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Central Coast Regional Water Quality Control Board



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DATE: September 20, 2017

SUBJECT: CENTRAL COAST WATER BOARD COMMENT LETTER – SEP POLICY AMENDMENT

EXECUTIVE SUMMARY

Thank you for the opportunity to comment on the proposed amendments to the Policy on Supplemental Environmental Projects (SEPs). With respect to providing accountability for SEP funds, proper oversight, and a focus on disadvantaged communities, we appreciate and strongly support the concept. However, the proposed amendments would require Regional Boards to implement a process that is not workable, and threatens to dismantle the highly successful SEP process we currently implement. We note that the State Water Board's Cleanup and Abatement Account does not operate in the manner proposed for the Regional Boards (for very good reasons). There are two main problems with the proposed amendments:

1. **Regional Board oversight of multiple and disparate SEPs:** The Regional Boards do not have the funding or personnel to oversee multiple SEPs spread out among different organizations and accounts; that approach is chaos. We have already learned this lesson the hard way-- the State audited the Regional Boards' SEP oversight in approximately 2008/2009, and illustrated our inability to properly oversee multiple disparate, potentially low priority SEPs among multiple organizations and accounts. In response, we developed and implemented a manageable, professional, transparent SEP oversight process that funds the Water Boards highest water quality priorities, including services to disadvantaged communities. We strongly recommend that the State Board/Office of Enforcement allow Regional Boards to implement a slightly alternative approach than described in the proposed amendments, where the alternative assures

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proper oversight, absolute accountability, fairness to Dischargers, and meets the intent of Assembly Bill 1071, while at the same time allows the regions to address their highest water quality priorities through the strategic use of SEPs.

2. ***Third Party SEPs and Discharger liability:*** Holding a discharger liable until a Water Board approved third party SEP is complete is not reasonable because the discharger has no control over the SEP implementation, and, the discharger has already paid the penalty. This proposed requirement amounts to double jeopardy. Again, the State Board's Cleanup and Abatement Account does not operate in this manner. When a project, or type of project, is approved by the Water Board, and a third party is approved to receive the funds and implement the project, the discharger's liability should be resolved upon payment to the third party or approved funding organization. No discharger would knowingly choose to fund a SEP to be implemented by a third party if they understood their ongoing unreasonable liability, and we would recommend the discharger not pursue that option under the proposed requirement. A discharger should be liable for completion of a SEP only when the discharger is implementing the SEP.

We note that the proposed amendments go far beyond Assembly Bill 1071, which requires the following.

(b) Each board, department, and office within the agency that has enforcement authority shall establish a policy on supplemental environmental projects that benefits disadvantaged communities. The policy shall include, but need not be limited to, all of the following:

(1) A public process to solicit potential supplemental environmental projects from disadvantaged communities.

(2) Allowing the amount of a supplemental environmental project to be up to 50 percent of the enforcement action brought under the jurisdiction of a board, department, or office within the agency.

(3) An annual list of supplemental environmental projects that may be selected to settle a portion of an enforcement action under the jurisdiction of a board, department, or office within the agency.

(4) A consideration of the relationship between the location of the violation and the location of the proposed supplemental environmental project.

(c) The Secretary for Environmental Protection shall consolidate the projects compiled pursuant to subdivision (b) into one list and post that list on the agency's Internet Web site.

Our current SEP process can meet these requirements with minor adjustments. However, the proposed SEP Policy amendments go far beyond AB 1071 and would create an extraordinary bureaucratic burden that cannot be met and is wholly unnecessary.

We ask that you consider the professional level of SEP fund oversight we established, where the Bay Foundation of Morro Bay (the funding arm of the Morro Bay National Estuary Program) provides exceptional financial management and tracking, including quarterly financial reports. The Bay Foundation of Morro Bay manages SEP funds in three primary areas per the Regional Board's priorities:

Central Coast Ambient Monitoring Program (CCAMP): CCAMP is the flagship of ambient monitoring programs in California and is the ultimate measure of our performance in protecting and restoring water quality objectives and beneficial uses. CCAMP has historically collected more empirical water quality data than all of the

Regional Boards and the State Board combined, and is regularly peer reviewed by independent scientists. CCAMP data are used extensively to determine Water Board priorities, actions to address water quality problems, and to successfully defend Water Board actions. CCAMP data are also easily available and used extensively by the public, universities, and other agencies.

Low Impact Development Initiative (LIDI): LIDI is one of the most successful low impact development initiatives in California. We have literally leveraged tens of millions of dollars from other sources to implement LID projects on the Central Coast, and throughout California in collaboration with the State Water Board. LIDI changed the Central Coast Water Board's relationship with municipalities from a litigation focus to a service and water quality-based, tangible results focus.

Groundwater Assessment and Protection Program (GAP): GAP is a relatively new initiative that focuses on groundwater protection, groundwater monitoring, development of monitoring programs and infrastructure in local agencies, implementation of the Sustainable Groundwater Management Act (holistic and sustainable basin management), safe drinking water and domestic well sampling, and assistance to disadvantaged communities. GAP is currently conducting sampling of domestic wells throughout our Region, and the dissemination of information to those with contaminated drinking water. GAP is also focused on developing the capacity of disadvantaged communities to deal with their drinking water issues—one of the difficult challenges we face. This lack of capacity in disadvantaged communities highlights one of the fundamental problems with the SEP Policy amendments. We cannot "solicit" projects from these areas because these communities do not have the technical, managerial, and financial capacity to develop funding request proposals or implement such projects. *We must instead proactively engage with these communities and environmental justice organizations to develop capacity on an ongoing basis.*

These programs and initiatives implement some of the most innovative and highest priority work in our Region, and implement the State Water Board's priorities as well. Every penny is professionally and thoroughly accounted for, and the Bay Foundation of Morro Bay charges minimal oversight fees relative to industry standards. These programs and initiatives would not be possible under the proposed SEP Policy amendments. Why not review the transparent, comprehensive accountability we have established, and the value of the work being funded, before undoing these programs in favor of the proposed SEP Policy that would undo solutions and create less of the state desired outcomes at the local/regional level? We are more than happy to present our SEP oversight program to State Water Board staff for their review and critique.

Please do not inadvertently adopt Policy amendments that dismantle these initiatives in favor of an approach that the State audit process has already shown to be unworkable. The SEP Policy amendments would take us backwards into the very problems we worked so hard to overcome. Instead, please add an option allowing the State Water Board and Office of Enforcement to consider approval of highly effective alternative SEP oversight programs that are implementable and meet the intent of the law and the need for accountability. We urge the State Water Board and the Office of Enforcement to add language to the Policy that allows Regional Boards to preserve or develop alternative and more effective processes for implementing SEP projects. We recommend that you add the following language:

Regional Boards may propose alternative SEP oversight programs with professional third party organizations that minimize Water Board staff resources, implement established Regional Board water quality priorities, provide transparent fund management, comprehensive accounting of funds and expenditures, quarterly financial reporting, compliance with AB 1071, and demonstrate an ability to achieve tangible water quality objectives and services to disadvantaged communities. These alternative programs are subject to State Water Board and Office of Enforcement review, approval, and audit, and approval can be rescinded at any time for cause.

We recommend that you focus on efficiency and performance in terms of tangible results that serve our mission.

Thank you for your consideration.