smelt, and other estuarine fishes in the Delta, Suisun Bay, and Suisun Marsh.</li> <li>8. Maintain or restore groundwater and surface water interconnection to support instream benefits and groundwater dependent ecosystems.</li> </ol>   |
| <p><b>Physical Processes and Habitat</b></p> <ol style="list-style-type: none"> <li>9. Enhance flow regimes or groundwater conditions to improve the quantity and quality of riparian and floodplain habitats for aquatic and terrestrial species.</li> <li>10. Enhance the frequency, magnitude, and duration of floodplain inundation to enhance primary and secondary productivity and the growth and survival of fish.</li> <li>11. Enhance the temporal and spatial distribution and diversity of habitats to support all life stages of fish and wildlife species.</li> <li>12. Enhance access to fish spawning, rearing, and holding habitat by eliminating barriers to migration.</li> <li>13. Remediate unscreened or poorly screened diversions to reduce entrainment of fish.</li> <li>14. Provide water to enhance seasonal wetlands, permanent wetlands, and riparian habitat for aquatic and terrestrial species on State and Federal wildlife refuges and on other public and private lands.</li> <li>15. Develop and implement invasive species management plans utilizing techniques that are supported by best available science to enhance habitat and increase the survival of native species.</li> <li>16. Enhance habitat for native species that have commercial, recreational, scientific, or educational uses.</li> </ol> |

2. CDFW shall apply the following relative environmental value criteria to score each of the priorities listed in Table 1 that an applicant claims would be provided by the project. The score shall be assigned by evaluating the degree of change between with and without project conditions, and the degree to which ecosystem improvements associated with each claimed priority would be provided by a project. CDFW shall consider each criterion listed in Table 2:

**Table 2. Ecosystem Relative Environmental Value Criteria**

|   |
|---|
| <ol style="list-style-type: none"> <li>1. Number of different ecosystem priorities claimed.</li> <li>2. Magnitude of ecosystem improvements.</li> <li>3. Spatial and temporal scale of ecosystem improvements.</li> </ol> |
|---|

- 4. Inclusion of an adaptive management and monitoring program that includes measurable objectives, performance measures, thresholds, and triggers to achieve the ecosystem benefits.
- 5. Immediacy of ecosystem improvement actions and realization of benefits.
- 6. Duration of ecosystem improvements.
- 7. Consistency with species recovery plans and strategies, initiatives, and conservation plans.
- 8. Location of ecosystem improvements and connectivity to areas already being protected or managed for conservation values.
- 9. Efficient use of water to achieve multiple ecosystem benefits.
- 10. Resilience of ecosystem improvements to the effects of changing environmental conditions, including hydrologic variability and climate change.

(B) Water Quality Improvements Relative Environmental Value

- 1. The State Water Board shall determine the relative environmental value for water quality improvements provided by a project. The State Water Board shall consider information supporting water quality benefits including the analytical methods, modeling results, and physical or chemical information.

**Table 3. Water Quality Priorities**

|  |
|--|
| <p>In accordance with Water Code section 79754, the State Water Board has identified water quality priorities that could be realized by water storage projects. These priorities, which are not listed in rank order and are considered equal, are presented below:</p> <ul style="list-style-type: none"><li>1. Improve water temperature conditions in surface water bodies that are not meeting water quality standards for temperature.</li><li>2. Improve dissolved oxygen conditions in surface water bodies that are not meeting water quality standards for dissolved oxygen.</li><li>3. Improve nutrient conditions in surface water bodies that are not meeting water quality standards for nutrients.</li><li>4. Improve mercury conditions in surface water bodies that are not meeting water quality standards for mercury.</li><li>5. Improve salinity conditions in surface water bodies that are not meeting water quality standards for sodium, total dissolved solids, chloride, or specific conductance/electrical conductivity.</li><li>6. Protect, clean up, or restore groundwater resources in high- and medium-priority basins designated by the Department.</li><li>7. Achieve Delta tributary stream flows that resemble natural hydrograph patterns or other flow regimes that have been demonstrated to improve conditions for aquatic life.</li><li>8. Reduce current or future water demand on the Delta watershed by developing local water supplies and improving regional water self-reliance.</li><li>9. Provide water for basic human needs, such as drinking, cooking, and bathing, in disadvantaged communities, where those needs are not being met.</li></ul> |
|--|

2. The State Water Board shall apply the following relative environmental value criteria to score each of the priorities listed in Table 3 that an applicant claims would be provided by the project. The score shall be assigned by evaluating the degree of change between with and without project conditions and the degree to which water quality improvements associated with each claimed priority would be provided by a project. State Water Board shall consider each criterion listed in Table 4:

**Table 4. Water Quality Relative Environmental Value Criteria**

|  |
|--|
| 1. Number of different water quality priorities claimed.   |
| 2. Magnitude of water quality improvements.  |
| 3. Spatial scale of water quality improvements.  |
| 4. Temporal scale of water quality improvements.   |
| 5. Inclusion of an adaptive management and monitoring program that includes measurable objectives, performance measures, thresholds, and triggers for managing water quality benefits. |
| 6. Immediacy of water quality improvement actions.   |
| 7. Immediacy of the realization of water quality benefits.   |
| 8. Duration of water quality improvements.   |
| 9. Consistency with water quality control plans, water quality control policies, and the Sustainable Groundwater Management Act (2014).  |
| 10. Connectivity of water quality improvements to areas that support beneficial uses of water or are being managed for water quality.  |
| 11. Resilience of water quality improvements to the effects of climate change and extended droughts.   |
| 12. Extent to which undesirable groundwater results that are caused by extractions are corrected.  |

(d) Resiliency.

(1) Resiliency shall be comprised of two subcomponents, integration/flexibility and response to an uncertain future.

(A) Staff shall evaluate the integration/flexibility of the project based on the quality of the analysis and information provided pursuant to section 6003 of these regulations. Staff will note where the integration and flexibility claims are not supported by information provided in the application.

(B) Staff shall evaluate the response to an uncertain future, based on the quality of analysis provided in the uncertainty analysis and the project performance during a drought provided in the application pursuant to section 6004 of these regulations. Staff shall consider the reasonableness of the assumptions, calculations used to support the conclusions, the project's ability to sustain public benefits under future uncertainties, and the quality of analysis. Staff shall note if conclusions are supported or conclusions lack supporting information or documentation.

(e) Implementation risk.

(1) Staff shall consider the project's schedule and the following items when evaluating a project's implementation risk and shall score them as described in section 6009 of these regulations:

(A) Technical feasibility, as described in Technical Reference, section 3.5;

(B) Financial feasibility, as described in Technical Reference, section 3.5;

(C) Economic feasibility, as described in Technical Reference, section 3.5;

(D) Environmental feasibility, as described in Technical Reference, section 3.5, and status and schedule of permits.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

## Section 6008. Commission Appeal

- (a) If the applicant's public benefit ratio is modified in the evaluation process pursuant to section 6007(b)(1)(B), the applicant can appeal the modification as follows:
  - (1) Within three weeks of notification of the revised Staff public benefit ratio, the applicant shall submit an appeal letter to Staff via the Commission email address appealing the Staff revised public benefit ratio. All appeals and supporting documentation received shall be posted on the Commission's website within two business days of receipt. The appeal letter shall consist of:
    - (A) A statement clearly appealing the Staff revised public benefit ratio;
    - (B) The public benefit ratio value the applicant claims as the correct value;
    - (C) A written rebuttal of specific Staff comments or reasons for Staff modifications;
    - (D) New supporting information, if any, specific to the written rebuttal to support the value the applicant claims is correct; and
    - (E) Reference to existing application information to support the rebuttal.
  - (2) The appeal shall not exceed 20 written pages in length using a 12 point font.
  - (3) Staff shall have a minimum of three weeks to respond to the appeal. Staff responses to appeals shall be made available through the Commission's website at least 10 days before the Commission meeting where the Commission's agenda includes the appeal discussion.
  - (4) Applicant representatives and Staff representatives will appear at the next available Commission meeting to present the appeal and Staff response to the Commission.
  - (5) The Commission will hear public comment on any application under appeal and make a decision on the applicant's public benefit ratio. The Commission may direct Staff to make changes to the public benefit ratio and associated Program cost share based on the applicant's appeal, Staff response, and public comment received.

Note: Authority cited: Water Code sections 79705, 79710, 79750, and 79754.

Reference: Water Code sections 79705, 79710, 79750, 79751, 79752, 79753, 79755, and 79757.

## Section 6009. Scoring

- (a) Following the technical review in section 6007 and Commission Appeal Process in section 6008, projects shall be scored.
  - (1) Each application's expected return for public investment shall be scored based on the following criteria:
    - (A) Public benefit ratio and non-monetized benefit;
    - (B) Relative environmental value for ecosystem and water quality;
    - (C) Resiliency; and
    - (D) Implementation risk
- (b) Component maximum point values are described in Table 5.

**Table 5. Maximum Component Scores**

| <b>Component</b>   | <b>Maximum Component Score</b> |
|--|--------------------------------|
| <b>Public Benefit Ratio and Non-Monetized Public Benefit</b> | 33                             |
| <b>Relative Environmental Value</b>                          | 27                             |
| <b>Resiliency</b>  | 25                             |
| <b>Implementation Risk</b>                                   | 15                             |
| <b>Expected Return for Public Investment Score</b>           |                                |
| <b>Total</b>   | 100                            |

(c) At the end of the evaluation and appeal process, components listed in subsection 6009(1)(A-D) are expressed in numbers dissimilar to Table 5. For example, public benefit ratios may be values such as 1, 1.2, 1.5, 2, 3, but not near the Table 5 value of 33. Staff shall apply a normalization calculation to convert dissimilar values into their corresponding scoring system values while preserving a project's relative score placement to other projects. The following process will be used to normalize initial component values for public benefit ratio, relative environmental value and implementation risk to Staff component scores:

(1) Evaluation metrics shall be normalized to the scoring scale by the following calculation:

$$SSSSSSSS = SSSSSSSSSSSSS * \frac{sseeeeeeeeess}{sseeeeeeeeessssss}$$

Where:

“scoremax” is the maximum possible score for each component listed in Table 5; “evalnum” is each component’s value calculated for each project before any normalization; “evalnummax” is the highest score for a given component amongst all applications; and “score” is the Staff normalized component score.

- (d) Public benefit ratio scores shall be determined using each application’s final public benefit ratio value pursuant to section 6008. Staff shall convert each application’s public benefit ratio value to a number on a scale of 0-33 by using the normalization process from subsection 6008(c). Once normalized, the public benefit ratio score will be rounded to the nearest whole number.
- (e) Non-monetized public benefits will be scored based on magnitude and quality of analysis. A maximum of four points will be assigned to non-monetized public benefits. If the public benefit ratio score is less than 33, the non-monetized public benefit score shall be added to the public benefit ratio score. The sum of the public benefit ratio score and non-monetized public benefit score shall not exceed the maximum stated in section 6009, Table 5.
- (f) State Water Board and CDFW shall provide a water quality and ecosystem relative environmental value, respectively, for each application pursuant to section 6007(c). Staff shall then combine the water quality and ecosystem relative environmental value scores for an application to produce an application’s total relative environmental value score as follows:
  - (1) For projects with both ecosystem and water quality relative environmental values, the score shall consist of 70% ecosystem and 30% water quality.
  - (2) In cases where a water quality relative environmental value is not applicable, the score shall be based solely on ecosystem relative environmental value.
  - (3) Staff shall convert combined ecosystem and water quality relative environmental value scores to a scale of 0-27 using the normalization process from subsection 6009(c).
  - (4) The combined and converted relative environmental value score will be rounded to the nearest whole number.
- (g) Staff shall develop a preliminary scoring recommendation for the commission’s consideration for resiliency as follows:
  - (1) Staff shall assign a maximum of 10 points for integration and flexibility based on the evaluation of claims made and the quality of the analysis. Eight to 10 points will be assigned for projects that show a high quality of analysis and high level of integration and added system flexibility. Four to seven points will be assigned for projects that show a high quality of analysis and moderate levels of integration and added system flexibility or a lesser quality of analysis and a high level of integration and added system flexibility. Zero to three points will be assigned for projects with low quality of analysis or low levels of integration and added system flexibility.
  - (2) Staff shall assign a maximum of 15 points for the project’s response to an uncertain future based on quality of analysis and effects on public benefits. Ten to 15 points will be assigned for projects that demonstrate a high quality analysis, the ability to maintain or increase public benefits, and have high levels of water stored in the system due to the project during a drought. Five to nine points will be assigned for projects that demonstrate a high-quality analysis, maintain or increase public benefits, and have moderate levels of water stored in the system due to the project during a drought or have a lesser quality analysis, maintain or increase public benefits, and have a high level of water stored in the system due to the project during a drought. Zero to five points will be assigned for projects

demonstrating low quality of analysis, reduction of public benefits, or low levels of water stored in the system due to the project during a drought.

(3) An application's scores for integration/flexibility and response to uncertain future will be summed to produce the resiliency component score.

(4) This recommended score will be considered by the Commission and can be changed by the Commission pursuant to section 6011.

(h) Staff shall develop a preliminary scoring recommendation for the Commission's consideration for implementation risk as follows:

(1) A score of 1-5 points shall be assigned for each feasibility category: technical, financial, economic and environmental. One point shall be assigned if the feasibility category information indicates a high uncertainty of being able to build or operate the project or the feasibility information is not supported, and 5 points will be assigned if the feasibility category information indicates a low risk and the information is well supported. The maximum possible composite score is 20. The composite score shall be normalized to a scale of 0-15 using the normalization process in section 6009(c).

(2) This recommended score will be considered by the Commission and can be changed by the Commission pursuant to section 6011.

(i) Preliminary component scores shall be summed to produce a preliminary expected return for public investment score.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

#### **Article 4. Conditional Eligibility and Funding Process.**

### **Section 6010. Funding for Environmental Documentation and Permits**

(a) Pursuant to Water Code section 79755(c), funding for completion of environmental documentation and permits necessary for the project shall be determined once applications are ranked pursuant to section 6011 of these regulations.

(b) The following conditions apply to funding for completing environmental documents and permits:

(1) The Commission shall not allocate funds for any project before December 15, 2016.

(2) The funds are not available for reimbursement until an agreement between the State and the applicant for these funds is executed.

(3) A cost share of at least 50% non-Program funding is required to accompany Program funding in completion of the proposed scope of work for completing environmental documents and permits.

(4) Program funds made available for the purposes of this section shall be considered a portion of the maximum eligible funding request for a project, not to exceed 5% of the maximum eligible funding request for a project pursuant to section 6011.

(c) A project shall be eligible for funding to complete environmental documentation and permits if all of the following conditions are met:

(1) The application contains a specific request for such funding pursuant to section 6003(a)(1)(X);

(2) The application contains a scope of work, schedule, and budget that details tasks to be performed using the funding;

- (3) The scope of work proposed cannot include work performed prior to submittal of the application;
- (4) The scope of work includes an introductory paragraph that describes the financial need for early funding including:
  - (A) Explanation of why the early funding is critical to the project;
  - (B) Viability of the project in the absence of early funding; and
  - (C) How the project will proceed once early funding is expended;
- (5) The application's implementation risk decision criteria score is no less than 7, pursuant to section 6009(g);
- (6) The Commission has assigned a maximum conditional eligibility amount to the project pursuant to section 6011; and
- (7) The Commission has reviewed the financial need for early funding contained in the scope of work and has decided that the early funding request is warranted.

- (d) Activities reasonably related to completion of environmental documentation and permitting may be included in the scope of work for this funding.
- (e) Funding for completion of environmental documentation and permits will be disbursed as follows:
  - (1) Staff shall use the maximum conditional eligibility amounts and Commission determination regarding early funding requests, pursuant to section 6011 and assign early funding amounts consistent with this section.
- (f) The Commission will make one additional funding opportunity available pursuant to this section for applicants to the Water Storage Investment Program that received a Maximum Conditional Eligibility Determination pursuant to section 6011 and either did not apply for or did not receive an award of funding pursuant to this section. Applicants that request funding pursuant to this section meeting these criteria must:
  - (1) Notify the Commission staff of the applicant's intent to request funding for environmental documentation and permits at least 15 days in advance of the next regularly scheduled Commission meeting;
  - (2) Present the request at a regularly scheduled meeting of the Commission explaining the need and scope of the request, including the amount requested as a portion of the Maximum Conditional Eligibility Determination; and
  - (3) Provide any materials that will be used at the Commission meeting to the Commission staff at least fourteen (14) days before the regular scheduled Commission meeting.
- (g) If an applicant notifies the Commission pursuant to section 6010(f)(1), Commission staff shall provide an update on the specific project to the Commission at the scheduled Commission meeting before the applicant presents its request. The update shall include a status of the project and an overview of the quarterly reports received to date.
- (h) The Commission will determine whether to award funding pursuant to section 6010(f) based on its discretion, the same as that exercised when decisions were made under this section during the initial evaluation of the applications. The Commission may not delay a decision to a future meeting unless the meeting does not occur due to events of force majeure or lack of a quorum.

Note: Authority cited: Water Code sections 79705, 79711, 79750, 79751, 79752, 79753, 79754, 79755, and 79757.

Reference: Water Code sections 79705, 79711, 79751, 79755, and 79757.

## Section 6011. Commission Maximum Conditional Eligibility Determination

The Commission shall determine a maximum conditional eligibility amount for projects based on ranking, as determined by this section. The maximum conditional eligibility amount is a "not to

exceed" amount of potential funding, contingent on the applicant meeting the conditions of Section 6013. Funding Agreements necessary for the commission to make a funding allocation. The total sum of maximum conditional eligibility amounts shall not exceed the available funding amount.

- (a) Staff shall provide to the Commission all component scores including appealed public benefit ratio, pursuant to section 6008, and technical review comments for the Commission's deliberation. The Commission and public shall have a minimum of 30 days to consider the information before any Commission meeting regarding decisions on application component scores.
- (b) The Commission shall review the component scores and approve or make adjustments to the public benefit ratio and non-monetized public benefits, resiliency, and implementation risk, as follows:
  - (1) Public benefit ratio and non-monetized public benefits (maximum point value of 4). The Commission shall consider the technical review comments regarding non-monetized public benefits and evaluate whether point contributions from non-monetized benefits is consistent. If the Commission determined it is not consistent, the Commission may change the non-monetized public benefit score as described in section 6011(b)(4).
  - (2) Implementation Risk (maximum point value of 15). The Commission shall consider the technical review comments for implementation risk and evaluate if the review comments are consistent with the implementation risk score assigned by reviewers. If the Commission determines it is not consistent, the Commission may change the component score as described in section 6011(b)(4).
  - (3) Resiliency (maximum point value of 25). The Commission shall consider the technical review comments for resiliency and evaluate if the review comments and score are consistent. If the Commission determines it is not consistent, the Commission may change the component score as described in section 6011(b)(4).
  - (4) The Commission may adjust a project's component score for items listed in section 6011(b)(1)–(3) by plus or minus 25% of the maximum value rounded to the nearest whole number. In all cases of score adjustment, the adjusted component cannot exceed the maximum component score in section 6009, Table 5. If the Commission decides that component point adjustments should be made beyond 25%, the Commission shall direct Staff to re-evaluate an application, adjust scores, and substantiate the changes for reconsideration by the Commission.
  - (5) Staff shall adjust the total expected return for investment scores to reflect the Commission's.
- (c) Before the Commission assigns a maximum eligibility amount to a project, the Commission shall make all the following determinations, based on the technical review and appeal:
  - (1) The proposed project is cost effective;
  - (2) The proposed project improves the operations of the State water system;
  - (3) The proposed project provides a net improvement in ecosystem and water quality conditions;
  - (4) The proposed project provides measurable improvements to the Delta ecosystem or to the tributaries to the Delta;
  - (5) The Program cost share is less than or equal to 50 percent of the proposed project's total capital costs, with the exception of conjunctive use projects and reservoir reoperation projects, as defined in Water Code section 79751. Program cost share for conjunctive use projects and reservoir reoperation projects defined in Water Code section 79751(c) may be greater than 50

percent of the proposed project's total capital costs, pursuant to Water Code section 79756(a);

- (6) The Program-funded ecosystem improvement benefits make up at least 50 percent of the total public benefits funded by the Program;
- (7) The proposed project appears to be feasible;
- (8) The proposed project will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta; and
- (9) The proposed project is consistent with all applicable laws and regulations.

(d) For all projects for which the Commission has made determinations pursuant to section 6011(c), Staff shall use the Commission scores and resulting total expected return on public investment scores to provide the Commission the ranked projects separated into three ranks as follows:

- (1) Rank one (Rank 1) shall include projects with a total expected return on public investment score of 85 or higher;
- (2) Rank two (Rank 2) shall include projects with a total expected return on public investment score between 70 and 84;
- (3) Rank three (Rank 3) shall include the remainder of projects.

(e) For ranked projects pursuant to section 6011(d), Staff shall provide the Commission with suggested maximum conditional eligibility amounts, determined as follows:

- (1) No single project shall receive a maximum conditional eligibility amount equal to the total available Program funding;
- (2) Staff will first assign suggested maximum conditional eligibility amounts equal to Rank 1 project eligible Program cost shares;
- (3) If maximum conditional eligibility amounts from section 6011(e)(2) exceed the available funding amount, Staff shall assign maximum conditional eligibility amounts proportional to the expected return on public investment scores;
- (4) Staff shall assign maximum conditional eligibility amounts to Rank 2 only if the sum of Rank 1 conditional eligibility amounts are less than the total available funding. Staff shall assign Rank 2 maximum eligibility amounts by applying section 6011(e)(1) and (2) to projects in Rank 2; and
- (5) Staff shall not assign any maximum conditional eligibility amounts to projects in Rank 3.

(f) Staff shall also indicate which applications have requested early funding and the amount of the early funding request.

(g) Information from section 6011(d)–(f) will be provided to the Commission and public at least 10 days before the Commission meeting where the agenda includes discussion or decision of maximum conditional eligibility for a project.

(h) The Commission shall review the suggested maximum conditional eligibility amounts provided by Staff and make adjustments or accept the Staff suggestion according to the following:

- (1) In adjusting any individual project's maximum conditional eligibility, the Commission shall consider public input and the following:
  - (A) Leveraging of private, federal, or local funding pursuant to Water Code section 79707(b);
  - (B) The ability of the collective suite of projects to advance the long term objectives of restoring ecological health and improving water management for beneficial uses of the Delta;
  - (C) Implementation of the California Water Action Plan 2016 Update (January 14, 2016).

(2) Projects in Rank 3 shall be considered for funding only if there is remaining available funding and all projects in Rank 1 and Rank 2 are funded to the full amount of the projects' requests.

(i) For projects where the Commission has assigned a maximum conditional eligibility amount and the applicant has requested early funding, the Commission shall determine if early funding should be allowed after reviewing the funding need information contained in the early funding scope of work. Staff shall disburse early funding based on the Commission's determinations and limits pursuant to section 6010.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79754, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79751, 79757, 79755, 10733.2, and 10753.7.

## Section 6012. Agency Findings

(a) The agency finding, required by Water Code section 79755(a)(3), for the purposes of the Program is a preliminary assessment of public benefits based on information supplied in the application that indicates that a project's public benefits meet the requirements of Water Code section 79750 *et seq.*

(b) CDFW and State Water Board shall base their respective findings on:

- (1) The technical review of the ecosystem and water quality public benefits, respectively;
- (2) The requirements of Water Code section 79753; and
- (3) The agency's assessment of a project's relative environmental value in achieving the priorities identified by the agency.

(c) The Department shall base its findings on the technical review of the flood control, emergency response, and recreation public benefits, if applicable.

(d) If CDFW, State Water Board or the Department (each a reviewing agency) finds the public benefits as described in a project's application meet all of the requirements of Water Code section 79750 *et seq.* for which the reviewing agency is responsible, the reviewing agency shall provide to the Commission a written statement confirming the finding.

(e) A finding does not commit the reviewing agency to a definite course of action regarding any subsequent determination or approval by the reviewing agency under any regulatory or statutory authority beyond this section 6012, and the finding shall not be construed to limit any agency's obligations under any statute or regulation.

(f) Only those public benefits found to be consistent with Water Code section 79750 *et seq.*, pursuant to this section will be considered in project scores and determinations of maximum conditional eligibility amounts.

(g) Changes in the amount of public benefits may occur from the time of the reviewing agencies' findings to the time an applicant enters into a contract with the reviewing agency. Prior to entering into a contract with the project applicant, as required by Water Code section 79755(a)(3), the agencies responsible for administering the public benefits shall confirm that the public benefits, as modified, continue to meet all the requirements of Water Code section 79750 *et seq.*

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79754, 79755, and 79757.

Reference: Water Code sections 79705, 79710, 79750, 79751, 79752, 79753, 79755, and 79757.

## Section 6013. Funding Agreements

- (a) Letter of Maximum Conditional Eligibility.
  - (1) After the maximum conditional eligibility determinations are confirmed by the Commission, Staff shall send a letter to each applicant whose project received a determination that the project is conditionally eligible for Program funding but additional information is needed to execute a funding agreement. The required information shall include:
    - (A) Applicant's audited financial statements;
    - (B) Items stated in section 6013(c);
    - (C) Additional information, as applicable, on the status of environmental documentation, labor compliance, urban water management plans, agricultural water management plans, groundwater management plans, or GSP(s), and potential effects of other conditionally eligible projects on the applicant's public benefits;
    - (D) Final project costs, schedule, and scope of work;
    - (E) Evidence of bilateral communications between the applicant and any owners and operators of potentially impacted facilities regarding the potential impacts of the proposed project to their facilities;
    - (F) Reporting interval for status of section 6013(c) items; and
    - (G) A statement acknowledging that any applicant seeking funding for a project situated on any land with the following status must demonstrate, prior to the execution of the funding agreement, the existence of a limited waiver of sovereign immunity between the Commission and the governing body of the Tribe entered into pursuant to section 6013(f)(8):
      - 1. Land that is owned by or subject to an ownership or possessory interest of the Tribe;
      - 2. Land that is "Indian lands" of the Tribe, as that term is defined by 25 U.S.C. § 81(a)(1); or
      - 3. Land that is owned by tribal entity, or Tribe, within the external borders of such Indian lands.
- (b) For projects that were ranked, but did not receive a maximum conditional eligibility amount, a letter will be sent to the applicant stating that the project is still ranked and may be eligible for funding if additional funding became available.
- (c) The Commission will not encumber funds and funds will not be made available to an applicant, (with the exception of funding associated with subsection 6010) until such time as the provisions of these regulations have been satisfied, the Commission holds a public hearing allowing for public review and comment on the information required by this subdivision, and the Commission determines that all required provisions have been met. Each applicant shall submit documentation demonstrating that the following items from Water Code section 79755(a) have been completed:
  - (1) The project applicant has entered into a contract pursuant to Water Code section 79755(a)(2) with each party that will derive benefits, other than public benefits that ensures each party to the contract will pay its share of the total costs of the project;
  - (2) The project applicant has entered into a contract pursuant to Water Code section 79755(a)(3) with CDFW, State Water Board, and the Department, which administer public benefits of the project after the individual agency makes a finding that the public benefits of the project meet all of the requirements of Water Code sections 79750 *et seq.*;
  - (3) The project applicant has submitted completed feasibility studies;
  - (4) The project applicant has completed the final environmental documentation associated with the project; and

(5) The project applicant has obtained all federal, state, and local approvals, certifications, and agreements required.

(d) The applicant shall submit to the Commission progress reports, monthly, quarterly, semi-annually or annually, as directed by the Commission, that document progress the applicant is making toward complying with the items contained in this section, including any changes in the magnitude of public benefits that could affect cost allocation. Progress reports will be posted on the Commission's website within one week of receipt.

(e) Funding for the Completion of Environmental Documentation and Permitting of a Project. Notwithstanding subsection 6013(b), the Commission may provide funding for a project to complete environmental documentation and obtain the necessary permits for constructing and operating the project when the letter of conditional eligibility is sent. Funding for activities associated with the completion of environmental documentation and obtaining permits shall be subject to the following conditions:

- (1) Funds shall be specifically requested by the applicant in the application;
- (2) Funds shall not be disbursed until the applicant enters into a funding agreement with the Commission and has met all disbursement conditions;
- (3) Funding to be provided for the completion of environmental documentation and obtaining permits shall be identified in the letter of conditional eligibility; and
- (4) Funding for the completion of environmental documentation and obtaining permits shall not exceed 5 percent of the maximum amount of Program funding the project is eligible for.

(f) Funding Agreement

- (1) Funding for the capital costs of a project remains contingent until all items in section 6013(c) are complete and have been submitted to the Commission. The Commission may determine at a regularly scheduled meeting that the applicant has failed to make substantial progress toward completing these required documents and the project is no longer eligible for Program funding.
- (2) After January 1, 2022, a project will not be eligible for funding if the following conditions are not met:
  - (A) All feasibility studies are complete and draft environmental documentation is available for public review;
  - (B) The Commission makes a finding that the project is feasible, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta;
  - (C) The Director of the Department receives commitments from not less than 75 percent of the non-public benefit cost shares of the project;
- (3) Applicants shall provide a description of changes to the planned project that have occurred since the receipt of the letter of maximum conditional eligibility including any changes to planned operations.
- (4) When an applicant has complied with the requirements in section 6013(f)(1), (2) and (3), 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.
- (5) The Program cost share shall be encumbered after all items in section 6013(f) are complete and the Commission approves final funding.
- (6) Funds will not be disbursed until the applicant enters into a funding agreement with the Commission.

- (7) The Commission shall not reimburse any costs incurred prior to November 4, 2014, and shall not allocate funds for any project before December 15, 2016.
- (8) Tribal Waiver Requirements. If the funding recipient is a Tribe, the following requirements must be met before funding for projects located on land with any of the specified status in section 6013(a)(1)(G) can enter into a funding agreement with the Commission pursuant to this section.
  - (A) The governing body of the Tribe must enter into a limited waiver of sovereign immunity with the Commission related to its receipt of funding for the duration of the planning horizon period of the project.
  - (B) This waiver must include a consent to suit by State of California, Commission, Department, CDFW, State Water Board or the California Attorney General's Office in the courts of the State of California, with respect to any action in law or equity commenced by the State of California, Commission or Department, CDFW, State Water Board or the California Attorney General's Office to enforce the restrictions on the use of funds or the operation of the project by the Tribe related to funds received pursuant to this chapter, irrespective of the form of relief sought, whether monetary or otherwise, except for purposes of relief under this limited waiver, Tribes shall receive the same protections as a California public entity under California Government Code sections 818 and 818.8.
  - (C) The Tribe must provide the Commission with documentation demonstrating the limited waiver of sovereign immunity entered into pursuant to this section has been properly adopted in accordance with the Tribe's Constitution or other organic law, by-laws and ordinances, and applicable federal laws.
  - (D) The limited waiver of sovereign immunity related to operations and management of the proposed project and its public benefits must remain in effect until the end of the project's planning horizon.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

## Section 6014. Managing Public Benefits

- (a) The Commission shall provide for the management of public benefits provided by the projects through the Program by:
  - (1) Implementing Water Code section 79755 prior to the award of funding pursuant to section 6013.
  - (2) Pursuant to the requirements of Water Code section 79755, any project funded under the Program shall enter into a contract with each of the appropriate State agencies, CDFW, the State Water Board, and the Department (administering agencies) to administer the public benefits of the project. These contracts shall supersede any preliminary operations, monitoring, and management commitments made in the Program application.
    - (A) The contract between an administering agency and applicant shall contain:

1. An adaptive management plan for the public benefits funded under the Program. The adaptive management plan shall contain:
  - a. Public benefit monitoring metrics;
  - b. Monitoring locations, frequencies, and timing;
  - c. Metric evaluation methodology and associated threshold or trigger levels based on best available science that initiate adaptive management actions;
  - d. Decision making process including the administering agency role and the adaptive management actions that would be taken when a trigger is reached;
  - e. Funding sources and financial commitments to implement the adaptive management plan;
  - f. Other items deemed necessary on a case-by-case basis by administering agencies entering into the contract.
2. A description of public benefits being administered;
3. Reporting requirements between the administering agency and the applicant. Reporting requirements shall be on a contract-by-contract basis, depending on the type of public benefits to be achieved;
4. A provision requiring reporting to the Commission. Reporting may be consistent with the reporting in Section 6014 (a)(2)(A)(3). Reporting to the Commission shall include:
  - a. Documentation of public benefits provided;
  - b. Description of any public benefit changes and how they were adaptively managed; and
  - c. Other information as deemed appropriate by the administering agency.
5. Assurances, as determined by the administering agency and applicant, regarding how the project will be operated, maintained, repaired, replaced and rehabilitated;
6. A provision allowing the administering agency to inspect the project during construction and operation;
7. Actions the administering agency may take, if the project fails to comply with its contractual responsibilities; and
8. Other provisions deemed necessary by the administering agency.

(B) Prior to the execution of the contract between the administering agency and the applicant, the administering agency may submit a draft of the contract to the Commission. The Commission, after considering any public comment, may offer comment for the administering agency's consideration prior to execution.

(C) The applicant shall submit the executed administering agency contracts to the Commission in compliance with section 6013(c).

(3) After an applicant has met the requirements of section 6013, the applicant responsible for the project funded under the Program shall enter into a funding agreement with the Commission. The funding agreement shall include language consistent with the requirements of the contracts and permits identified in section 6013(c)(2) and (5), respectively, and describe how the funding recipient will ensure the public benefits identified by the project are achieved.

(4) Once a project is operational and providing public benefits, the Commission shall track the public benefits received and provide access to data and reports to the public. Reports submitted pursuant to section 6014(a)(2)(A)(4) will be posted to the Commission's website within one week of receipt. In addition to reports received by the Commission, the Commission may request administering

agencies or funding recipients to present additional information regarding project public benefits at a Commission meeting.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

## **Article 5. General Provisions.**

### **Section 6015. Confidentiality**

- (a) Information submitted to the Commission pursuant to this chapter is subject to the provisions of the California Public Records Act (California Government Code section 6250 *et seq.*). Documents that may pose security concerns should be marked "confidential" and will be treated pursuant to the following provisions:
  - (1) Any person submitting to the Commission any records containing data claimed to be "confidential" or otherwise exempt from disclosure under Government Code section 6254 or under other applicable provisions of law shall, at the time of submission, identify in writing the portions of the records containing such data as "confidential" and shall provide the name, address, telephone number, and email address of the individual to be contacted if the Commission receives a request for disclosure of or seeks to disclose the information claimed to be confidential. The Commission shall not disclose data identified as confidential, except in accordance with the requirements of this subchapter.
  - (2) The following information shall be considered confidential if marked as such by the applicant:
    - (A) Records of Native American graves, cemeteries, and sacred places and records of Native American places, features, and objects described in sections 5097.9 and 5097.993 of the Public Resources Code maintained by, or in the possession of, the Native American Heritage Commission, another state agency, or a local agency;
    - (B) A document prepared by or for a state, federal, or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations;
    - (C) Critical infrastructure information; and
    - (D) Existing facility as-builts and operation manuals.
- (b) Upon receipt of a request from a member of the public that the Commission disclose information claimed to be confidential or if the Commission seeks to disclose such information, Staff shall inform the applicant by telephone and by email that disclosure of the information is sought. The entity claiming confidentiality shall file with the Commission documentation in support of the claim of confidentiality. The documentation must be received within ten (10) days from the date of the telephone contact and email notification, whichever occurs first.
- (c) The documentation submitted in support of the claim of confidentiality shall include the following information:
  - (1) The statutory provision(s) under which the claim of confidentiality is asserted;
  - (2) A specific description of the information claimed to be entitled to confidential treatment;
  - (3) The period of time for which confidential treatment is requested;
  - (4) The extent to which the information has been disclosed to others and whether its confidentiality has been maintained or its release restricted;

- (5) Confidentiality determinations, if any, made by other public agencies as to all or part of the information and a copy of any such determinations, if available; and
- (6) Whether it is asserted that the information could be used in a manner to threaten the security of the project.
- (d) Documentation, as specified in this section, in support of a claim of confidentiality may be submitted before the Commission receives a request for the information.
- (e) The Commission shall, within ten (10) days of the date it sought to disclose the information or received the request for disclosure, or within 20 days of that date if the Commission determines that there are unusual circumstances, as defined in Government Code section 6253, review the request, if any, and supporting documentation, if received within the time limits specified in subsection (B) above, including any extension granted, and determine whether the data is entitled to confidential treatment pursuant to Government Code section 6254, 6255 or 6254.7 or other applicable provisions of law and shall either:
  - (1) Decline to disclose the data and, if a request was received, provide a justification to the person making the request and to the person claiming the data is confidential for the determination pursuant to Government Code section 6255; or
  - (2) Provide written notice to the person claiming the information is confidential and, if a request was received, to the person requesting the information that it has determined that the information is subject to disclosure, that it proposes to disclose the information, and that the information shall be released 21 days after receipt of the notice by the person claiming confidentiality, unless the Commission is restrained from so doing by a court of competent jurisdiction. The Commission shall release the information in accordance with the terms of the notice unless so restrained.
- (f) Should judicial review be sought of a determination issued in accordance with this regulation, either the person requesting data or the person claiming confidentiality, as appropriate, may be made a party to the litigation to justify the determination.

Note: Authority cited: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

Reference: Water Code section 79705, 79711, 79750, 79751, 79752, 79753, 79755, and 79757.

## **Article 6. Uncommitted Funds.**

### **Section 6020. Use of Uncommitted Funds**

- (a) As used in this section, the terms below shall have the meanings noted:
  - (1) "Additional public benefits" means public benefits associated with water storage projects outlined in Water Code section 79753(a) and that were either not previously included in an application or not previously accepted by the Commission during the evaluation of the project pursuant to section 6011.
  - (2) "Existing approved project" means a project that has received a maximum conditional eligibility determination and remains eligible to receive Program funding. "Existing approved project" does not include projects that have been voluntarily withdrawn from the Program by the applicant or been deemed ineligible for Program funding by the Commission pursuant to section 6013(f)(1).
  - (3) "Returned funds" means those funds that were previously committed to a project by the Commission pursuant to section 6011 or this section, but are no longer committed to an existing approved project.

- (4) "Supplemental funding determination" means a determination by the Commission of an amount of potential funding that is intended to supplement a project's maximum conditional eligibility amount or final Program cost share.
- (5) "Uncommitted funds" means funds made available under Public Resources Code section 91015 ("Proposition 4 funds"), and any returned funds.
- (b) At or after the time the administering agency submits to the Commission a draft contract for the administration of public benefits, but prior to the execution of the contract for the administration of public benefits, pursuant to section 6014(a)(2)(B), the Commission may, for good cause, make a supplemental funding determination.
  - (1) In determining if there is good cause to make a supplemental funding determination, the Commission will 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 and increases in costs due to inflation.
  - (2) In deciding whether to make a supplemental funding determination, the Commission will consider a project's progress in meeting the requirements of section 6013(c) and the ability of the collective suite of projects to advance the Program goals and purposes described in Water Code, section 79750(b).
  - (3) The final award of funds under a supplemental funding determination is contingent on the applicant meeting the requirements of section 6013(c).
  - (4) If the Commission makes a supplemental funding determination, then an applicant may seek additional early funding for the purposes described in section 6010. If additional early funding is awarded, the total early funding provided may not exceed 5% of the total of the maximum conditional eligibility amount plus whatever supplemental funding amount made by the Commission.
- (c) At the time of the public hearing described in section 6013(c), the Commission may, for good cause and to support timely completion of existing approved projects, increase a project's final Program cost share beyond the total of the maximum conditional eligibility amount plus whatever supplemental funding amount previously made by the Commission if uncommitted funds remain available.
  - (1) In determining if there is good cause to increase a project's final Program cost share, the Commission will 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 and increases in costs due to inflation.
  - (2) In deciding whether to increase a project's final Program cost share, the Commission will consider a 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).
- (d) For funding recipients with a funding agreement already in place, the Commission may, upon the request of the funding recipient but no later than one year thereafter, for good cause, make a supplemental funding determination.
  - (1) In determining if there is good cause to make a supplemental funding determination, the Commission will 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 and increases in costs due to inflation.
  - (2) In deciding whether to make a supplemental funding determination, the Commission will consider a 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).
  - (3) Whatever supplemental funding amount the Commission makes will be in addition to the final Program cost share.
  - (4) The final award of funds under a supplemental funding determination is contingent on the recipient meeting any applicable requirements of section 6013(c).

- (e) The Commission shall not make a supplemental funding determination or increase a project's final Program cost share if 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.
- (f) Notwithstanding section 6011, the total amount of a project's Program cost share, that includes a supplemental funding amount, may exceed the maximum conditional eligibility amount.
- (g) Notwithstanding whether good cause has been shown, as described above in subsections (b), (c), and (d), the Commission will not make a supplemental funding determination or increase a project's final Program cost share beyond the total of the maximum conditional eligibility amount plus whatever supplemental funding amount previously made 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.

Note: Authority cited: Sections 90135(e) and 91015, Public Resources Code; sections 79705, 79750, 79753, and 79754, Water Code.

Reference: Section 91015, Public Resources Code; sections 79753 and 79754, Water Code.