

## San Diego Regional Water Quality Control Board

September 11, 2017

EMAIL TRANSMITTAL



Jeanine Townsend  
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State Water Resources Control Board  
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In reply refer to: GENERAL:clemente

**Subject: San Diego Water Board Comment Letter- SEP Policy Amendment**

Dear Ms. Townsend:

The San Diego Regional Water Quality Control Board (San Diego Water Board) would like to submit the following comments on the *Proposed Amendment to the Policy on Supplemental Environmental Projects* (SEPs). Generally speaking, we recognize and appreciate the State Water Board's effort to strike a balance between incentivizing worthwhile SEPs and maintaining a credible audit record, while also incorporating added requirements and considerations for human right to water, Environmental Justice (EJ) and Disadvantaged Communities (DAC), and climate change.

We encourage the State Water Board to consider additional ways to incentivize meaningful SEPs; particularly those performed by third parties and those related to EJ/DAC. In doing so, one must consider the perspectives of both responsible parties and SEP proponents. Based on our discussions with these entities, we recommend the following modifications:

- 1) Allow for the transfer of performance responsibilities to a third party, in cases where the third party is willing to accept the responsibility, through a separate agreement between the Board and the third party. The current draft Policy Amendment discourages, if not precludes, such third-party SEP management (in section VI.(4), VIII.E (para. 3), and IX.A). In settlement communications, we often find that parties facing ACL penalties are reluctant to fund third-party SEPs if they remain fully liable for the SEP outcome. This is a major challenge because many of our highest ranking SEPs are proposed by such third-party entities (e.g. non-governmental organizations (NGOs)).
- 2) Clarify language (page 9, paragraph 3) to exempt the requirement for approval from the Director of the Office of Enforcement for EJ/DAC SEP projects exceeding the 50 percent "cap." As currently drafted, Director approval must be obtained for any Settlement where SEPs exceed 50 percent of the ACL regardless of whether they are for EJ/DAC projects. This is established in the current SEP Policy and does not streamline or incentivize the process for EJ/DAC projects. Instead, the Policy could require a Regional Water Board to make express findings that the project benefits EJ/DAC or human right to water to allow exceedance of the 50% cap. This would be consistent with

the section regarding EJ/DAC oversight costs (section VIII.G).

- 3) To further incentivize efforts for EJ/DAC SEPs, please clarify that in situations where a discharger wants to propose multiple SEPs, and only some of them are EJ/DAC projects, the discharger can propose up to the 50 percent "cap" on projects that are non-EJ/DAC and up to an additional 50 percent for EJ/DAC projects.
- 4) Allow for aggregating of funds from multiple settlements for a larger third-party performed SEP (as was indicated in the accompanying staff report, P.5) by
  - a. Modifying or deleting exclusion VI.(12)
  - b. Increasing the time for accrual and implementation from 24 months to 5 years (Sections VIII.D and H).
- 5) Eliminate or clarify section VI.(7). In many cases a responsible party is unwilling, if not legally unable, to commit to implementing efforts to address problems identified in a study without first knowing what these efforts might entail. Moreover, many NGOs cannot commit to implementation until they receive grant funds, and oftentimes grant funds do not become available until they can conduct feasibility and design work.

The San Diego Water Board has recently completed a project solicitation and review process intended to conform to the new requirements of AB1071 and include other considerations listed in the draft Policy (i.e. climate change and human right to water). Therefore, we believe our solicitation process is already consistent with the process described therein. Information on our process is available through our "Environmental Projects" website.<sup>1</sup> We would be happy to share our experiences on the solicitation effort and its (albeit brief) implementation.

Thank you for considering these comments. We do not anticipate attending the September 20 hearing. Please direct questions about our SEP experiences or these comments to our enforcement coordinator, Ms. Chiara Clemente at 619-521-3371 or [Chiara.Clemente@waterboards.ca.gov](mailto:Chiara.Clemente@waterboards.ca.gov).

Respectfully,



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<sup>1</sup> See [http://www.waterboards.ca.gov/sandiego/water\\_issues/programs/compliance/environmental\\_projects.shtml](http://www.waterboards.ca.gov/sandiego/water_issues/programs/compliance/environmental_projects.shtml)