



Action Item: Documenting Process for WIIN Act Consistency with Proposition 1

Background

The Water Infrastructure Improvements for the Nation (WIIN) Act, December 2016, contains Section 4007 authorizing the Bureau of Reclamation (Reclamation) to build water storage projects in the western United States. Section 4007 authorized a new financial structure for Reclamation to support infrastructure projects. Projects must be approved for construction prior to January 1, 2021. Projects are divided into two primary types, Federally-led and State-led. Federally-led projects, where the United States holds title, are eligible for up to 50% Federal funding. State-led projects are groundwater or surface storage projects constructed, operated, and maintained by the State or political subdivision. The funding limit for State-led projects is 25% of the total cost of construction. The Secretary of Interior must find that the project is feasible and provides federal benefits proportionate to the federal government's cost share. For example, a project supported by 25% federal funding must have 25% of its benefits support federal interests, such as water supplies dedicated to environmental enhancement or federal wildlife refuges. For State-led projects, the State Governor must request federal support for the project via letter to the Secretary of the Interior. California projects have an additional requirement.

Section 4007(f) requires that State-led projects obtain a finding from the California Water Commission that the project is consistent with the California Water Quality, Supply, and Infrastructure Improvement Act (Proposition 1) approved by voters on November 4, 2014. This provision is a finding of consistency with Proposition 1 generally, not a specific chapter within the Proposition. Rancho California Water District is the first State-led project to approach the Commission and request the consistency finding. Since receiving Rancho California Water District's request, Commission staff have become aware of two additional projects that may need a consistency finding in the next few months. Additionally, although the initial budget funding for the WIIN Act was through the 2019 budget year, it is possible the funding will be extended to future budget years.

Process to Date

The Commission needs to maintain a fair process for each project that requests a consistency finding. Projects may come forward at different times, possibly after some of the current Commissioners are no longer serving on the Commission. It is necessary to ensure each project

receives the same treatment and that no additional requirements are imposed at a later date. Rancho California Water District performed or will perform the following tasks to obtain a consistency finding:

- Contacted the Commission in writing to request the Commission's evaluation of the project's consistency with Proposition 1.
- Requested a place on the agenda for a specific meeting.
- Provided to Commission staff, in time for the posting of the agenda for the May meeting, all written documentation supporting a Commission finding of consistency.
- Present the materials to the Commission and allow public comment on the project at a Commission meeting.

The Commission and Commission staff performed the following tasks:

- Communicated with Rancho California Water District to obtain information about the project and explained what the Commission needs to place an item on the agenda.
- Posted the materials submitted on the Commission's website.
- Provided copies (as requested) of the materials to each Commissioner.

Summary of Issues

If WIIN Act funding continues to be available, additional California projects will need consistency findings from the Commission. Fairness dictates that the Commission set forth a process for these projects to follow. Because the process will be applied to multiple similarly situated parties, it meets the definition of a "regulation" under Government Code Section 11342.600:

"Regulation" means every rule, regulation, order or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

The Commission needs to be protected against claims that its process is unfair or being administered unfairly, and projects need to know the process to obtain a consistency finding from the Commission. Adopting regulations will ensure transparency in the process to obtain the consistency finding and protect the Commission from charges that it is acting arbitrarily and capriciously in the future when considering similarly situated projects.

Proposed Course of Action

The Commission could direct staff to draft regulations and begin the rulemaking process, including the publication of the Notice of Public Availability. The regulations would codify the steps taken by Rancho California Water District and Commission staff in the California Code of

Regulations. If the Commission so directs staff, it is anticipated the rulemaking could be completed within 6 months, as very simple and procedural regulations are contemplated. The regulations would not contemplate factors for the Commission to consider when making a finding of consistency.

If additional projects request consistency findings before the regulations are finalized, so long as the Commission adheres to the same process used for Rancho California Water District, they could proceed using the same process without delay.

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