



November 13, 2017

Armando Quintero, Chair
California Water Commission
1416 9th Street
Sacramento, CA 95814

RE: Consideration of the San Joaquin Valley Water Infrastructure Authority's late-submitted Water Storage Investment Program application materials

Dear Chairman Quintero and Commission Members:

On behalf of Defenders of Wildlife, Natural Resources Defense Council, Sierra Club California, and Friends of the River we are writing to urge the Commission to reject the executive summary and uncertainty analysis that the San Joaquin Valley Water Infrastructure Authority (“Authority”) submitted after the close of the application solicitation period for the Water Storage Investment Program (“WSIP”).

The Authority—the WSIP applicant for the Temperance Flat Reservoir Project—failed to submit a complete application by the close of the WSIP solicitation period. On August 31, 2017, in accordance with section 6006 of the WSIP regulations, the California Water Commission’s (“Commission”) Executive Officer sent a letter to the Authority identifying specific items related to basic eligibility and application completeness that the Authority had failed to submit, and indicated that the Authority could submit the identified items by September 15, 2017.¹ The letter stated that “[o]nly the information specifically listed below . . . will be added to your current application.” The Authority submitted the information related to basic eligibility and completeness that the Commission had requested, and also submitted additional information that the Commission had not requested—an executive summary and uncertainty analysis. At the October 18, 2017 Commission meeting, Commission members discussed whether the Commission should accept the late-filed executive summary and uncertainty analysis, and deferred a decision until the November 15, 2017 Commission meeting. We strongly recommend

¹ <https://cwc.ca.gov/WSIPLetters/ELetterTemperanceFlat.pdf>

that the Commission reject the Authority's late-filed information because doing so is necessary for compliance with the WSIP regulations and for the integrity of the Commission's process.

The Commission's acceptance of the Authority's late-filed executive summary and uncertainty analysis would violate the WSIP regulations that the Commission adopted in 2016. The regulations state that "[a]pplicants shall complete and submit an application . . . by the close of the application solicitation period," and that the "application shall consist of" thirty specific items, including an executive summary and uncertainty analysis. WSIP Reg. §§ 6003(a); 6003(a)(1)(A), (DD) (emphasis added). The mandatory language in section 6003(a) makes clear that applicants were required to submit all application materials by the close of the solicitation period.

As discussed at the October Commission meeting, the regulations establish a limited exception to allow the late submission of materials that are necessary to cure deficiencies related to completeness or basic eligibility. *See* WSIP Reg. § 6006(b) ("If any completeness or basic eligibility deficiencies are identified, Staff shall notify the applicant in writing . . . and provide a list of the identified deficiencies."); § 6006(c) ("The applicant shall be provided a 14-day period to submit the required information that addresses the identified deficiencies to Staff.") (emphasis added). While section 6003(a) of the regulations lists thirty items that should be included in an application, section 6006(c) describes a specific subset of those items that relate to basic eligibility and completeness, and allows for that subset of items to be submitted within a short time period after the close of the solicitation period. The specific and limited nature of this exception underscores that all other materials must be submitted by the close of the solicitation period, as required by section 6003(a). After all, there would be no need for the exception provided in section 6006(c) if any of the information described in section 6003(a) could be submitted after the solicitation deadline.

Because section 6003(a) of the regulations establishes a clear deadline for submitting application materials, and the Authority's executive summary and uncertainty analysis do not fall into the limited exception for late-filed documents established in section 6006(c), the Commission lacks discretion to accept and consider those documents.

Further, accepting the late-filed information would undermine the fairness of the competitive process that Proposition 1 intended to establish, and would make it look like the Commission is selecting winners and losers before it has even completed its review of the applications. At the October meeting, the Commission voted that River Partners' San Joaquin River & Tributaries Conjunctive Use Project was ineligible for WSIP funding. If the late submission of information is acceptable, then River Partners should have been given an opportunity to submit additional material to support its eligibility. Allowing the Authority to submit late information while declining to give River Partners the same opportunity would make it look as though the Commission is pre-selecting winners and losers in an unprincipled manner. Our organizations spent months working on the WSIP regulations, and care deeply about the

integrity of this application process. To ensure that all applicants are required to play by the same rules, the Commission must reject the Authority's late-filed information.

Finally, acceptance of the Authority's late-filed executive summary and uncertainty analysis could create substantial problems as the Commission's review of WSIP applications progresses. If the Commission accepts the Authority's late submissions, fairness will require the Commission to accept additional late submissions by other applicants. With a completely open-ended application period, Commission staff will find themselves constantly re-reviewing and reassessing projects in light of new information. The scoring process that the WSIP regulations establish is already complicated, and allowing constantly changing and evolving applications is likely to create substantial frustration and delay.

For all of these reasons, we recommend that the Commission reject the Authority's late-filed executive summary and uncertainty analysis. Thank you for considering our comments, and please feel free to contact us with any questions.

Sincerely,



Rachel Zwillinger
Defenders of Wildlife



Doug Obegi
Natural Resources Defense Council



Ronald Stork
Friends of the River



Kyle Jones
Sierra Club California