

Title 23

Division 7. California Water Commission

Chapter 2

NOTICE OF PROPOSED RULEMAKING

The California Water Commission (Commission) will conduct a public hearing at the time and place noted below to consider the adoption of the Procedure for Water Infrastructure Improvements for the Nation Act Determination regulations. The proposed regulations would allow the California Water Commission to implement a process to determine whether a project is consistent with Proposition 1, AB 1471, Stats 2014, to obtain federal funding.

OPPORTUNITY FOR PUBLIC COMMENT

Public Hearings. The hearing will be held in accordance with the requirements set forth in Government Code section 11346.8. The hearing details are as follows:

Date: December 18, 2019

Time: 9:30 a.m.

This item may be considered at any time during the regularly scheduled meeting of the Commission. Please consult the agenda, which will be available at least ten (10) days before December 18, 2019, to confirm the time at which this item will be considered. The agenda will be posted at <http://cwc.ca.gov>.

Location: Resources Building
First Floor Auditorium
1416 Ninth Street
Sacramento, California 95814

Sections Affected: Proposed adoption of California Code of Regulations, title 23, new article 2, which contains new sections 6100, 6101, 6102, and 6103.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Interested members of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on November 1, 2019. To be considered by the Commission, written comments not physically submitted at the hearing, must be submitted on or after November 1, 2019 and received no later than 5:00 pm on December 18, 2019 and must be addressed to the following:

California Water Commission
901 P Street, Room 314
P.O. Box 924836
Sacramento, CA 94236

cwc@water.ca.gov

Please note that under the California Public Records Act (Government Code §6250 *et seq.*), written and oral comments, attachments, and associated contact information (e.g., address, phone, email, etc.) become part of the public record and can be released to the public upon request.

The Commission requests, but does not require, that written and email statements on this item be filed at least 10 days prior to the hearing so that Commission staff and Commissioners have additional time to consider each comment. The Commission encourages members of the public to bring to the attention of staff, in advance of the hearing, any suggestions for modification of the proposed regulatory action.

Additionally, the Commission requests, but does not require, that persons who submit written comments to the Commission reference the title of the proposal in their comments to facilitate review.

AUTHORITY AND REFERENCE

Authority Cited: 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612, 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612, Water Code section 150.

Reference: 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612, 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612

DOCUMENTS INCORPORATED BY REFERENCE

No documents are incorporated by reference in the regulations.

INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW PURSUANT TO GOVERNMENT CODE SECTION 11346.5(a)(3)

Background and Effect of the Proposed Rulemaking

The Water Infrastructure Improvements for the Nation (WIIN) Act was enacted by Congress on December 16, 2016. The WIIN Act is codified as 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612, 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612 of the United States Code. The purposes of the WIIN Act include improving water infrastructure across the country. Section 4007 addresses water projects in California and makes funding available to build water storage projects in California.

The proposed regulations provide the process for a project proponent to obtain the California Water Commission's determination that the project is consistent with Proposition 1, which was

codified as Division 26.7 of the California Water Code and approved by voters in November 2014.

Objectives, Benefits, and Policy Statement Explaining the Specific Benefits Anticipated from the Proposed Regulatory Action

This proposed regulation will establish the procedure for proponents of water projects to obtain the Commission's determination of consistency with Proposition 1. The proposed regulations will ensure a fair and consistent process for each proponent and promote transparency by making the process the same for each and every project proponent.

Determination of Inconsistency and Incompatibility with Existing State Regulations Pursuant to Government Code section 11346.5(a)(3)(D)

The proposed regulations establish a procedure for water storage proponents to obtain a determination from the California Water Commission that a project is consistent with the requirements of Proposition 1. None of the proposed regulations are inconsistent or incompatible with existing state regulation. The Commission has developed these regulations in alignment with existing state law and regulations that govern an open and transparent process for addressing state governmental agencies.

The Commission developed the proposed regulations to be consistent with the following sections of California Code: Government Code sections 11340.5 and 11342.600 requiring any rule of general application to be adopted as a regulation.

The proposed regulations are uniquely applicable to the applicants applying for funds pursuant to the WIIN Act. In addition to the consistency of the regulatory policies with the implementing statute, the policies are also consistent with existing laws and regulations that relate to the specific policies discussed below.

During the process of developing the proposed regulatory action, Commission staff has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

Mandated by Federal Law or Regulations

The proposed regulations are not mandated by federal law or regulations but are required because of duties imposed on the California Water Commission via federal law.

Comparable Federal Regulations

The proposed regulation implements a new process for water projects to obtain the California Water Commission's determination that the water project is consistent with Proposition 1. Although the authority to make the determination necessary is implied from federal law, these regulations do not have a federal counterpart, and do not impact, duplicate, or conflict with Federal regulations or statutes. The commission has reviewed federal regulations and standards specifically regarding the authorization to make the determination.

Summary of Existing Laws and Regulations Related Directly to the Proposed Rulemaking

The WIIN Act, codified at 114 P.L. 322, 130 Stat. 1628, 2016 Enacted S. 612, 114 Enacted S. 612, charges the Commission with making a determination that California State led water storage projects applying for federal funding under the WIIN Act are consistent with Proposition 1. Specifically, the commission is directed in Section 4007(f) to make such a determination. To be consistent with California Government Code section 11340 *et seq.*, the Commission is required to adopt regulations governing the process water projects must complete to obtain the Commission's determination.

Other Statutory and Legal Requirements

California Government Code section 11340.5 states:

- (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

California Government Code section 11342.600 defines a regulation as:

...[E]very 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.

Because the WIIN Act conferred a power on the California Water Commission, the Commission needs to undertake a rulemaking to ensure the process it implements is consistent with Government Code section 11340.5.

FISCAL IMPACT DETERMINATION REGARDING THE PROPOSED ACTION

Local Mandate (Government Code section 11346.5(a)(5))

Pursuant to Government Code sections 11346.5(a)(5) and (a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs to covered State agencies. The proposed regulatory actions would not create costs or savings in federal funding to the State, costs or mandate to any local agency or school district, whether or not reimbursable by the State pursuant to Government Code, Title 2, division 4, part 7 (commencing with section 17500) or other nondiscretionary costs of savings to State or local agencies.

The regulation does not impose a mandate on any private individual, business or local government. Application to the federal government for WIIN Act funding is entirely voluntary. Participation is open to California water agencies promoting water storage projects.

The determinations of the Commission's Executive Officer concerning the costs or savings necessarily incurred by public agencies and private persons and businesses in reasonable compliance with the proposed regulatory action are presented below:

- Cost to any Local Agency or School District Requiring Reimbursement Pursuant to Government Code section 17500 *et seq.*: None.
- Cost or Savings for State Agencies: None.
- Other Non-discretionary Costs or Savings on Local Agencies: None.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including Ability to Compete

The Executive Officer has made an initial determination that the proposed regulatory action would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

Cost Impacts on Representative Private Persons or Businesses

In developing this regulatory proposal, Commission staff evaluated the potential economic impacts on representative private persons or businesses. The commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Small Business

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would not affect small businesses because the projects that would apply for WIIN Act funding do not meet the qualifications of a small business.

Business Reporting Requirements

The administrative requirements of the proposed regulations do not apply to business or private individuals. Therefore, there is no reporting requirement that applies to businesses.

Housing Costs

The Executive Officer has also made the initial determination that the proposed regulatory action will not have a significant effect on housing costs.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT PREPARED PURSUANT TO GOVERNMENT CODE SECTION 11346.3(b)

Effect on Jobs/Businesses

The Executive Officer has determined that the proposed regulatory action would not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, or the expansion of businesses currently doing business within the State of California.

Benefits of the Proposed Regulation

The objective of the proposed regulations is to ensure a level playing field and a consistent process for any California water storage project proponent seeking funding through the federal WIIN Act in obtaining a determination from the Commission of whether the project is consistent with Proposition 1.

A detailed explanation of the benefits of the proposed regulation is in the Initial Statement of Reasons, under "Purpose of Proposed Regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The proposed regulation does not award funding from WIIN Act sources. Rather, it ensures water projects from California that apply for funding from the Federal government pursuant to the WIIN Act are consistent with California's stated goals and policies related to water storage.

The following summarizes the sections of the proposed regulation and the potential categories of economic and fiscal impact:

Section 6100. Explanation of the reason to adopt the regulations.

Section 6101. General provisions and definitions.

Section 6102. Process for applicant to request the Commission's determination.

Section 6103. Explanation of staff responsibilities

Section 6104. Process of presenting the project to the Commission

Costs potentially resulting from these regulations are:

Costs to local agencies to prepare information, submit information, and attend the Commission meeting

Costs to the Commission and its staff to manage the information and meet with applicants to explain the process.

The following are conclusions of an economic and fiscal impact analysis for the proposed regulations:

The proposed regulation will not result in a significant or permanent change in the number of jobs within the state.

No creation or elimination of businesses within the state would occur as a result of this proposed regulation.

The proposed regulation would not affect the competitive advantages or disadvantages of businesses within the state.

The proposed regulation would not significantly affect investment in the state.

Incentives for innovation in business products, materials, or processes would not be affected.

ALTERNATIVES STATEMENT

The Commission must determine that no reasonable alternative considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS

Commission staff has prepared an Initial Statement of Reasons for the proposed regulatory action, which includes a summary of the economic and environmental impacts of the proposal. The report is entitled "Initial Statement of Reasons."

Copies of the ISOR and the full text of the proposed regulatory language may be accessed on the Commission's website listed below, or may be obtained from Kimberly Muljat, California Water Commission, 901 P Street, Sacramento, California, 95814, (916) 651-7501.

The following materials are available for public review:

- Text of Proposed Regulation
- Notice of Proposed Rulemaking
- Initial Statement of Reasons
- Materials Relied Upon
- Form 400
- Form 399
- Final Statement of Reasons (upon completion)
- Final Text of Regulation (upon completion)

These materials may be viewed in two ways:

- Visiting the Commission's website (<http://cwc.ca.gov>)
- Arranging an in-person review. Please contact Kimberly Muljat (contact information provided above).

Final Statement of Reasons Availability

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice or may be accessed on the Commission's website (<http://cwc.ca.gov>).

Agency Contact Persons

Inquiries concerning the substance of the proposed regulatory action may be directed to:

Holly Stout
California Water Commission
901 P Street, Room 314
P.O. Box 924836
Sacramento, CA 94236
916-651-0156

cwc@water.ca.gov

Further, the agency representative to whom nonsubstantive inquiries concerning the proposed administrative action may be directed to:

Kimberly Muljat
California Water Commission
901 P Street, Room 314
P.O. Box 924836
Sacramento, CA 94236
916-651-7501

The Commission staff has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

Internet Access

This notice, the Initial Statement of Reasons, and all subsequent regulatory documents, including the FSOR, when completed, are available on the Commission's website for this rulemaking at <https://cwc.ca.gov>.

HEARING PROCEDURES

The public hearing will be conducted in accordance with the California Administrative Procedure Act, Government Code, title 2, division 3, part 1, chapter 3.5 (beginning with section 11340).

Following the public hearing, the Commission may adopt the regulatory text as originally proposed, or with nonsubstantial or grammatical modification. The Commission may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice and that the regulatory language as modified could result from the proposed regulatory action; in such event, the full regulatory text, with modifications clearly indicated, will be made available to the public, for written comment, at least 15 days before it is adopted.

The public may request a copy of the modified text from the Commission contact persons listed in this notice.

The hearing location is wheelchair accessible. At the hearing, any person may present statements or arguments orally or in writing relevant to the proposed action described in the Informative Digest. The Commission requests but does not require that persons who make oral comments at the hearing also submit a written copy of their testimony at the hearing.

CALIFORNIA WATER COMMISSION

/s

Joseph R. Yun
Executive Officer

Date: October 21, 2019