

Los Angeles River Upper Reach 2 Watershed Management Area



September 25, 2017

Public Comment
SEP Policy Amendment
Deadline: 9/25/17 by 12 noon

Sent by email to: commentletters@waterboards.ca.gov

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
1001 I Street, 24th Floor, Sacramento, CA 95814



Comment Letter – SEP Policy Amendment

Chair Marcus and State Water Resources Control Board Members Moore, Doduc, D’Adamo, and Esquivel

On behalf of the Los Angeles River Upper Reach 2 Watershed Management Area (LAR UR2 WMA) Cities of Bell, Bell Gardens, Commerce, Cudahy, Huntington Park, Maywood, Vernon, and the Los Angeles Flood Control District (LACFCD), we appreciate this opportunity to comment on the July 21, 2017, *Draft Policy on Supplemental Environmental Projects* (SEP Policy Amendment). The LAR UR2 WMA supports the intent and purpose of the SEP Policy Amendment, while offering suggestions to provide additional implementation flexibility, at the Regional Board Enforcement Officer level, should they determine that such considerations are warranted and appropriate based on the local circumstances and constraints.

The LAR UR2 WMA Municipal Separate Storm Sewer System (MS4) Permittees include municipalities comprised of mostly industrial land use areas, such as Commerce and Vernon; others that are primarily residential with commercially-lined arterial streets, such as Bell Gardens, Cudahy, and Maywood; and mixed land use communities such as Bell and Huntington Park. The general fund resources for these communities are severely constrained and primarily dedicated to providing basic public safety services. For these impoverished, economically Disadvantaged Communities (DAC), with legacy Environmental Justice (EJ) derived challenges, betterment of runoff water quality should include the potential inclusion of enforcement decisions derived financial support including mandatory minimum penalty based criteria.

Although subject to an Adaptive Management Process (AMP), the LAR UR2 WMA Watershed Management Program (WMP) Plan proposes the implementation of over \$310 million in runoff capture projects over the next twenty years or approximately \$15 million per year. This compares with recent annual General Fund Expenditure Budgets for the Cities of Cudahy, Maywood, and Bell of \$7,233,094, \$10,658,940, and \$13,147,740 respectively. The Permittee funded April 2017 LAR UR2 WMA Feasibility Study, of the initial five WMP Plan Regional Best Management Projects, identified over \$55 million in construction costs, with another \$15 million in permitting, design, and construction management. While grateful for having been selected to receive Proposition 1 Stormwater Implementation Grant support from the State Board, the WMP implementation needs of the LAR UR2 WMA are great, fiscal resources limited, and the community demands on those limited resources, both numerous and extraordinarily compelling.

Relax Amendment Part VI.(8) Prohibition on Projects with Partial Funding Assistance

The draft Policy Amendment states that proposals unacceptable as SEPs include: *Projects which the responsible party, SEP recipient, or SEP implementer will undertake, in whole or in part, with federal or*

state loans, contracts, grants, or other forms of financial assistance or non-financial assistance. Table 1 of the July 21, 2017 SEP Policy Amendment Staff Report, summarizes 515 SEP and Enhanced Compliance Actions (ECA) Orders during the period from 2000 to 2016. The mean value of those SEPs and ECAs is approximately \$105,000, rising slightly to \$109,000 during the last four years. In contrast, Regional BMP projects identified in the Los Angeles County WMP and EWMPs will typically cost many millions of dollars to construct, while DAC communities are scraping together a few thousand dollars to develop each grant application. Including permitting, design, and construction, the LAR UR2 WMP identified John Anson Ford Park Cistern Project is anticipated to cost \$40 million dollars and be built in four \$10 million dollar phases. Receiving federal or state assistance, for portions of projects of this magnitude, should not preclude the application of SEP resources, when authorized by a Board Enforcement Officer (EO), to expedite project completion and provide the highest and earliest water quality benefits. Permittees need access to as many financial resources as possible, for expedited (E)WMP project implementation, and the Board EOs authorization to immediately benefit water quality by prioritizing asset delivery to projects that maximize water quality benefits. We request that Part VI.(8) of the draft policy be deleted and that section VIII.B:

- Allow Board Enforcement Officers to consider the potential additional value, when responsibly leveraged, that SEP based funds may provide for fiscally challenged DAC communities;
- Allow that completed project phases, supported by grants, not preclude application of SEP funds to future project phases, finalization, or modifications leading to improved water quality; and
- Allow that the use of SEP fines during initial project phases, not preclude large scale projects from seeking future federal or state grant assistance for subsequent phases and project completion.

Relax Policy Limiting the Use of Mandatory Minimum Penalties towards SEPs

The draft SEP Policy Amendment applies the Public Resources Code Section 71118(a)(3) definition of a SEP as an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of civil penalty. Also footnoted to "civil penalty" is, Water Code section 13385(i) which allows for limited use of SEPs associated with mandatory minimum penalties (underline added). For DACs, such as those that make up the LAR UR2 WMA, Mandatory Minimum Penalties (MMPs) of \$3,000 are neither trivial nor easily dismissed. An MMP of this amount might support reconstruction of a catch basin, to meet LACFCD standards, and allow installation of a Board approved trash Full Capture Device (FCD), such as a connector pipe screen (CPS). Each permit cycle results in more complex permit requirements, such as additional monitoring, and more opportunities for an MMP, or series of them, to be assessed. We request that the Policy Amendment:

- Allow for the application of MMPs towards specific small SEP projects, or larger project attributes

Allow the Aggregation of Small Settlements towards Larger or Complex SEPs

While the SEP Policy Amendment Staff Report acknowledges consideration of allowing small settlements to go towards funding a large SEP, the footnote states that these policy considerations have not been discussed with internal stakeholders, and subsequently, are not yet included in the Policy Amendment. We support the aggregation of small SEPs projects or project enhancements to be applied to other projects. As previously stated, larger WMP and EWMP Regional BMP projects may cost many millions of dollars to construct; adding multiple small settlements collectively towards the funding of the large SEPs may reduce the financial strain on DAC resources. Recognizing that several small settlements can be collectively large for DACs, we recommend flexibility for the cap on small settlements to fund a SEP.

- Allow the aggregation of small SEP projects in order to fund a cost effective construction contract

Preclude the Insertion of Funding Caps on SEP Settlements

While both the Board and Permittees appreciate the benefits of improved receiving water quality, municipalities often have several constituencies with divergent opinions regarding expenditure requirements placed on the general fund. To the degree that a larger proportion of penalty can be directed to a public good, rather than a fine paid to the Board or on extended negotiations, those divergent opinions about the expenditure can often be silenced or mollified. We encourage that EO settlements, facilitate negotiations that are less about the magnitude of the settlement and more about finding a nexus to important projects or study that improve water quality management.

- Modify the Draft SEP Policy to encourage settlements that maximize water quality Improvements over the collection of fines and extended negotiations

Finally, the LAR UR2 WMA commends and supports the decision of Board Staff to insert qualifying directions regarding the determination SEP amounts within Policy Part VIII.B. While increasing the 50% cap on SEPs funds for Permittees meeting certain hardship requirements (e.g., DAC and EJ communities) limitsthe redistribution of funds to other programs, it provides the greatest opportunity for restorative justice through SEP nexus requirements. The LAR UR2 WMA appreciatethis opportunity to comment on the draft SEP Policy Amendment and please feel free to email me at gnila@ci.commerce.ca.us or call me at (323) 722-4805 extension 2839, if you have any questions or concerns with our suggestions.

Respectfully submitted,



Gina Nila, LAR UR2 WMA Permittee Chair
Deputy Director of Public Works, City of Commerce

