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TO: Supervisor Jim Provenza

FROM: Philip J. Pogledich, County Counsel

DATE: May 10, 2017

SUBJECT: Proposition 1 Grant Funding—Eligibility of “Water-Related Agricultural Sustainability” Projects

The purpose of this memorandum is to briefly summarize my research and conclusions regarding the interpretation of Water Code § 79732(a)(13), which states that Proposition 1 funding administered by the Delta Conservancy may “[a]ssist in water-related agricultural sustainability projects.”

INTRODUCTION

In 2014, California voters approved Proposition 1—entitled the Water Quality, Supply and Infrastructure Act of 2014 (Water Code §§ 79700 *et seq.*)—to authorize \$7.12 billion in general obligation bonds for water quality, supply, treatment, and storage projects. Proposition 1 includes an allocation of \$50 million to the Delta Conservancy “for competitive grants for multibenefit water quality, water supply, and watershed protection and restoration projects.” Water Code §§ 79730-79732 are each directly relevant to the Delta Conservancy’s administration of this funding.

This memorandum focuses on one of the grant funding objectives included in Section 79732: to “[a]ssist in water-related agricultural sustainability projects.” (Water Code § 79732(a)(13).) The following discussion addresses the proper interpretation of this phrase and concludes that it should be read broadly to include projects benefitting agriculture even if they do not provide any corresponding benefit to the environment. Relevant provisions of Proposition 1 do not support—and are, in fact, inconsistent with—the notion that the Delta Conservancy may only fund environmentally beneficial projects.

A. Water Code §§ 79730-79732 Provide Funding to Advance Both Environmental Objectives and Human Uses of Watersheds.

Water Code § 79730 allocates \$1.495 billion “for competitive grants for multibenefit ecosystem and watershed protection and restoration projects in accordance with statewide priorities.” Addressing a portion of this funding, Section 79731 states that “[o]f the funds authorized by Section 79730, the sum of three hundred twenty-seven million five hundred thousand dollars (\$327,500,000) shall be allocated for multibenefit water quality, water supply, and watershed protection and restoration projects for the watersheds of the state[.]” Section 79731, as mentioned above, allocates \$50 million of this funding to the Delta Conservancy.

As this brief summary indicates, Section 79731 appears to expand the intended purposes of funding authorized in Section 79730 (adding water quality and water supply projects) even though Section 79731 is subordinate in the structure of Proposition 1. Read together with Water Code § 79732, however, a coherent picture of the apparent intent of the Legislature (and voters) emerges.¹

To this end, Water Code § 79732(a) describes 13 purposes of the Section 79730-79731 allocations in relation to watershed protection and restoration. Many of these purposes are focused on improving ecosystem health and environmental quality. Other purposes, however, affirm that the concept of watershed protection and restoration also includes projects that protect or advance beneficial human uses of watersheds, including: reducing climate change impacts on communities (subd. (a)(2)), restoring river parkways and urban river greenways (subd. (a)(3)), reducing wildfire risks and protecting watersheds “tributary to water storage facilities” (subd. (a)(8)), improving protection of life and property and stormwater resource management (subd. (a)(9)), restoring natural system functions that contribute to water supplies and flood management (subd. (a)(11)), and assisting in “water-related agricultural sustainability projects” (subd. (a)(13)).

As Section 79732(a) thus illustrates, the Legislature intended funding covered by Sections 79730-79731 to support environmental objectives and, additionally, projects relating to human uses of watersheds.

B. Water Code §§ 79730-79732 do not Restrict Delta Conservancy Funding to Environmentally Beneficial Projects.

A key question concerning Water Code § 79732(a) is whether projects relating to human uses and activities in watersheds must also demonstrate an environmental benefit to qualify for funding from the Delta Conservancy. The answer to this question is a straightforward “no” for any project within the scope of subdivision (a). The Legislature has expressly stated the eligibility of such projects in the course of defining the purposes of Proposition 1 as it relates to “protecting and restoring California rivers, lakes, streams, and watersheds.” Consequently, there is no legal basis for applying an environmental litmus test to projects that the Legislature has already included within the scope of Sections 79730-79732.

As the plain language of Proposition 1 is clear in this regard, there is no need to review other indicia of Legislative or voter intent. Nonetheless, it is worth noting that the Assembly Journal contains a letter from the bill’s author, Assemblyman Rendon, which states: “My Assembly Bill 1471 provides for funding to assist

¹ The interpretation of a ballot measure is similar in most respects to statutory interpretation in general. As the Attorney General explained in 96 Ops. Cal. Atty. Gen. 48 (2013):

Our central goal in construing ballot measures is to effectuate the intent of the electorate. To determine that intent, we look first to the words of the provision adopted; if the language is clear and unambiguous, there is ordinarily no need to look for further construction. But where the text itself is not enough to resolve a legal question, we must look deeper to ascertain the voters’ intent. When it comes to ballot measures, a recognized indicator of voter intent is the official ballot pamphlet, which contains both the language of the measure as well as information and arguments advanced for and against its passage.

The interpretation of a ballot measure submitted by the legislature also entails considerations of legislative intent as manifested by committee reports, legislation on the same subject, and (in appropriate instances) other indicia of intent such as statements by a bill’s author.

water-related agricultural sustainability projects. This includes projects to support agricultural sustainability in areas where agriculture is impacted by restoration or other water-related projects.” Though brief, this letter further demonstrates that the concept of watershed protection in Sections 79730-79732 includes promoting the sustainability of existing human uses, even in the absence of any corresponding benefit to the environment.

This interpretation, however, should not be taken to extremes. Section 79732(a) expresses a holistic view of watershed protection that includes human activities and uses. This is far different from providing a blank check to projects that advance human uses irrespective of the environmental cost. In no way does Section 79732(a) support projects that significantly degrade the environment (or vice versa, with respect to projects benefiting the environment at great expense to human uses within watersheds). Any project with significant environmental or human impacts should thus be scrutinized closely—and in all likelihood, rejected—in administering grant funding pursuant to Water Code §§ 79730-79732.

C. The Phrase “Water-Related Agricultural Sustainability” Should be Interpreted Broadly.

As a final matter, the scope of the phrase “water-related agricultural sustainability” warrants consideration. The phrase is most easily analyzed by separately considering its distinct component terms: “water-related” and “agricultural sustainability.”

Proposition 1 includes the phrase “agricultural sustainability” only once, in Water Code § 79732, and the official ballot pamphlet omits the phrase altogether. Other resources are helpful in evaluating its proper interpretation. In this regard, Food and Agriculture Code § 821 expresses the official state agricultural policy as including, among other things, efforts to “sustain the long-term productivity of the state’s farms by conserving and protecting the soil, water, and air, which are agriculture’s basic resources.” Also informative is Public Resources Code § 10246, which states that “long-term sustainable agricultural use” is advanced by land improvements such as “water supply development and streambank revegetation projects.” It is thus reasonable to interpret “agricultural sustainability,” as used in Proposition 1, to include projects and programs that maintain continued agricultural use and otherwise “sustain the long-term productivity of the state’s farms.”

The phrase “water-related” is somewhat easier to interpret. Proposition 1 provides over \$4 billion for water supply and other projects with a relationship to water resources, such as groundwater management, water quality improvements, stormwater management and drainage, water recycling, flood protection and management, and water storage. “Water-related” is thus inclusive of all the foregoing categories of projects and activities, which in turn mirror the expansive use of the term “water-related” in other provisions of California law (*e.g.*, Water Code §§ 10540 and 79562.5, Public Resources Code § 75026, and Health & Safety Code § 116527).

On these grounds, “water-related agricultural sustainability” is properly interpreted to encompass a wide range of projects arising from the interrelationship between water resources, agriculture, and the long-term productivity of agricultural lands. A broad application of Water Code § 79732(a)(13) is thus in keeping with Proposition 1 and other provisions of California law that illuminate the meaning of “agricultural sustainability” and “water-related.”

CONCLUSION

Please let me know if you have any questions regarding this memorandum. If desired, consistent with the conclusions set forth above, I can provide comments on the existing Delta Conservancy Ecosystem Restoration

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and Water Quality Grant Program (the "Program") guidelines to inform the update process that I understand is ongoing.

Attachment: Water Code § 79730-79732

ATTACHMENT A

West's Annotated California Codes

Water Code (Refs & Annos)

Division 26.7. Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Refs & Annos)

Chapter 6. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds (Refs & Annos)

West's Ann.Cal.Water Code § 79730

§ 79730. Appropriation

Effective: November 4, 2014

[Currentness](#)

The sum of one billion four hundred ninety-five million dollars (\$1,495,000,000) shall be available, upon appropriation by the Legislature from the fund, in accordance with this chapter, for competitive grants for multibenefit ecosystem and watershed protection and restoration projects in accordance with statewide priorities.

Credits

(Added by [Stats.2014, c. 188 \(A.B.1471\)](#), § 8, eff. [Aug. 13, 2014](#), (Prop. 1, approved Nov. 4, 2014, became effective upon adoption by the voters).)

West's Ann. Cal. Water Code § 79730, CA WATER § 79730

Current with urgency legislation through Ch. 8 of 2017 Reg.Sess

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West's Annotated California Codes

Water Code (Refs & Annos)

Division 26.7. Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Refs & Annos)

Chapter 6. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds (Refs & Annos)

West's Ann.Cal.Water Code § 79731

§ 79731. Allocations for multibenefit water quality, water supply, and watershed protection and restoration projects

Effective: November 4, 2014

[Currentness](#)

Of the funds authorized by [Section 79730](#), the sum of three hundred twenty-seven million five hundred thousand dollars (\$327,500,000) shall be allocated for multibenefit water quality, water supply, and watershed protection and restoration projects for the watersheds of the state in accordance with the following schedule:

- (a) Baldwin Hills Conservancy, ten million dollars (\$10,000,000).
- (b) California Tahoe Conservancy, fifteen million dollars (\$15,000,000).
- (c) Coachella Valley Mountains Conservancy, ten million dollars (\$10,000,000).
- (d) Ocean Protection Council, thirty million dollars (\$30,000,000).
- (e) San Diego River Conservancy, seventeen million dollars (\$17,000,000).
- (f) San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy, thirty million dollars (\$30,000,000).
- (g) San Joaquin River Conservancy, ten million dollars (\$10,000,000).
- (h) Santa Monica Mountains Conservancy, thirty million dollars (\$30,000,000).
- (i) Sierra Nevada Conservancy, twenty-five million dollars (\$25,000,000).
- (j) State Coastal Conservancy, one hundred million five hundred thousand dollars (\$100,500,000). Eligible watersheds for the funds allocated pursuant to this subdivision include, but are not limited to, those that are in the San Francisco Bay Conservancy region, the Santa Ana River watershed, the Tijuana River watershed, the Otay River watershed, Catalina Island, and the central coast region.
- (k) Sacramento-San Joaquin Delta Conservancy, fifty million dollars (\$50,000,000).

Credits

(Added by Stats.2014, c. 188 (A.B.1471), § 8, eff. Aug. 13, 2014, (Prop. 1, approved Nov. 4, 2014, became effective upon adoption by the voters).)

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West's Annotated California Codes

Water Code (Refs & Annos)

Division 26.7. Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Refs & Annos)

Chapter 6. Protecting Rivers, Lakes, Streams, Coastal Waters, and Watersheds (Refs & Annos)

West's Ann.Cal.Water Code § 79732

§ 79732. Purposes of Chapter 6

Effective: November 4, 2014

[Currentness](#)

(a) In protecting and restoring California rivers, lakes, streams, and watersheds, the purposes of this chapter are to:

- (1) Protect and increase the economic benefits arising from healthy watersheds, fishery resources, and instream flow.
- (2) Implement watershed adaptation projects in order to reduce the impacts of climate change on California's communities and ecosystems.
- (3) Restore river parkways throughout the state, including, but not limited to, projects pursuant to the California River Parkway Act of 2004 (Chapter 3.8 (commencing with [Section 5750](#)) of Division 5 of the Public Resources Code), in the Urban Streams Restoration Program established pursuant to [Section 7048](#), and urban river greenways.
- (4) Protect and restore aquatic, wetland, and migratory bird ecosystems, including fish and wildlife corridors and the acquisition of water rights for instream flow.
- (5) Fulfill the obligations of the State of California in complying with the terms of multiparty settlement agreements related to water resources.
- (6) Remove barriers to fish passage.
- (7) Collaborate with federal agencies in the protection of fish native to California and wetlands in the central valley of California.
- (8) Implement fuel treatment projects to reduce wildfire risks, protect watersheds tributary to water storage facilities, and promote watershed health.
- (9) Protect and restore rural and urban watershed health to improve watershed storage capacity, forest health, protection of life and property, stormwater resource management, and greenhouse gas reduction.
- (10) Protect and restore coastal watersheds, including, but not limited to, bays, marine estuaries, and nearshore ecosystems.

(11) Reduce pollution or contamination of rivers, lakes, streams, or coastal waters, prevent and remediate mercury contamination from legacy mines, and protect or restore natural system functions that contribute to water supply, water quality, or flood management.

(12) Assist in the recovery of endangered, threatened, or migratory species by improving watershed health, instream flows, fish passage, coastal or inland wetland restoration, or other means, such as natural community conservation plan and habitat conservation plan implementation.

(13) Assist in water-related agricultural sustainability projects.

(b) Funds provided by this chapter shall only be used for projects that will provide fisheries or ecosystem benefits or improvements that are greater than required applicable environmental mitigation measures or compliance obligations.

Credits

(Added by Stats.2014, c. 188 (A.B.1471), § 8, eff. Aug. 13, 2014, (Prop. 1, approved Nov. 4, 2014, became effective upon adoption by the voters).)

West's Ann. Cal. Water Code § 79732, CA WATER § 79732
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