

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – DIVISION OF FINANCIAL ASSISTANCE  
JUNE 7, 2016**

**ITEM 2**

**SUBJECT**

CONSIDERATION OF A RESOLUTION TO ACCEPT THE COUNTY OF SAN DIEGO'S PROPOSED REPLACEMENT PROJECTS FOR BREACH OF AGREEMENTS FOR GRANT AGREEMENTS 03-264-559-2 AND 06-135-559-0

**DISCUSSION**

The County of San Diego Department of General Services (County) obtained two grants from the State Water Resources Control Board (State Water Board) totaling \$2.9 million in 2006 and 2007 to construct structural best management practices (BMPs) to improve storm water quality in the San Diego River watershed. The County's "Porous Pavement and Model Municipal Operation Center Project – Phases I and II" (Project) received \$1,400,000 and \$1,500,000 through Grant Agreement Nos. 03-264-559-2 and 06-135-559-0 (collectively known as "Agreements"), respectively. San Diego Regional Water Quality Control Board (San Diego Regional Water Board) staff conducted a routine construction site inspection on May 10, 2013 and learned that 118,000 square feet of porous pavement funded by the grants had been or was in the process of being demolished, which violated the terms and conditions of the Agreements. The San Diego Regional Water Board staff issued a notice of Breach of Agreements letter to the County on August 16, 2013. Effectively removing BMPs prior to the end of the useful life identified in a grant agreement can result in the grantee reimbursing the State Water Board for all funds granted plus interest and penalties.

Division of Financial Assistance (Division), Office of Enforcement and San Diego Regional Water Board staff (collectively known as "Staff") began working with the County to identify an appropriate remedy for the breach of agreements. Staff and the County developed a tentative settlement agreement (Attachment 1) for State Water Board consideration. The tentative settlement includes three replacement projects that provide over five times the infiltration benefits as the original project (11.6 acre-feet/year versus the original 2.1 acre-feet/year) and over twenty-four times the sediment reduction (17,118 pounds/year versus the original of 690 pounds/year); a penalty of \$25,000; and staff oversight costs of \$20,000 to \$30,000 depending on the time needed to complete the replacement projects.

Staff believe it is in the best interest of the State of California to enter into this settlement agreement. The replacement projects provide greater water quality and groundwater recharge benefits than the original Project. In addition, the penalty sends a clear signal that the State Water Board will take action against recipients of our grant funds, when our grant funded projects are not maintained for the agreed upon useful life.

**POLICY ISSUES**

Should the State Water Board:

1. Authorize the Deputy Director of the Division (Deputy Director) to negotiate, approve, and execute the tentative settlement agreement (Attachment 1) or otherwise resolve the violations in a manner the Deputy Director deems fit? Additionally, should the State Water Board authorize the Deputy Director to perform all acts and to do all things necessary and convenient to implement any such settlement agreement, and resolve any disputes or violations of the settlement agreement?
2. Authorize the Deputy Director to make any necessary adjustments to the scope of work of the replacement projects to ensure the cumulative benefit of those projects equals or exceeds the benefits of the original Project? The current form of the tentative settlement agreement, approved by the County of San Diego Board of Supervisors, achieves these benefits.
3. Retain repayment authority of the original grant amounts plus penalties and interest, if the County fails to implement and maintain the replacement Projects consistent with the settlement agreement?
4. Impose a \$25,000 fine, payable to the Cleanup and Abatement Account, as a penalty for breach of the original agreements, in addition to providing staff oversight costs, as described in the tentative settlement agreement?

#### **FISCAL IMPACT**

Staff oversight costs for the replacement projects will be paid for by the County.

#### **REGIONAL BOARD IMPACT**

The replacement projects should improve storm water quality in the San Diego region. There is no projected impact on San Diego Regional Water Board staff.

#### **STAFF RECOMMENDATION**

Staff recommends that the State Water Board adopt the proposed resolution, which will authorize the Deputy Director of the Division to approve and execute the settlement agreement.

<p>This item will assist the Water Boards in reaching Goal 4 of the Strategic Plan Update: 2008-2012 to comprehensively address water quality protection and restoration, and the relationship between water supply and water quality, and describe the connections between water quality, water quantity, and climate change, throughout California's water planning processes.</p>
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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2016-

TO ACCEPT THE COUNTY OF SAN DIEGO'S PROPOSED REPLACEMENT PROJECTS  
FOR BREACH OF AGREEMENTS FOR GRANT AGREEMENTS 03-264-559-2  
AND 06-135-559-0

### WHEREAS:

1. The County of San Diego Department of General Services (County) was awarded \$1,400,000 and \$1,500,000, pursuant to the State Water Resources Control Board (State Water Board) [Resolution No. 2004-0003](#) and [Resolution No. 2006-0060](#), in 2006 and 2007, respectively. The County was approved per Agreement Nos. 03-264-559-2 and 06-135-559-0 (Agreements) to construct structural best management practices (BMPs) to improve storm water quality in the San Diego River watershed through the County's "Porous Pavement and Model Municipal Operation Center Project – Phase I and II" (Project);
2. The County agreed per the terms of the above referenced Agreements to construct structural BMPs, which would have treated approximately 2.1 acre feet per year (AFY) of storm water runoff. The structural BMPs would have improved water quality in the San Diego River watershed through Project completion plus twenty (20) years (including operation, maintenance, and continuous use);
3. The San Diego Regional Water Quality Control Board (San Diego Regional Water Board) staff, on May 10, 2013, observed 118,000 square feet of porous pavement, which was installed pursuant to the above referenced grant agreements, had been or was in the process of being demolished;
4. On August 16, 2013, San Diego Regional Water Board staff issued a notice of Breach of Agreements letter to the County finding that the County's actions violated the terms of the Agreements and constituted a breach of those Agreements;
5. The State Water Board concurs with the San Diego Regional Water Board's findings that the County breached the Agreements;
6. The County responded to the Breach of Agreement for both agreements by proposing the three replacement projects to remove or reduce coarse sediment, trash, fine particles and dissolved particles and infiltrate water from approximately 11.6 acres;
7. State Water Board and San Diego Regional Water Board staff concur that the proposed replacement projects will provide equivalent or greater performance in pollutant removal and increased infiltration compared to the original Project;
8. In general, a breach of agreement can result in the recipient of the grant funds paying the State of California (State) back all funds received for the Project in addition to paying applicable interest and penalties;

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9. The State Water Board finds that completion of the replacement Projects and maintenance of those Projects for the equivalent remaining useful life of the original Project, in lieu of repayment of grant funds, is in the best interest of the State; and
10. The State Water Board finds that a penalty is appropriate given: a) the County's failure to inform and receive concurrence from the San Diego Regional Water Board and State Water Board of its intent to terminate the Project prior to the end of its useful life; b) the County's action resulted in an increase in runoff and discharge of pollutants from the Project site; c) the San Diego Water Board and State Water Board have expended and must expend significant staff resources to maintain oversight of the replacement Projects; and d) the need to deter other Grantees from taking actions that render ineffective projects funded by the people of the State.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Deputy Director of the Division of Financial Assistance (Deputy Director) to negotiate, approve, and execute the tentative settlement agreement ([Attachment 1](#)) or otherwise resolve the violations in a manner the Deputy Director deems fit. Additionally, the Deputy Director is authorized to perform all acts and to do all things necessary and convenient to implement any such settlement agreement, and resolve any disputes or violations of the settlement agreement;
2. Authorizes the Deputy Director to make any necessary adjustments to the scope of work of the replacement projects to ensure the cumulative benefit of those projects equals or exceeds the benefits of the original Project;
3. Retains repayment authority of the original grant amounts plus penalties and interest, if the County fails to implement and maintain the replacement Projects consistent with the settlement agreement; and
4. Imposes a \$25,000 fine, payable to the Cleanup and Abatement Account, as a penalty for breach of the original agreements, in addition to providing staff oversight costs, as described in the tentative settlement agreement.

## CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 7, 2016.

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Jeanine Townsend  
Clerk to the Board