



THE CITY OF SAN DIEGO

September 21, 2017

VIA EMAIL TO: commentletters@waterboards.ca.gov

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814

Subject: SEP Policy Amendment

To Whom It May Concern:

The City of San Diego (City) appreciates the opportunity to provide comments on the proposed amendment to the Policy on Supplemental Environmental Projects (SEPs). We understand that the State Water Resources Control Board (State Board) is proposing the revisions to establish a policy on SEPs that benefit disadvantaged communities, apply the policy to enforcement actions by the Division of Drinking Water and its Districts, also to include human right to water considerations. The City supports the use of SEPs as a way to generate an environmental benefit out of an enforcement action. The City shares the State Board's guiding principles which are the key drivers of the amendments including benefits to disadvantaged communities, climate change, and the human right to water.

The City provides drinking water services to the entire City, wastewater services to the City and surrounding communities, and manages and operates a vast municipal separate storm sewer system (MS4) for the protection of the environment, life, and property. The City is strongly committed to effectively implementing our utility and storm water programs to meet the goals of the federal Clean Water Act and California's Porter Cologne Act. We want to ensure that the modifications do not result in unintended consequences that could negatively impact our ability to utilize SEPs. Our main comments and concerns are discussed in the body of this letter, and detailed comments and recommendations are provided in Attachment A.

- In order to maximize the availability and utility of SEPs in enforcement actions, this proposed policy should provide the flexibility necessary to allow for projects that are specifically tailored to different regions, their issues and their stakeholders. Unfortunately, the proposed policy as drafted includes an extensive list of limitations and prohibitions on SEPs that could effectively bar many innovative and effective SEPs that Regional Boards have previously approved. The City recommends that the Policy be modified to more narrowly tailor the limitations on the types of projects that may be proposed as SEPs and instead rely on the Water Boards' existing authority and discretion to approve, modify or deny proposed SEPs. The City also supports the detailed comments submitted by the California Association of Sanitation Agencies in this regard.

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- The City is concerned with a 24 month limit for project completion. A 24 month limit will severely limit the eligible projects and collaboration between entities which will require extensive planning and appropriate time for agreement. In addition, 24 months may not be sufficient time to complete all California Environmental Quality Act (CEQA) review and documentation for a given project. The City recommends extending the project timeline up to 5 years.
- The City appreciates the effort of the State Board to show preference for SEPs that benefit disadvantaged communities. In order to continue to allow flexibility to aggregate projects, the City recommends allowing for flexibility that in situations where a responsible party wants to propose multiple SEPs, the responsible party can propose up to the 50 percent of the value of the SEPs on non-environmental justice communities/disadvantaged communities projects.

Thank you for your time and consideration of these comments. If you have questions, please contact Ruth Kolb at (858) 541-4328 or at rkolb@sandiego.gov.

Sincerely,



Drew Kleis
Deputy Director

cc: Paz Gomez, Deputy Chief Operating Officer, Infrastructure/Public Works
Alejandra Gavaldon, Director of Infrastructure & Water Policy, Office of the Mayor
Kris McFadden, Director, Transportation & Storm Water Department
Halla Razak, Director, Public Utilities Department
Davin Widgerow, Deputy City Attorney, City Attorney's Office
Ruth Kolb, Program Manager, Transportation & Storm Water Department

**Amendments to SEP Policy
 Section - Specific Comments:**

#	Page	Section	Comment
1	2	I.B. Applicability	<p>This language is too broad and leaves too much discretion to the water board without stakeholder input.</p> <p>Recommendation: “The Water Boards reserved the right to change this Policy at any time, without prior notice as long as stakeholder input has been solicited and considered prior to the change”.</p>
2	4	III. Definition and Characteristics of a SEP	<p>Allow SEP/ECAs to include projects or programs that are not currently implemented/required but are standard industry practice because they have already been proven effective, thus reducing potential uncertainty as to whether a SEP/ECA will be cost effective and successful.</p> <p>Recommendation: Remove the following language: “Projects or actions that are not required, but that reflect standard industry practices, are generally not acceptable as SEPs or ECAs”.</p>
3	4	IV. Legal Guidelines	<p>Recommendation: Add the following language: “In cases where a Responsible Party proposes multiple SEPs, the Responsible Party can propose up to the 50 percent of the liability be eligible to fund a project(s) that are non-EJ/DAC and up to an additional 50 percent for EJ/DAC project(s).”</p>
4	5-7	VI. Projects not acceptable as SEPS	<p>In the proposed amendments, there is inconsistency between sections related to eligible projects that may have unintended consequences of limiting the scope of projects, especially projects described under Section VI. Projects not acceptable as SEPS listed (7) and (8) seem to contradict previous descriptions of eligible projects from pages 5 and 6. Project (7) conflicts with regional monitoring programs that are an example of an eligible pollution reduction projects. Also, during the State Board Workshop on August 16, 2017, the State Board stated there is an intent to allow IRWM projects to be used as SEPs. In order to support this collaboration, responsible parties may need the flexibility to fund part of the program through IRWM grants depending on the size or type of the program.</p>

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5	8	VII. Project Solicitation and Selection	<p>Recommendation: (7) Studies, assessments, or monitoring programs without a goal requirement to address better understand the problems in the study and support future plans to address the problems identified. (8) Project 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. Include language to allow for responsible parties to come up with their own SEPs in this section for consistency with Provision VIII.C.</p>
6	8	VII. Project Solicitation and Selection – B SEP Evaluation Criteria and Potential SEP Lists	<p>Recommendation: Add the following language: “Agencies can select and propose their own SEP project that has an adequate nexus to the location and nature of the violation.” As long as there is a benefit to one of these priority criteria, then the project will be given preference.</p>
7	8	VIII. Requirements for Settlements that include a SEP B. Amount of SEPs	<p>Recommendation: “...benefit DACs, EJ communities, communities with a financial hardship, and or the human right to water.” Same Comment and Recommendation as Comment 3.</p>
8	10	VIII. Requirements for Settlements that include a SEP D. Third Party-Administered SEPs	<p>Recommendation: Add the following language: “In cases where a Responsible Party proposes multiple SEPs, the Responsible Party can propose up to the 50 percent of the liability be eligible to fund a project(s) that are non-EJ/DAC and up to an additional 50 percent for EJ/DAC project(s).” The City is concerned with a 24 month limit for project completion. A 24 month limit will severely limit the eligible projects and collaboration between entities which will require extensive planning and appropriate time for agreement. The City recommends extending the project timeline up to 5 years.</p>

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9	11	VIII. Requirements for Settlements that include a SEP G. Oversight	<p>Recommendation: “All SEP funds must be expended on the SEP project specifically defined in the stipulated order within 24 months 5 years of the order’s adoption, unless the Executive Officer or Deputy Director of the appropriate Water Board grants an extension for good cause shown as to why the project has been delayed.”</p> <p>Clarify that oversight costs will be funded out of the remaining portion of the monetary assessment that is paid at the time the stipulated order goes into effect.</p> <p>Recommendation: “Oversight costs are not included in the 50% funding limitation and may be considered as part of the overall monetary assessment.”</p>
10	12	VIII. Requirements for Settlements that include a SEP I. Third Party Financial Audits	<p>Including this as an extraneous cost to the responsible party, solely subject to the water board’s discretion and without a source of funding, is inappropriate. In addition, the audit should include the entire settlement amount and costs, not limited to direct SEP costs.</p> <p>Recommendation: “The third party financial audit costs will be funded out of the remaining portion of the monetary assessment that is paid at the time the stipulated order goes into effect and are not part of the 50% funding limitation.”</p> <p>The City recommends a transfer of liability for third-party administered SEPs.</p> <p>Recommendation: “The responsible party is ultimately responsible for meeting these milestones, standards, and indicators, regardless if the project is a responsible party-performed SEP or hired-party-administered SEP.”</p>
11	13	IX. Additional Requirements for stipulated Orders that include a SEP A. Project Scope and Schedule	<p>Clarify that reporting costs incurred by the responsible party may count towards money expended as part of the SEP.</p> <p>Recommendation:</p>
12	14	IX. Additional Requirements for stipulated Orders that include a SEP	<p>Clarify that reporting costs incurred by the responsible party may count towards money expended as part of the SEP.</p> <p>Recommendation:</p>

Attachment: CITY OF SAN DIEGO COMMENTS ON AMENDMENT TO SEP POLICY
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		D. Reporting and Certificate of Completion	Reporting costs may be funded out of the remaining portion of the monetary assessment and are not considered part of the 50% funding limitation.