



tel: 916.455.7300 • fax: 916.244.7300
510 8th Street • Sacramento, CA 95814

December 14, 2021

SENT VIA EMAIL (teresa.alvarado@cwcc.ca.gov)

Chair Teresa Alvarado
California Water Commission Members
California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

**RE: WSIP Feasibility Determination for Pacheco Dam Project
December 15, 2021 Commission Meeting, Item 11**

Dear Chair Alvarado and Members of the Commission:

This letter pertains to the California Water Commission's ("Commission") feasibility determination for the Pacheco Dam project for purposes of continuing eligibility for funding under the Proposition 1 Water Storage Investment Program ("WSIP"). This letter is written on behalf of Stop Pacheco Dam, a coalition working to protect Santa Clara County's ratepayers and the environment, as well as working ranchlands, from this wasteful and high-risk project.¹ The Pacheco Dam project, as currently proposed by the applicant, Santa Clara Valley Water District ("Valley Water"), would be both extremely environmentally damaging and also does not meet public funding requirements under Proposition 1.

This letter specifically addresses the Proposition 1 requirement that: **"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."** (Water Code, § 79752, bold added.) In order to remain eligible for funding under Proposition 1, the Commission must, by January 1, 2022, "Make 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." (CWC Staff Report, Item 11, p. 1; see also Cal. Code Regs., tit. 23, § 6003, subd. (a)(1)(R).)

¹ See stoppachecodam.org for more information about the coalition. Two prior letters have been submitted regarding the Pacheco Dam, pertaining to the economic and environmental infeasibility of the project on November 29, 2021 and December 1, 2021. To date, over 216 other letters have also been submitted to the Commission by individuals, expressing opposition to the Commission making a finding of continuing eligibility for Pacheco Dam.

The Staff Report for the Pacheco Dam item contains basically no information about how the project would advance the long-term objectives of restoring ecological health and improving water management for beneficial uses of the Delta. It simply states:

Ecosystem Improvement- San Joaquin Refuges

The applicant provides a 2021 benefit of \$6.40 million, similar to the \$4.96 million as approved by staff in 2018. The 2021 benefit is reasonable and a small fraction of other project benefits.

(CWC Staff Report, Item 11, p. 10.) It is unclear from the Staff Report, why the value of the benefit was increased from that calculated in 2018. Furthermore, no explanation is provided as to why the benefit is reasonable. The fact that the claimed Delta benefit is a small fraction of other claimed benefits also does not speak to whether the project would lead to “**measurable improvements** to the Delta ecosystem or to the tributaries to the Delta.” (Water Code, § 79752, bold added.)

At best, the purported benefits of Pacheco Dam to Delta tributaries are very small, and the hypothetical improvements claimed should be approached with skepticism. While provision of water to wildlife refuges in Merced County may be positive for wildlife in those areas, the Delta is already overstressed and has its own wildlife needs. It is difficult to believe that the Legislature or the voters intended a measurable improvement to the Delta ecosystem to mean exporting **more** water from the Delta, and **newly inundating** about 1,500 acres of heretofore relatively undisturbed, pristine wildlife habitat between Henry Coe Park and other conserved lands.

It does not make sense for the Commission to allocate any funding for a project that would provide barely a **scintilla** of improvements for the Delta’s tributaries. If the applicant wishes to provide water to refuges in the San Joaquin River Watershed, surely there are less destructive ways to do it. We ask that the Commission **NOT** find that the Pacheco Dam would provide a measurable benefit to the Delta, as the applicant has failed to adequately document how this project would “advance[] the long-term objectives of restoring ecological health and improves water management for beneficial uses of the Delta.” (Cal. Code Regs., tit. 23, § 6003, subd. (a)(1)(L).)²

² Moreover, the November 2021 Supplemental Feasibility Documentation (pp. 4-5 to 4-7), does not “describe specific water rights or water contracts that would be created or amended to ensure public benefits to the Delta ecosystem and shall provide supporting documentation of the parties’ willingness to enter into such contracts or amendments

* * *

As described above, the Pacheco Dam proponents have failed to substantiate the new dam's measurable benefits to the Delta. With increased pressure on water exports, ongoing droughts, and other strains, the Delta is in decline; this situation would not be improved by Pacheco Dam. As a result of these and other deficiencies, the Commission lacks the necessary evidence to make the finding that the project would result in measurable improvements to the Delta ecosystem or to the tributaries to the Delta under Water Code section 79752, or to make the other feasibility findings required by Water Code section 79757, subdivision (a).³

Allowing the Pacheco Dam project to proceed farther in the WSIP process would undermine the credibility of the groundbreaking WSIP program and ongoing efforts, integrated into Proposition 1 requirements, to make measurable improvements to the Delta ecosystem. Thank you for considering this information and please feel free to contact me (osha@semlawyers.com, 916-455-7300) with any questions.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve

Sent Via Email:

Members of the California Water Commission
Matthew Swanson (Matthew.Swanson@cwcc.ca.gov)
Samantha Arthur (Samantha.Arthur@cwcc.ca.gov)
Daniel Curtin (Daniel.Curtin@cwcc.ca.gov)
Kimberly Gallagher (Kimberly.Gallagher@cwcc.ca.gov)
Alexandre Makler (Alexandre.Makler@cwcc.ca.gov)

including an explanation of how these changes would assure measurable improvements to the Delta ecosystem.” (See 23 Cal. Code Regs., § 6003, subd. (a)(1)(L).)

³ The Commission also has continuing authority to review and modify the public benefits of WSIP projects under 23 California Code of Regulations, section 6102, subdivision (g).

Chair Teresa Alvarado & California Water Commission Members
California Water Commission
December 14, 2021
Page 4 of 4

Jose Solorio (Jose.Solorio@cwcc.ca.gov)
Fern Steiner (Fern.Steiner@cwcc.ca.gov)
cwcc@water.ca.gov

cc:

Executive Director, Joseph Yun (joseph.yun@water.ca.gov)
Legal Counsel, Holly Stout (holly.stout@water.ca.gov)
Josh Grover, DFW Water Branch Chief (Joshua.Grover@wildlife.ca.gov)
Katie Miller, DFW Counsel, WSIP (Kathleen.Miller@Wildlife.ca.gov)
Kristal Davis-Fadtke, Environmental Program Manager, WSIP (Kristal.Davis-Fadtke@wildlife.ca.gov)