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March 08, 2016

The Honorable Joseph Byrne, Chair
California Water Commission
1416 9th Street,
Sacramento, CA 95814

Regarding: Comments on Draft WSIP Regulations, dated January 11, 2016

Dear Chair Byrne and Commission Members:

As a potential applicant under the voter-approved Water Storage Investment Program ("WSIP") to implement the CALFED project referred to in Section 215 of Public Law 108-7 as the North of Delta Off-stream Storage (aka Sites Reservoir Project), the Sites Project Authority ("Authority") appreciates the opportunity to submit comments on the draft regulations being developed for adoption as California Code of Regulations, Title 23, Division 7, Chapter 1. The Authority commends the efforts of the Water Commission and staff to develop these regulations in an open and transparent manner and appreciates the opportunity to participate both in the Water Commission's Stakeholder Advisory Committee and during the Water Commission's monthly meetings.

During this process, the Authority has focused its efforts to ensure the regulations can be implemented in a meaningful and cost-effective manner in accordance with Proposition 1, the State's policy to achieve coequal goals for management of the Delta (California Water Code §85020), existing water rights, and area of origin requirements. The Authority believes that such an approach maximizes the return on investment for both water supply reliability and those ecosystem benefits contemplated under Proposition 1, Chapter 8 by enabling feasible and permitable projects to advance in a manner that encourages these benefits to accrue sooner and in a cost-effective manner. From this perspective, the Authority offers the following comments.

1. **Draft Regulations increase Project costs, which reduces the return on investment, due to the omission to consider funding of the environmental documentation.**

   The Water Commission was granted discretion under Water Code §79755(c) to "fund [ ] the completion of environmental documentation and permitting of a project". However, the draft regulation §6003(d) only allows the Water Commission to consider funding the State's cost-share to acquire permits starting at the time a conditional funding commitment is granted to an applicant. §6003 does not address the environmental documentation aspect of Water Code §79755(c) and further, it places a 10% limitation from Proposition 1, Chapter 4 (Water Code §79704) that is not addressed in Chapter 8. In practice, the environmental documentation is a primary source of information used to acquire the multitude of permits needed to construct and then to operate – these two processes along with the feasibility study are integrated with each process informing the other through a series of iterations. Funding the State's cost-share of two of these processes, but not the third, will create inefficiencies that add time and cost. Contributing the respective share of costs to finalize the environmental document also supports a shared goal to maximize the return

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on investment by reducing total project costs which occurs by reducing the finance costs borne by the applicant to perform this work in advance of receiving the State's cost-share. For the Sites Reservoir Project, the cost to complete the environmental documentation is estimated to be several million dollars.

2. **Draft regulations will increase project costs, which reduces the return on investment, by causing a significant delay to when State's cost-share becomes available.**

Draft regulation §6003(b) allows the Water Commission to encumber funds after a number of conditions have been met. Of concern are the conditions that the project applicant has "completed the final environmental document" per §6003(b)(4) and "secured all known permits" per §6003(b)(5), which according to the Initial Statement of Reasons (ISOR), "Commission staff anticipates the timeline for some projects to complete the Water Code Section 79755(a) provisions could be on the order of ***5 years or longer*** depending on the project size or complexity (emphasis added)".

While the definition of "permits" in §6001(a)(68) generally reflects Proposition 1 §79755(c) of the Water Code, securing "all known permits" could delay the State's cost-share until the project is well under construction, thereby increasing the project's financing cost, which is allowed per §6003(d). For example, a Stormwater Pollution Prevention Plan (SWPPP) is a mandatory permitting requirement that is usually prepared by the construction contractor only after the design is complete and the construction contract has been awarded. The Sites Reservoir Project anticipates executing multiple, staggered, construction contracts. The result is that some SWPPPs will not be prepared until the final year of construction. Should the Water Commission's decide to not encumber funds until the applicant "has secured all known permits", the finance costs for all prior work, will increase the total project costs and therefore reduce its return on investment for both water supply reliability and ecosystem benefits contemplated under Proposition 1. These financing costs are Proposition 1 eligible State cost-share capital costs per §6001(a)(14).

To allow the Water Commission to retain its discretion regarding the funding of permits (and completion of environmental documentation), the encumbrance of the State's funds should not be structured as an 'on/off' switch, but in recognition that most projects are implemented in concurrent and overlapping tracks (i.e. engineering design overlaps both the environmental documentation and permit acquisition processes). Structuring how the State's cost-share is encumbered to align with the project schedule would ensure the State's cost-share of traditional and Proposition 1 eligible activities, such as design, would occur independent of any Water Commission decision related to the acquisition of all permits (or completion of the environmental documentation). The result is to reduce the finance cost for the pre-construction activities, which improves the project's return on investment for both water supply reliability and ecosystem benefits contemplated under Proposition 1, Chapter 8.

As an illustration for the Sites Reservoir Project, the geotechnical exploration program is planned to be performed in parallel with completion of the environmental document and will cost tens of millions of dollars. Having the State's cost-share for these Proposition 1 eligible activities reduces

the finance cost so that the project's return on investment for both water supply and public benefits is maximized. Furthermore, should the Water Commission elect to fund permits and completion of the environmental documentation, the project's return on investment improves by removing the inefficiencies described in item 1, above.

As a side note, the Water Commission's discretion to fund permit acquisition is stated in the ISOR as "aid[ing] those applicants that potentially have a cash flow issue". This perspective is not supported by Proposition 1. While it is assumed in Proposition 1 that applicants have the creditworthiness to obtain financing for the non-public benefits elements of the project, the funding for permits (and potentially completion of the environmental documentation) has a direct bearing on the project's return on investment, which will be used in the selection criteria. Electing to fund the permit acquisition of some projects, but not others will affect the comparative return on investment and therefore a project's viability for selection.

3. **Water Commission's Review Process is lengthy, which increases total project costs.**

The selection process includes "rank[ing the project] relative to the other projects based on their return on investment" (§6002(c)(7)(B)(4)), which can only occur after all projects have been through both the technical and independent peer reviews. This process is dependent upon the strength of all applications received, such that well prepared applications have to wait until the reviews of the other applications have been completed. For the technical review, the duration is limited to 18 months (§6002(c)(5) and no time limit is provided for completion of the independent review. Having an applicant wait more than 18 months prevents a project from making significant progress, unless the applicant and its other financing partners are willing to accept the risk the Water Commission may elect to not fund the project. Not only does this delay increase total project cost through incurred escalation costs, but it makes it more difficult to attract additional financing partners from the minimum 75% (§6002(c)(2)(E)) at time of submitting the application to achieve the 100% requirement (§6003(b)(1) needed for funds to be encumbered. Additional participants are likely to wait until the Water Commission makes its decision before signing any commitment to financially participate in the project. As such, this process does not create an incentive to achieve the 100% threshold sooner, which directly affects the work and project's decision-making processes.

The Water Commission should revisit the review process to identify methods to reduce its duration and evaluate an interim commitment process that could incentivize applicants to advance their project within an acceptable risk threshold. As stated previously, reducing the project development time reduces total project cost, which increases the return on investment.

4. **Application requirements should focus on meaningful inputs that support the Water Commission's decision-making process.**

The application requirements are very prescriptive and in some topic areas are not likely to produce meaningful information to aid the Water Commission in their decision-making process.

For example, the need to 'stress test' a project's response to climate change so the Water Commission can understand how resilient the public benefits are likely to be in the future makes good business sense. However, the parameters appear to be extreme and the process is costly for an applicant to perform the necessary technical analysis needed to produce results for inclusion in their application. The requirements are summarized as follows:

Draft Regulations	Reg (page)	ISOR (page)	Precipitation (%)	Temperature (°F)	Sea Level Rise (cm)
Baseline w/o Project, Future: 6004(a)(1)(C)	23	20	0.	+ 4.9	+30.
Uncertainty Analysis (1): 6004(a)(8)(1a)	27	29	-11.4	+ 5.0	+60.
Uncertainty Analysis (2): 6004(a)(8)(1b)	27	29	+15.0 -6.1	+ 5.3 + 8.8	60. 105.

At a minimum, the applicants need to understand how the subtle differences associated with having the temperature range from +4.9 to +5 to +5.3 °F will provide meaningful information that supports the Water Commission's selection process.

While Table 3 in the ISOR estimates up to 4 model runs may be needed for the Water commission's purposes, this assessment does not take into account an applicant's need to also comply with the National Environmental Policy Act (NEPA), where all alternatives to the proposed project need to be developed to an equivalent level of detail. Should an applicant assume the Water Commission's requirements relate solely to an assessment of the project's feasibility, and elect to not include the results in their environmental document, since the application is a public document, the applicant assumes the risk that their NEPA document could be challenged on the basis that that the proposed project was developed to a more-detailed level since the applicant did not also perform the same climate change analysis on the alternatives to their proposed project. This is a subtle difference between NEPA and California Environmental Quality Act (CEQA) and currently, the Authority has not found a viable strategy that avoids having to analyze at least 3 of the more-promising alternatives to this degree of climate change.

Additionally, to fully evaluate the most extreme climate change scenarios of (§6004(a)(8)(1b)), even qualitatively, requires a parametric analysis where each key parameter is changed once while the other parameters are held constant. This requires 16 scenarios for 1 project alternative to be technically assessed before even a qualitative response could be developed.

It is recommended that the technical guidance document currently under development by the Water Commission include CalSim model results for the no project with future condition as proposed in §6004(a)(1)(C) to determine how the two sets of uncertainty analysis, as required in §6004(a)(8)(1a) §6004(a)(8)(1b) respectively, compare. Such an analysis would demonstrate that the modeling scenarios proposed by the regulation is technically feasible within the limitations of the CalSim or other models. This may also help to define what this future condition looks like

and what if any policy changes may be needed to address in-Delta water quality and the location of future suitable ecosystem and habitat zones.

5. **Applicant's costs are greater than assumed**

   The Water Commission's Impact Analysis report (attachment to Form 399) states "The CALFED projects have already substantially completed most of the planning studies required for a WSIP application, including a feasibility studies and public draft environmental documentation" (page 10). This statement is not representative of the Sites Reservoir Project where the Authority is planning to spend over $7 million, which is significantly greater than the $0.4 million listed in Table 2. These costs are required to update the current pre-administrative draft EIR/S to reflect facility changes and operational changes that were not previously studied. The facility changes are a direct result of working with the local communities and land owners to identify methods to reduce impacts to existing land uses. The operational changes are a result of assessing the impact the current drought has had on the Sacramento Valley and other areas of the state to manage their water operations more effectively during future droughts.

The Authority thanks the Water Commission for the opportunity to provide these comments and are willing to continue working with the Water Commission and staff to ensure the implementation of the required regulations can be accomplished in a meaningful and cost-effective manner and one that maximizes the project's return on investment for both the water supply reliability and ecosystem benefits contemplated under Proposition 1, Chapter 8.

Sincerely,

James C. Watson, PE
General Manager

Cc: Paula Landis, Executive Officer
Jennifer Marr, Supervising Engineer