

# Handouts

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Imported Water Storage Team can you be prepared to answer the questions?

- \*LV3 is more of the same, very limited benefit to SBA Contractors, and a 60% Public Benefit due to accepting Prop1 monies.
  - Can you compute the cost?
- The LV-JPA now will require a super majority vote from the other members to allow leaving the LV-JPA
  - Is this true?
- SBA Contractors are being asked to partially reimburse CCWD for LV1 and LV2. (amount not yet published).
  - Can you confirm zero reimbursement?
- The 8-ft diameter Bethany Transfer Pipeline can be invested in separately
  - Can you confirm this is still true?
- LV4 (500,000-acre feet) allowed in Bay Delta Record of Decision, and LV5 (1-million acre feet using saddle dams) would be located at a site near the Transfer Station over 5 miles down stream and probably require removing LV1-3.
  - Is this accurate?
- Sea Level rise of more than 2-ft will result in the Estuary becoming a seasonal water supply due to higher salinity. A 1-million acre foot reservoir would be needed to support CCWD alone.
  - Have we looked at this?

Also what do the potential partner say?

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**MEMORANDUM**

FC 14 (08-21-19)

**TO:** Water Storage Exploratory Committee

**FROM:** Don Rocha, Acting Deputy Administrative Officer

**SUBJECT:** Pacheco Reservoir Expansion Project - Potential Options for Unused Proposition 1 WSIP Funding

**DATE:** October 27, 2020

**Temperance Flat Reservoir Authority Announcement at the California Water Commission**

On 10/21/20, the Temperance Flat Reservoir Authority informed the California Water Commission (CWC or Commission) that the Temperance Flat Reservoir Project may not secure 75% of the project's non-state funding by 1/1/22, as required by the project's \$171 million Proposition 1 Water Storage Investment Program (WSIP) grant. In the presentation, the Authority urged that, if the project ultimately fails to meet the requirements, the CWC should reallocate the \$171 million award to another project in the Central Valley. The Commission made no assurances regarding how a reallocation could be accomplished or to what type of projects the unused funds could be reallocated.

As the Committee is aware, the Pacheco Reservoir Expansion Project was awarded \$484,550,000 million from the same Proposition 1 WSIP program, which was the maximum amount for which the Pacheco project could qualify under existing statute and regulation. With the Temperance Flat announcement, there will be an effort by the CWC and other WSIP funded projects to determine how the \$171 million in unused funds could be reallocated. This memo explores options for securing more WSIP funding for the Pacheco Reservoir Expansion Project.

**When Would There Be Unused Proposition 1 WSIP Funds?**

The following discussion is prefaced on the assumption that a WSIP funded project will fail. The timing of when the CWC or the Legislature will see a WSIP funded project as failing may not occur until a project misses the statutory deadline of 1/1/22 for completing draft environmental documents, submitting a feasibility study, and securing 75% of non-state funding. Until at least one of the WSIP funded projects is seen as failing, the CWC and the Legislature are not likely to take a binding action to reallocate the funding. However, planning for how to reallocate Temperance Flat Reservoir funds likely proceeds now.

**Statutory Changes Require Approval by the Voters**

[California Water Code Section 79760 \(a\)](#), enacted by Proposition 1, requires that any amendments to Chapter 8 relating to the Water Storage Investment Program (WSIP) must first pass both houses of the Legislature with a 2/3 vote and then appear on the statewide ballot for approval by a majority of California voters. While improbable of success, the most viable way to amend Proposition 1 would be to attach statutory changes to another possible water bond measure that would go to the voters on a 2022 statewide ballot or later.

**Pacheco's Maximum Conditional Eligibility Determination**

Both the statutory language and CWC regulations require that state funds only be spent on public benefits as defined in the statute and that a maximum of 50% of project costs can be paid by the state. The public benefits of the Pacheco project were already determined by the CWC and a Maximum Conditional Eligibility Determination (MCED) was assigned to Pacheco of \$484,550,000. As stated above, that is the maximum amount of funding that can be provided to the Pacheco project pursuant to the statute and the regulations as they are in place today.

**CWC Reconsideration of Pacheco's MCED?**

One question that comes to mind is if the CWC could reconsider the MCED for Pacheco based on a higher project cost and a revised requested amount. The emergency water supply and environmental benefits scored for Pacheco were higher than needed to get to the 50% funding limit. If reconsideration happens, Pacheco also might qualify for dual designation in more than one funding category, namely a "reservoir reoperation project," in addition to its existing designation as a "surface storage project." Our review of the Proposition 1 statute (Attachment 1) found no reason why the CWC could not amend the WSIP regulations to allow for a

reconsideration of the MCED based on updated project information, especially if that reconsideration were requested by the project applicant. However, this is tempered with the fact that some WSIP project applicants were ranked with significant public benefits, but either did not receive their full funding request or received no funding at all. Pacheco would be competing with those projects in the minds of the CWC commissioners as they considered reallocation of WSIP funds.

**CWC’s Non-Binding Resolution on Reallocation of Unused Funds**

On 9/19/2018, 2/20/2019, and 3/20/19, the CWC considered offering advice to a future Commission as to what should happen to unused funding should a WSIP project fail. In the 3/20/19 meeting, the CWC adopted a resolution (Attachment 2) that advises a future Commission on how it could redistribute funding. The resolution is non-binding and states that:

- 1) The Commission could distribute funding to the Rank 3 projects that didn’t secure all the funding they requested; and/or
- 2) Query applicants who requested less than their Commission approved eligible amounts.

\* Neither scenario would allow Pacheco to secure additional funding.

In 2018 and 2019 as the CWC was considering the non-binding resolution, the staff considered the options for the Pacheco project and determined, based on project cost estimates available at that time, that Pacheco had already been awarded the maximum amount possible pursuant to the 50% project cost limit in [Water Code Section 79756](#), that can only be changed by a 2/3 vote in both houses of the Legislature and a majority approval of the voters.

**Statutory Change a Longshot**

Our options are quite limited by the Water Code regarding state legislation to allow for a reconsideration of the MCED for Pacheco. The most viable option for statutory change to the Water Code provisions of Proposition 1 is adding language to a future water bond that is passed by a 2/3 vote in both houses of the Legislature and approved by a majority of voters. That’s a high bar, and while technically possible, there are numerous interests that would want to consume the unused Proposition 1 funds into the purposes of the new water bond, which may or may not include a new round of applications for water storage projects. While Water Code Section 79750 prohibits the repurposing of WSIP funds, that could be changed by the voters through another bond measure. Any statutory change presents additional political risk and the 2/3 vote in the Legislature makes a Pacheco windfall even less likely.

**Regulatory Change Allowing Reconsideration of MCED - Most Viable Path**

A reconsideration of the Pacheco MCED may be possible if Valley Water works with the remaining project applicants on a regulatory change by the CWC that would award the unused funds among the remaining projects, but also would allow for a reconsideration of higher project costs across the board for every project applicant. Given the attached non-binding Commission resolution discussed above, a regulatory effort may include the Rank 3 projects as well as the reconsideration of all the WSIP funded projects’ costs and MCED.

With the 10/21/20 announcement by the Temperance Flat Reservoir Authority referenced above, the scramble is on to get the CWC to adopt new regulations or find a way to make the existing regulations work. Staff intends to pursue a regulatory change by the CWC as the most viable path to a reconsideration of the Pacheco MCED. Valley Water’s Legislative Guiding Principles include direction from the Valley Water Board to seek funding for water supply, climate adaptation, and flood projection projects, all of which could apply to the Pacheco Project.

Funding for Water Infrastructure

1. Support funding to ensure sustainable long-term water supplies, including recycled water projects.

Resource Protection Funding

1. Support funding to address climate change impacts on water supply and flood management facilities and infrastructure needs.

Flood Protection Funding

1. Support funding for infrastructure, construction, and repair of flood protection systems.

**Next Steps**

The CWC may not take a formal action to reallocate funds from a failing WSIP funded project until a project misses the statutory 1/1/22 deadline for completing draft environmental documents, submitting a feasibility study, and securing 75% of non-state funding for the project. Based on the Legislative Guiding Principles listed above, staff will begin working with other WSIP funded project applicants to determine if a unified approach is possible and to determine if the CWC would reopen the MCED determinations.

## HANDOUT: AGENDA ITEM 4.3

Based on staff's review of the statute and regulations, the CWC cannot open a new round of grant applications because statutory deadlines in [Water Code Section 79757](#) likely could not be met by new project applicants. A regulatory approach would enable only a reallocation to the existing WSIP applicants. A regulatory change that would make Pacheco eligible must address the MCED already determined at the maximum 50% of the project cost as required by the statute. Staff will begin exploration with existing WSIP applicants and the CWC to determine if a regulatory approach to allow reconsideration of the WSIP funded projects' MCEds is politically viable.

*Don Roche*

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Acting Deputy Administrative Officer  
Office of Government Relations

Attachment 1: Chapter 8 of Proposition 1 Water Storage Investment Program Statute  
Attachment 2: California Water Commission Resolution Dated 3/20/19

cc: R. Callender, M. Richardson, R. Gibson, A. Baker, C. Hakes, B. Broome, R. McCarter, M. Ozbilgin

BB  
(2020-10-27 DR to Wtr Storage Cmte - Reallocation of WSIP Funds - Final)


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## WATER CODE - WAT

**DIVISION 26.7. Water Quality, Supply, and Infrastructure Improvement Act of 2014 [79700 - 79798]** ( *Division 26.7 added by Stats. 2014, Ch. 188, Sec. 8.* )

**CHAPTER 8. Statewide Water System Operational Improvement and Drought Preparedness [79750 - 79760]** ( *Chapter 8 added by Stats. 2014, Ch. 188, Sec. 8.* )

**79750.** (a) Notwithstanding Section 162, the commission may make the determinations, findings, and recommendations required of it by this chapter independent of the views of the director. **All final actions by the commission in implementing this chapter shall be taken by a majority of the members of the commission at a public meeting noticed and held pursuant to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).**

(b) Notwithstanding Section 13340 of the Government Code, the sum of two billion seven hundred million dollars (\$2,700,000,000) is hereby **continuously appropriated from the fund**, without regard to fiscal years, to the commission for public benefits associated with water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions, in accordance with this chapter. **Funds authorized for, or made available to, the commission pursuant to this chapter shall be available and expended only for the purposes provided in this chapter, and shall not be subject to appropriation or transfer by the Legislature or the Governor for any other purpose.**

(c) Projects shall be selected by the commission through a competitive public process that ranks potential projects based on the expected return for public investment as measured by the magnitude of the public benefits provided, pursuant to criteria established under this chapter.

(d) Any project constructed with funds provided by this chapter shall be subject to Section 11590.

(*Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.*)

**79751.** Projects for which the public benefits are eligible for funding under this chapter consist of only the following:

(a) Surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000, except for projects prohibited by Chapter 1.4 (commencing with Section 5093.50) of Division 5 of the Public Resources Code.

(b) Groundwater storage projects and groundwater contamination prevention or remediation projects that provide water storage benefits.

(c) Conjunctive use and reservoir reoperation projects.

(d) Local and regional surface storage projects that improve the operation of water systems in the state and provide public benefits.

(*Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.*)

**79752.** **A project shall not be funded pursuant to this chapter unless it provides measurable improvements to the Delta ecosystem or to the tributaries to the Delta.**

(*Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.*)

**79753.** (a) Funds allocated pursuant to this chapter may be expended solely for the following public benefits associated with water storage projects:

(1) **Ecosystem improvements**, including changing the timing of water diversions, improvement in flow conditions, temperature, or other benefits that contribute to restoration of aquatic ecosystems and native fish and wildlife,



including those ecosystems and fish and wildlife in the Delta.

(2) Water quality improvements in the Delta, or in other river systems, that provide significant public trust resources, or that clean up and restore groundwater resources.

(3) Flood control benefits, including, but not limited to, increases in flood reservation space in existing reservoirs by exchange for existing or increased water storage capacity in response to the effects of changing hydrology and decreasing snow pack on California's water and flood management system.

(4) Emergency response, including, but not limited to, securing emergency water supplies and flows for dilution and salinity repulsion following a natural disaster or act of terrorism.

(5) Recreational purposes, including, but not limited to, those recreational pursuits generally associated with the outdoors.

(b) Funds shall not be expended pursuant to this chapter for the costs of environmental mitigation measures or compliance obligations except for those associated with providing the public benefits as described in this section.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79754.** In consultation with the Department of Fish and Wildlife, the state board, and the Department of Water Resources, the commission shall develop and adopt, by regulation, methods for quantification and management of public benefits described in Section 79753 by December 15, 2016. The regulations shall include the priorities and relative environmental value of ecosystem benefits as provided by the Department of Fish and Wildlife and the priorities and relative environmental value of water quality benefits as provided by the state board.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79755.** (a) Except as provided in subdivision (c), no funds allocated pursuant to this chapter may be allocated for a project before December 15, 2016, and until the commission approves the project based on the commission's determination that all of the following have occurred:

(1) The commission has adopted the regulations specified in Section 79754 and specifically quantified and made public the cost of the public benefits associated with the project.

(2) The project applicant has entered into a contract with each party that will derive benefits, other than public benefits, as defined in Section 79753, from the project that ensures the party will pay its share of the total costs of the project. The benefits available to a party shall be consistent with that party's share of total project costs.

(3) The project applicant has entered into a contract with each public agency identified in Section 79754 that administers the public benefits, after that agency makes a finding that the public benefits of the project for which that agency is responsible meet all the requirements of this chapter, to ensure that the public contribution of funds pursuant to this chapter achieves the public benefits identified for the project.

(4) The commission has held a public hearing for the purposes of providing an opportunity for the public to review and comment on the information required to be prepared pursuant to this subdivision.

(5) All of the following additional conditions are met:

(A) Feasibility studies have been completed.

(B) The commission has found and determined that the project is feasible, is consistent with all applicable laws and regulations, and will advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta.

(C) All environmental documentation associated with the project has been completed, and all other federal, state, and local approvals, certifications, and agreements required to be completed have been obtained.

(b) The commission shall submit to the Legislature its findings for each of the criteria identified in subdivision (a) for a project funded pursuant to this chapter.

(c) Notwithstanding subdivision (a), funds may be made available under this chapter for the completion of environmental documentation and permitting of a project.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79756.** (a) The public benefit cost share of a project funded pursuant to this chapter, other than a project described in subdivision (c) of Section 79751, shall not exceed 50 percent of the total costs of any project funded under this chapter.

(b) No project may be funded unless it provides ecosystem improvements as described in paragraph (1) of subdivision (a) of Section 79753 that are at least 50 percent of total public benefits of the project funded under this

**chapter.**

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79757.** (a) A project is not eligible for funding under this chapter unless, by January 1, 2022, all of the following conditions are met:

(1) All feasibility studies are complete and draft environmental documentation is available for public review.

(2) 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.

(3) The director receives commitments for not less than 75 percent of the nonpublic benefit cost share of the project.

(b) If compliance with subdivision (a) is delayed by litigation or failure to promulgate regulations, the date in subdivision (a) shall be extended by the commission for a time period that is equal to the time period of the delay, and funding under this chapter that has been dedicated to the project shall be encumbered until the time at which the litigation is completed or the regulations have been promulgated.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79758.** Surface storage projects funded pursuant to this chapter and described in subdivision (a) of Section 79751 may be made a unit of the Central Valley Project as provided in Section 11290 and may be financed, acquired, constructed, operated, and maintained pursuant to Part 3 (commencing with Section 11100) of Division 6.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79759.** (a) The funds allocated for the design, acquisition, and construction of surface storage projects identified in the CALFED Bay-Delta Record of Decision, dated August 28, 2000, pursuant to this chapter may be provided for those purposes to local joint powers authorities formed by irrigation districts and other local water districts and local governments within the applicable hydrologic region to design, acquire, and construct those projects.

(b) The joint powers authorities described in subdivision (a) may include in their membership governmental partners that are not located within their respective hydrologic regions in financing the surface storage projects, including, as appropriate, cost share participation or equity participation. Notwithstanding Section 6525 of the Government Code, the joint powers agencies described in subdivision (a) shall not include in their membership any for-profit corporation or any mutual water company whose shareholders and members include a for-profit corporation or any other private entity. The department shall be an ex officio member of each joint powers authority subject to this section, but the department shall not control the governance, management, or operation of the surface water storage projects.

(c) A joint powers authority subject to this section shall own, govern, manage, and operate a surface water storage project, subject to the requirement that the ownership, governance, management, and operation of the surface water storage project shall advance the purposes set forth in this chapter.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

**79760.** (a) In approving the Water Quality, Supply, and Infrastructure Improvement Act of 2014, the people were informed and hereby declare that the provisions of this chapter are necessary, integral, and essential to meeting the single object or work of the Water Quality, Supply, and Infrastructure Improvement Act of 2014. As such, any amendment of the provisions of this chapter by the Legislature without voter approval would frustrate the scheme and design that induced voter approval of this act. The people therefore find and declare that any amendment of the provisions of this chapter by the Legislature shall require an affirmative vote of two-thirds of the membership in each house of the Legislature and voter approval.

(b) This section shall not govern or be used as authority for determining whether the amendment of any other provision of this act not contained in this chapter would constitute a substantial change in the scheme and design of this act requiring voter approval.

*(Added by Stats. 2014, Ch. 188, Sec. 8. (AB 1471) Approved in Proposition 1 at the November 4, 2014, election.)*

STATE OF CALIFORNIA

CALIFORNIA NATURAL RESOURCES AGENCY

CALIFORNIA WATER COMMISSION

RESOLUTION NUMBER: 2019-02

RESOLUTION REGARDING AVAILABILITY OF ADDITIONAL FUNDS IN  
THE WATER STORAGE INVESTMENT PROGRAM

WHEREAS, on November 4, 2014, California voters approved Proposition 1, the Water Quality, Supply, and Infrastructure Improvement Act of 2014 ("Proposition 1");

WHEREAS, Proposition 1 contained Chapter 8, "Statewide Water System Operational Improvement and Drought Preparedness," ("Chapter 8") which appropriates \$2.7 billion to the California Water Commission ("Commission") to invest in public benefits associated with water storage projects "that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions" (Water Code section 79750);

WHEREAS, on December 14, 2016, the Commission adopted regulations governing the quantification and management of public benefits associated with water storage projects that meet the criteria established for public investment (the Water Storage Investment Program ("WSIP"));

WHEREAS, the regulations were approved by the Office of Administrative Law on March 7, 2017, and appear in the California Code of Regulations, title 23, section 6000 *et seq.* ("regulations");

WHEREAS, the Commission, pursuant to the terms of the regulations, began the application period for funds from the WSIP on March 15, 2017;

WHEREAS, the Commission closed the application period for funds from the WSIP on August 14, 2017;

WHEREAS, the Commission, at meetings on May 3-5, 2018, determined each project's public benefit ratio;

WHEREAS, the Commission, at meetings on June 28, 2018, made the

determinations necessary pursuant to regulations section 6011(c) for eight projects that applied for funding from the WSIP;

WHEREAS, the Commission, at meetings on July 24-25, 2018, determined Maximum Conditional Eligibility Amounts for the eight projects that were eligible to receive funds from the WSIP;

WHEREAS, the Commission made Maximum Conditional Eligibility Amount determinations that total the amount of funds available in the WSIP;

WHEREAS, at its meeting on September 19, 2018, the Commission discussed how to address the potential issue of additional funding becoming available through the WSIP in the future because a project may not be able to move forward;

WHEREAS, the regulations do not address what the Commission should do if funds become available;

WHEREAS, the Commission expressed a desire to adopt a resolution with potential considerations for the disbursement of funds that may become available for future Commissions;

NOW, THEREFORE, BE IT RESOLVED that the California Water Commission hereby recommends the following preferences be considered if additional funds become available:

- Adjust the Maximum Conditional Eligibility Determination for Rank 3 projects to the Applicant Request from May 2018 (Table 1)

**Table 1. Rank 3 Project Summary**

<b>Project</b>	<b>Score</b>	<b>Applicant Request (May 2018)</b>	<b>Commission MCED (July 2018)</b>	<b>Difference between MCED and Request</b>
<b>Sites Project</b>	61	\$916,620,000	\$816,377,686	\$100,242,314
<b>Kern Fan</b>	54	\$85,700,000	\$67,537,315	\$18,122,685*
<b>Willow Springs</b>	53	\$123,290,000	\$95,405,999	\$27,884,001
<b>Total</b>				<b>\$146,249,000</b>
*Requested amount exceeds eligible amount. Eligible amount of \$85,660,000 used.				

- Query applicants who requested less than their Commission approved eligible amount from May 2018 to see if additional funding could be utilized and adjust those MCEs accordingly (Table 2)

**Table 2. WSIP Projects Requesting Less than the Eligible Amount**

Project	Rank	Commission-Approved Eligible Amount (May 2018)	Applicant Request (May 2018)	Commission MCE (July 2018)	Difference between Applicant Request and Eligible Amount
South County Ag Program	2	\$280,530,000	\$280,500,000	\$280,500,000	\$30,000
Sites Project	3	\$1,008,280,000	\$916,620,000	\$816,377,686	\$91,660,000
<b>Total</b>					<b>\$91,690,000</b>

- If, after consideration of the above, funds remain in the WSIP, consider needed changes in the regulations to perform an expedited solicitation to fund additional projects.


Signed:



Armando Quintero, Chair  
California Water Commission

3/20/2019  
Date

Attest:



Joseph R. Yun, Executive Officer  
California Water Commission

3/20/2019  
Date

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