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September 25, 2017

Ms. Jeanine Townsend  
Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-2000

Dear Ms. Townsend:

Subject: Comment Letter – Supplemental Environmental Project Policy Revision

The Los Angeles Department of Water and Power (LADWP) would like to thank the State Water Resources Control Board (SWRCB) for the opportunity to comment on the amendment to the Policy on Supplemental Environmental Projects<sup>1</sup> (Draft SEP Provisions).

LADWP commends the SWRCB for developing an updated Supplemental Environmental Projects (SEPs) policy that will provide more guidance, transparency and support to environmental justice causes. LADWP understands SEPs provide an opportunity to make direct benefits to the environment and public health and supports the use of SEPs to provide support to environmentally impacted communities.

LADWP supports the Draft SEP Provisions as written, particularly with respect to: requirements for time schedules of SEP implementation and expenditure of monies; clarification as to acceptable, and unacceptable, categories of SEP projects; and the requirement that SEPs have a relationship between location of the violation and the location of the proposed SEP. Notwithstanding the foregoing, LADWP offers comments on the Draft SEP Provisions as follows:

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<sup>1</sup> State Water Resources Control Board, 2017. "Draft Policy on Supplemental Environmental Projects". July 21, 2017. Accessed September 8, 2017 at, [https://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/sep\\_policy\\_amendment.pdf](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/sep_policy_amendment.pdf)

**1. The use of SEPs should be expanded to allow settlements in an amount greater than 50 percent of the total adjusted monetary assessment without the need to demonstrate exceptional circumstances to the Director of the Office of Enforcement**

In 2003, the California Environmental Protection Agency (CalEPA) provided guidelines regarding the use of SEPs in California. At that time, the CalEPA SEP guidelines suggested a limit of 25% of the total enforcement action. The State Water Resources Control Board (SWRCB) adopted the existing SEP policy on February 3, 2009, with the modification that allowed SEPs to account for up to 50% of the enforcement action. On October 8, 2015, Assembly Bill No. 1071 was approved requiring the CalEPA agencies follow the example of the SWRCB in allowing 50% of SEP funding for environmentally beneficial projects.

The Draft SEP Provisions provide that no SEP shall be approved in an amount greater than 50 percent without compelling justification, or in cases where the SEP benefits a Disadvantaged Community, Environmental Justice Community, a community that has a financial hardship, or where it is shown that the SEP substantially furthers the human right to water (Exceptional Circumstances Requirement).

It is respectfully suggested that the SWRCB should continue to lead California in the use of SEPs by allowing greater than 50 percent of an enforcement action to be allocated to SEPs without the need to demonstrate exceptional circumstances to the Director of the Office of Enforcement (OE).

Between 2000 and 2016 SEPs were only utilized an average of 14.5% of the time<sup>2</sup>. The LADWP respectfully suggests that the Exceptional Circumstances Requirement discourages the use of SEPs by requiring time and money to be spent to make the exceptional circumstances showing to the Director of OE which could be better spent securing significant environmental and public health benefits through the use of SEPs. Additionally, allowing SEPs to be made up of greater than 50% of the enforcement action could lead to SEPs that provide a greater return on investment to the public through larger SEP undertakings. By removing the arduous Exceptional Circumstances Requirement the SWRCB could increase the utilization and size of SEPs, thereby allowing greater positive impact on the environment and public health.

LADWP recognizes the importance of regular monitoring, evaluating, and reporting on SEPs. Any concerns about insufficient transparency and inequalities for affected communities caused by the loosening of the Exceptional Circumstances Requirement can be adequately addressed through a revision to Section VIII.D of the Draft SEP Provisions that allows the expanded use of third party financial audits, as follows:

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<sup>2</sup> State Water Resources Control Board, 2017. "2017 SEP Policy Amendment Staff Report". July 21, 2017. Page 2. Accessed September 8, 2017 at, [https://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/sep\\_staff\\_report.pdf](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/sep_staff_report.pdf)

Where a Water Board has entered a stipulated order authorizing a SEP with a direct cost over \$1 million, or in an amount greater than 50 percent of the total adjusted monetary assessment, it may request a third party financial audit be performed after the completion of the project at the sole cost of the responsible party.

LADWP recommends that the Draft SEP Provisions be revised to adopt such language, or language consistent with the above in order to encourage an expanded use of SEPs.

For the foregoing reasons, LADWP requests that the SWRCB allow the use of SEPs in amounts greater than 50 percent of an enforcement action without demonstrating exceptional circumstances to the Director of OE.

- 2. On page 2, section I. B. states, “Nothing in this Policy restricts Water Boards from establishing additional, more stringent criteria for SEPs. It also states, “The Water Boards reserve the right to change this Policy at any time, without prior notice.”**

These provisions suggest that the Water Board may revise the Policy without public notice and comment which is contradictory to Draft Staff Report dated July 21, 2017. The Draft Staff Report states that the State Water Board must comply with all state and federal public participation requirements and state laws governing environmental and peer review when amending the Policy. LADWP requests the state Water Board adhere to the same requirements when making changes to the Policy in the future.

- 3. On page 7, section VII.A states, “each Regional Water Board may choose to create its own SEP proposal form and guidance document to be posted on its respective website.”**

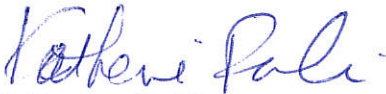
It would be easier for the regulated community to deal with one SEP proposal form and guidance document. Moreover, one SEP proposal form and guidance document would ensure consistency across the regions. LADWP requests that the SWRCB create uniform SEP proposal forms and guidance documents to be used by each of the regional boards.

4. **On page 14, section VIII.H states, “In some cases, a Water Board may choose to direct monies paid by the responsible party intended for SEP to go into a third party-administered account (also referred to as settlement accounts) for disbursement to various approved projects. In these cases, the Water Board shall ensure that the third party uses the monies on the specific approved SEP indicated in the stipulated order within 24 months, and that a nexus to each violation is maintained when implementing projects.”**

While LADWP agrees that a nexus to each violation is maintained when implementing SEP projects, the requirement to ensure the third party uses the monies on the specific approved SEP indicated in the stipulated order within 24 months should be reexamined. Some SEP projects may entail a multi-seasonal approach, a lengthy procurement process, time for permitting, and other logistical milestones for implementation, which can exceed the “24 months” requirement. Therefore, LADWP requests this section be amended to state “...the Water Board shall ensure that the third party uses the monies on the specific approved SEP indicated in the stipulated order within 36 months...”

The LADWP appreciates this opportunity to provide comments on the Draft SEP Provisions and looks forward to working with SWRCB staff in this process. Should you have any questions regarding this letter, please contact me at (213) 367-0436 or Edgar Gomez of the Wastewater Quality and Compliance Group at (213) 367-4425.

Sincerely,



Katherine Rubin  
Manager of Wastewater Quality and Compliance

EG:EK

c: Ms. Felicia Marcus, Chair, SWRCB  
Mr. Steven Moore, Vice Chair, SWRCB  
Ms. Tam M. Doduc, SWRCB  
Ms. Dorene D'Adamo, SWRCB

Mr. E. Joaquin Esquivel, SWRCB  
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