

Heal the Bay

1444 9th Street
Santa Monica CA 90401

ph 310 451 1500
fax 310 496 1902

info@healthebay.org
www.healthebay.org

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

September 25, 2017

Chair Felicia Marcus and Board Members
c/o Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814
commentletters@waterboards.ca.gov



VIA EMAIL

Re: Comment Letter – Proposed Amendment to the Policy on Supplemental Environmental Projects

Dear Chair Marcus and State Water Board Members,

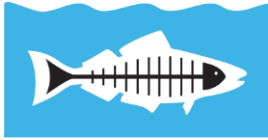
On behalf of Heal the Bay, we submit the following comments on the *Draft Policy on Supplemental Environmental Projects* (SEP Policy Amendment). Heal the Bay is an environmental organization with over 15,000 members dedicated to making the coastal waters and watersheds of greater Los Angeles safe, healthy, and clean. We appreciate the opportunity to provide comments on the SEP Policy Amendment.

Supplemental Environmental Projects (SEPs) can directly benefit the environment and public health by providing an opportunity for local stakeholders to implement programs that might not normally be possible. Heal the Bay appreciates the State Water Resources Control Board’s (State Board) commitment to clarifying and improving the SEP policy and its implementation.

Supplemental Environmental Projects Nexus Definition Needs Refinement

Heal the Bay appreciates the State Board’s goal to provide within its legal guidelines (p. 4, #4 within the IV. Legal Guidelines of the SEP Policy Amendment) “a consideration of the relationship between the location of the violation and the location of the proposed SEP” — also referred to as a “Nexus.” However, we believe that the Nexus definition and applicability should actually be more focused on the actual beneficial use or resource impacted and become geographically tighter.

We disagree with the State Board allowing SEPs to “have a nexus even if they address a different pollutant in a different medium, provided the project relates to the underlying violation.” The State’s definition is missing a ‘weighting’ element in its attempt at equivalence. For example, Heal the Bay has commented on a local Regional Water Quality



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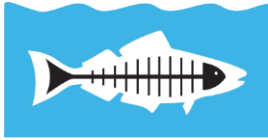
Control Board (Regional Board) approved SEP over a questionable interpretation of this application by allowing a stormwater best management practice SEP project downstream of the impacted site to qualify as adequate environmental value for destroyed riparian habitat. Local Regional Boards have no mechanism for determining relative values between competing beneficial uses to determine appropriate ratios to approve projects. As such, allowing SEPs to be applied to different pollutants or mediums fails to have the program function as intended, which is to insure that one community (ecological or urban) does not unnecessarily bear the burden of another. In addition, the policy needs to insure that the impacted area actually receives additional relief to insure recovery or remediation.

The State Board describes the limits on geographic location as needing to have occurred at the same site, in the same ecosystem, or within the “immediate geographic area” described as “in the same community, the same watershed, or within a 50-mile radius,” of the original violation (p. 11, last paragraph of VIII. F.).

In a region with a population as dense as Region 4, the Los Angeles Region, this 50-mile radius could allow SEPs the unwanted freedom to move far away from the task they’re trying to accomplish—assisting in the immediate area that was originally damaged. For instance, allowing for a 50-mile differential between the site where the alleged violation occurred could allow September 2015’s MOSO (materials of sewage origin) event taking place on the shores around Hyperion Waste Water Treatment plant to fund SEPs in locations as far away as Palmdale (north of the Angeles National Forest), the Santa Ana River-bordering Riverside, Dana Point in Orange County, or the Santa Clara River in Ventura County.

Another example of why limiting the geographic location for SEPs is necessary stems from another State Board policy—its Wetlands Policy. We’ve seen the “same watershed” definition warped in its application for compensatory mitigation. The Regional Board allowed compensatory mitigation to be used for impacts in Compton Creek—a tributary in the extreme southern part of the Los Angeles River watershed, to be applied to a common mitigation bank in the Tujunga Wash — a tributary located in the northeast portion of the Los Angeles River watershed. While both tributaries are in the Los Angeles River watershed, and the Tujunga Wash is arguably a superior ecological project, the loss of additional green, open space in South Los Angeles was disproportionately impacting one community over another. In this example, the socio-economic communities differ greatly and the unequal distribution of open space and recreational opportunities becomes an environmental justice issue.

Heal the Bay asks that the SEP Policy Amendment take out options for the “immediate geographical area” and the 50-mile radius example and simply read, “A relationship between the location of the violation and the proposed SEP (the Nexus) exists if the



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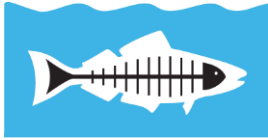
primary benefits to be attained from the project are located at the same site where the alleged violation occurred or at a site in the same ecosystem (e.g., in the same community or the same watershed).”

Categories of SEPs

When considering types of projects, there should be an ordered list of priority when considering the Categories of SEPs that the State Board has proposed. Heal the Bay recommends both Public Health (A) and Environmental Restoration and Protection (D) should be highest priority when it comes to Supplemental Environmental Projects. Consisting of projects including habitat restoration/enhancement, stream quality augmentation, private well testing, and drinking water distribution system infrastructure improvements; these two categories are likely to have the most value to the environment and to the public health of communities in the area near violations. In contrast, Category E, Assessments and Audits, which consists of investigations into origin of toxic and hazardous materials and internal reviews of problematic operations of the responsible party should only be implemented as a last resort. Assessments might be enlightening to what has been environmentally damaging and what can be avoided in the future, but there is no guarantee any action or betterment is actually done, in which case the money would be better used elsewhere. Assessments and audits should perhaps only be approved if they are done in conjunction with other projects that will get something tangible accomplished.

Regarding the project categories B and C—Pollution Prevention and Pollution Reduction, Heal the Bay is concerned that both these categories sound far too similar to what should be taking place on the part of the violator anyway. On page 4, within the last paragraph of “Section III. Definition and Characteristics of a SEP,” the SEP Policy Amendment reads, “Projects or actions that are not required, but that reflect standard industry practices, are generally not acceptable as SEPs.” Heal the Bay believes that many of the examples within both “Pollution Prevention” and “Pollution Reduction” would be considered exactly that, and as such, and should not be acceptable as SEPs. Looking at specific examples within the “Pollution Prevention” category, equipment modifications, training, best management practices, and projects that increase efficiency, should be considered “reflections of standard industry practice” and shouldn’t be an individual category of SEP. The same holds true with examples from the “Pollution Reduction” Category. Installation of more effective treatment technology, stormwater low impact development installation, and safer disposal of an existing pollutant source also seem like they should be standard practice for industry and not be considered Supplemental Environmental Projects.

Allowing these projects to be considered under any of the categories seems like the State Board contradictorily condoning projects that they themselves say in other parts of the policy should be implemented regardless and beyond SEPs as “standard industry



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practices.” To remain consistent, the State Board should take these two categories out of the SEP Policy Amendment completely.

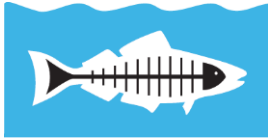
The State Board is wise to add a miscellaneous “Other” category (G) within its SEP Policy Amendment. This additional category goes hand-in-hand with the unforeseeable nature and spirit of Supplemental Environmental Projects and will allow for the possible approval of future, multi-beneficial projects, that have yet to be implemented or even invented. This category also grants Regional Boards leeway in authorizing disparate projects that have environmental health benefits as long as they remain consistent with the rest of the SEP Policy Amendment.

Disadvantaged Communities

Heal the Bay whole-heartedly agrees with the State Board’s desire to represent Disadvantaged Communities (DAC) when evaluating the merits of various SEPs. The policy mentions goals in soliciting DAC projects, but we feel the Regional Boards can be even more proactive in getting DAC projects on SEP lists. Open engagement with DACs should be held multiple times a year and discussed when evaluating what projects should be added to and removed from regional SEP lists. Outreach in this regard is particularly critical for DACs because the resources to research and the insight to be aware of the possibility of SEPs that could benefit their communities are likely at a minimum compared to other communities.

The guidance document mentioned on page 7 of the SEP Policy Amendment is an important tool that the State Board must make certain gets into the right hands and followed up upon. For example, how will the State Board determine the effectiveness of posting SEP proposal forms for solicitation from the public, specifically DACs? If the State is truly concerned about DAC involvement in this process, then simply “encouraging” or ‘making it optional for’ Water Boards to conduct additional outreach is insufficient. The SWRCB needs to make this a priority by 1) requiring all Water Boards to conduct actual public outreach, at a *minimum* of twice a year throughout the jurisdictional region and 2) funding it through the administrative civil liability process, where a percentage of the fines are mandated to be diverted to DAC outreach.

The “Oversight” provision is descent but limited since it only applies to projects that happen to be located in DAC areas. The “Oversight” provision as written does not address 1) developing community projects that do not originate from a discharger or agency, or 2) generate an on-going funding stream to support DAC outreach.



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Stringency is Encouraged

Perhaps one of the most important aspects of the SEP Policy Amendment when it comes to the State and Regional Boards is mentioned briefly in the policy's "Applicability." Within it the SEP Policy Amendment claims, "Nothing in this Policy restricts Water Boards from establishing additional, more stringent criteria of SEPs (p. 2, I.B. Applicability)." This point should be mentioned more prominently throughout the document. Any extra stringency will help SEPs become more effective and beneficial to the environment, propagating their use throughout the state.

Thank you for your consideration of these comments. If you have any questions, please feel free to contact us at (310) 451-1500.

Sincerely,

Steven Johnson
Water Resources Policy Analyst
Heal the Bay