



Topic: **Authority Board Agenda Item 3.3**

2020 May 27

Subject: **Secure Proposition 1 Water Storage Investment Program**

Requested Action:

Review and Comment on Efforts to Secure Proposition 1 Water Storage Investment Program implementation modifications in light of the continuing effects of the COVID-19 pandemic on local government and water agency finances.

Detailed Description/Background:

The Phase 2 work plan was unanimously approved last month by the Reservoir Committee and the Authority Board showing unwavering commitment to completing this Project in an expeditious manner. However, the uncertainty and longer-term financial impacts of the COVID-19 pandemic may negatively impact the participating members ability to provide some or all the necessary financial support to advance the project in the near term. A key upcoming statutory deadline to receive the Proposition 1 funding is to achieve three specific milestones (see attached) including demonstrating at least 75% local cost share commitment by January 1, 2022. While it is hoped that COVID's effects will have subsided by then, there are funding requirements between now and then that may be impacted.

As a funding partner in the Sites project, the State is in a unique position to provide emergency assistance that could defray local cashflow during the effects of the pandemic and keep the project on schedule. A group of 6 of the 8 storage projects that were awarded Proposition 1 WSIP funds, including Sites, requested that the California Water Commission direct staff to provide administrative and regulatory modifications within the next 60 days that could mitigate the impacts of COVID-19. The letter included suggested actions that could be evaluated on a project by project basis due to the variance in risk factors. Any of the suggestions could benefit the Sites Project.

The CWC will meet on May 20, 2020 and is anticipated to consider the request. Staff will provide a report at the meeting on the Commission's actions.

Fiscal Impact/Funding Source:

It is expected any actions by the Commission on our request would result in cashflow adjustments, not new outside funding to the Project. However, advanced cashflow by the State could keep the project on schedule if local funding becomes unavailable because of more serious economic conditions, which are a reasonable possibility in some cases. To date, State early funding has been provided to the project in the amount of \$6.1 million and \$897,000 is being held in retainage by the State.

History:

Status:	Final	Preparer:	Brown	Phase:	2	Version:	A
Purpose:	Staff Report	QA/QC:		Date:	2020 May 27		
Caveat:	Informational	Authority Agent:	Brown	Ref/File #:	10.700		
Notes:				Page:	1	of	2

In November 2016 the California Code of Regulations was modified by the California Water Commission to incorporate the conditions under which projects awarded funding under the Proposition 1 Water Storage Investment Program would be considered and receive funds. None of the conditions took into consideration the current COVID-19 natural disaster being experienced across the country.

In July 2018 eight storage projects were awarded funds under the WSIP, including the Sites Reservoir Project that received a maximum conditional eligibility determination (MCED) of \$816,377,686 and was provided early funding in the amount of \$40,818,884 which was the maximum allowed 5% of the MCED.

Staff Contact:

Jerry Brown

Attachments:

Attachment A: Proposition 1 Language

Attachment B: Proposition 1 Six Agency Letter sent to the CWC on May 11, 2020



Requirements That Must Be Met for Eligibility of Final Funding

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.

Requirements That Must Be Met Before January 1, 2022

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.



May 11, 2020

Armando Quintero, Chairman
California Water Commission
PO Box 942836
Sacramento, CA 94236

Dear Chairman Quintero,

We represent six of the eight projects that were conditionally awarded funds for water storage projects under the Proposition 1 Water Storage Investment Program (WSIP). We are writing to request that you consider making emergency and temporary modifications on a project by project basis in your implementation of the WSIP funding due to the COVID natural disaster. In particular, we are concerned about the longer-term economic and jobs related impacts this continuing disaster will have on our ability to implement these critical water storage projects that will be co-funded through the WSIP.

Across our State, residents are struggling to meet their financial obligations including paying their water bills. Business closures have resulted in lost revenue to water and wastewater agencies. These are some of the direct impacts of the disaster today. More concerning and uncertain are the longer-term impacts which are sure to negatively affect public agency finances. All of us are in strong financial positions today, but none of us could have ever expected or planned for what we are facing now and in our future because of the COVID pandemic. We are all foreseeing financial pressures on our local investments in capital projects from COVID, including potentially delaying these WSIP storage projects.

We are not wavering in our commitment to implement these critical projects of statewide significance. However, we are concerned that the uncertain financial times ahead could cause delays to these projects that you have previously determined create an important statewide benefit. Delays hurt all investors, especially the State, because the State's investment dollars are not inflation protected. We do not want to see any delays, which is why we are bringing this issue and potential solutions to your attention while there is time for measured steps that help to avoid more serious outcomes.

The State, as a project investor, is in the unique position to provide emergency assistance while the local investors sort out the unforeseen consequences of COVID. The State has the financial wherewithal and legal latitude within Proposition 1 to look beyond the current situation and ensure our storage projects move forward on the timeline needed for the State's long-term water security and for job creation.

We request the California Water Commission direct staff to evaluate administrative and regulatory modifications which are appropriate to mitigate COVID impacts and submit

corresponding recommendations to the Commission for its consideration within 60 days. To assist in this effort, we offer the following considerations as potential areas for modification depending on individual project circumstances:

- Modification of Early funding conditions – Currently, \$78.6 million of the \$135 million has been encumbered to applicants that requested early funding. New or additional funds could be released. The 5% limit on early funding could be increased, (per Water Code Section 79704, up to 10% of allocated funds may be expended for planning and monitoring). Also, the Commission could consider allowing the cost share of prior costs to extend back to November 4, 2014, instead of the current August 14, 2017 date. Scope revisions on existing early funding agreements could be implemented on all projects. Projects that did not request early funding could be given the opportunity to receive such funding under revised program conditions established by the Commission. The program cap of \$135 million toward early funding could be increased.
- Increased release frequency or waiver of retention on early funding - Since funds are provided on a reimbursement basis, this would better match actual expenditures rather than local dollars filling the many months gap between paying service providers and receiving the state funds.
- Consider using flexibility within the early funding agreements - For example, instead of maintaining 50/50 cost-share on a monthly basis, a longer time horizon would allow local dollars to be defrayed in the near term. A 70/30 cost share could be temporarily allowed for 18-24 months and the remaining time could be taken to achieve the required overall 50/50 share split.
- Incorporate COVID related impacts into pre-established deadlines - such impacts were not expected when dates were determined. Day for day extensions are typical contract remedies for Force-Majeure conditions. The Governor has significant powers under the emergency declaration which should be further explored. As an alternative to deadline changes, consider interpreting the requirements for feasibility and local cost-share commitments in a way that accommodates COVID impacts.

Thank you for your consideration of this unfortunate request. Our shared interest is in getting these projects built and we remain committed to achieving this goal, despite the COVID natural disaster.

Sincerely,



Jerry Brown, Executive Director
Sites Project Authority



Mark Beuhler,
Willow Springs Water Bank



Aaron Fukuda, General Manager
Temperance Flat Reservoir Authority



Shivaji Deshmukh, General Manager
Inland Empire Utilities Agency



Paul Cook, General Manager
Irvine Ranch Water District



Eric Averett, General Manager
Rosedale-Rio Bravo Water Storage District



Norma Camacho, Chief Executive Officer
Valley Water

Cc: Carol Baker, California Water Commission
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