



July 13, 2020

Armando Quintero, Chair  
California Water Commission  
P.O. Box 942836  
Sacramento, California 94236-0001

*Sent via email to [cwc@water.ca.gov](mailto:cwc@water.ca.gov)*

RE: Requested Changes to Water Storage Investment Program

Dear Commissioner Quintero and Members of the Commission:

On behalf of Defenders of Wildlife, Sierra Club California, Natural Resources Defense Council, Friends of the River, The Bay Institute, and Golden State Salmon Association, we are writing to urge you to reject most of the requested modifications to the Water Storage Investment Program (WSIP) that representatives of six storage projects requested in a May 11, 2020 letter to the Commission. Our organizations spent years working with the Commission to craft regulatory requirements for the WSIP that would ensure the program's limited funds are invested to provide credible ecosystem enhancements, water quality improvements, and other public benefits. The requested modifications would undermine these efforts and increase the risk that WSIP funds will be stranded or otherwise fail to provide public benefits.

First, the Commission should reject the requests to increase the cap on early funding from 5% to 10% of the Maximum Conditional Eligibility Determinations (MCED) and to increase the total amount of early funding available. The Commission should prioritize use of limited WSIP funds for providing public benefits. Increasing the amount of public funding dedicated to permitting and environmental documentation could limit the program's ability to provide ecosystem, water quality, and other tangible benefits. Further, as Commission staff noted in a memo regarding the requested WSIP modifications, the Commission established the 5% cap in the WSIP regulations in part to "limit the risk of stranding funds should an early funding recipient be reimbursed under

the early funding agreement but not proceed to final funding.” The risk of stranding funds weighs strongly in favor of proceeding with caution and maintaining the 5% limitation. Additionally, as Commission staff has suggested, use of an emergency rulemaking process to modify the early funding cap would be inappropriate, underscoring the impracticality of this request.

The status of several WSIP projects underscores the risks that would be created by increasing the early funding cap. For example, recent news reports have suggested that the Temperance Flat Reservoir Authority will likely be unable to complete all feasibility studies and provide draft environmental documents for public review by the statutory January 1, 2022 deadline, rendering it ineligible for WSIP funding. Dedication of any early funding to this project would be inappropriate, let alone funding in excess of the 5% cap. It also appears that the Sites project is undergoing substantial changes, and that it is unlikely to be able to provide the level of public benefits that its MCED is based upon. Increasing the amount of early funding could cause the public funding dedicated to environmental documents and permitting to be disproportionate to the project’s public benefits. In light of the risks and uncertainties associated with each WSIP project, increasing the amount of early funding would be imprudent.

Second, the Commission should reject the request to allow the cost share of prior costs to extend back to November 4, 2014, instead of the current August 14, 2017 date. As noted by Commission staff, this change would not help to advance current project schedules and it would not help to ensure that the projects are able to provide their identified public benefits. It would also enhance the risk of stranding significant sums of public money on projects that never materialize. Like increasing the early funding cap, this change would also require a modification to the WSIP regulations that could not be completed through an emergency rulemaking process.

Third, the Commission should reject the request to seek modification of the January 1, 2022 statutory deadline for feasibility studies and other materials. This change would require action by the legislature as well as voters, rendering it impractical. Further, the projects have been aware of the 2022 deadline since 2014 and have been provided with sufficient time to meet the eligibility requirements. Failure to meet the eligibility requirements by January 1, 2022 strongly suggests that a project is not viable.

We also urge that the Commission proceed with caution in pursuing non-regulatory changes to the WSIP program. For example, the projects have requested flexibility to spread the 50-50 cost share requirement over a longer time period. If the Commission intends to explore this option for certain projects, it should require a detailed plan to demonstrate the project will be able to achieve the 50-50 cost share by a date certain. The projects have also requested scope revisions on existing early funding agreements. Though it is not clear what such scope revision might entail, the WSIP’s statutory and regulatory requirements make clear that early funding is only available for environmental documentation and permitting and so any scope revisions for early funding must remain so limited.

Finally, Commission staff has recommended creating a process to potentially provide early funding for projects that did not initially receive it. If the Commission adopts this recommendation, we strongly urge that modifications to the WSIP regulations be as limited as possible to achieve this purpose. Further, the modification should merely create an opportunity for the projects that did not receive early funding to demonstrate eligibility. Clearly, projects like Temperance Flat Dam that are unable to demonstrate viability must not receive early funding.

Thank you for considering our comments. We would be happy to discuss these matters further at your convenience.

Sincerely,



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Rachel Zwillinger  
Defenders of Wildlife



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Brandon Dawson  
Sierra Club California



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Doug Obegi  
Natural Resources Defense  
Council



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Ronald Stork  
Friends of the River



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Gary Bobker  
The Bay Institute



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John McManus  
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