



April 23, 2013



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

Re: Amendment to the Policy for Implementing the CWSRF

Dear Ms. Townsend:

Thanks to you and the State Water Board Division of Financial Assistance for the opportunity to comment on the draft revised Policy for implementing the Clean Water State Revolving Fund. California's three National Estuary Programs applaud the Division's efforts to amend the policy to add new focus on stormwater and other expanded use/estuary enhancement projects.

We have reviewed the draft closely in an attempt to assist the Division in taking into account key distinctions between wastewater treatment facility construction and design/implementation of expanded use projects. We hope our comments will be helpful to the Division. We are sending them in the form of line edits to your document, but of course our hope is that the Division will incorporate at least the sense of these suggested changes.

***Page iv: Executive Summary***

Issue: "Estuary cleanup" is not a term that we tend to use when referring to the wide range of expanded use projects designed to improve estuary health.

Recommended change:

The CWSRF provides various types of assistance for construction of Publicly-Owned Wastewater Treatment Works (POTW), including sanitary sewer collection systems, sewer interceptors, water reclamation facilities, implementation of programs and projects to control pollution from nonpoint sources and storm water drainage, and development and implementation of estuary ~~cleanup~~ enhancement and habitat protection programs....

***Page 1: II. Purpose and Objective, second paragraph***

Issue: Project objectives that must be "essential components of projects..." should not, logically, be considered "secondary" objectives.

Recommended change:

...These ~~secondary~~ objectives must be cost-effective and essential components of projects that meet the federal and state criteria....

**Page 2: III. Definitions, (b) “Applicant”**

Issue: We believe the intent of the last sentence in the definition of “Applicant” is to include California’s three National Estuary Programs (NEPs) as potential applicants for CWSRF funding. However, all of the NEPs are not 501(c)(3)s. We suggest that you add the NEPs by name. Please note that without a change here, the NEPs will not be able to apply for CWSRF funding.

Recommended change:

For the purpose of an expanded use project, “applicant” includes the foregoing, as well as a 501(c)(3) non-profit organization- or one of California’s three National Estuary Programs: The San Francisco Estuary Partnership, the Morro Bay National Estuary Program, and the Santa Monica Bay Restoration Authority.

**Definitions: “Environmental Document”**

Issue: We suggest you add reference to “substitute environmental documents,” or SEDs, to the list of CEQA documents. See Public Resources Code Division 13 section 21080.5 and 14 CCR section 15251.

Recommended change:

“Environmental document” means a Categorical Exemption, Initial Study and Negative Declaration, Mitigated Negative Declaration, Substitute Environmental Document (SED), or an Environmental Impact Report (EIR), prepared in accordance with CEQA, and associated supporting documents showing compliance with federal environmental laws.

**Definitions: “Expanded Use Project”**

Issue: Please note that the first bullet, “Storm Water Projects as long as they are not required as part of a National Pollutant Discharge Elimination System permit” is contradicted later in the document (footnote to X.C.1, page 31). Funding of stormwater NPDES permit compliance projects is a foundational type of expanded use project, as TMDL compliance actions are most frequently incorporated into permits. We hope that the intent of the Division is to continue to consider funding for NPDES permit compliance projects under the CWSRF program.

Our preference is that the Policy be silent on the issue of NPDES permit compliance projects (as was the last version of the Policy). However, we would welcome explicit inclusion of such projects as eligible for funding.

Recommended change:

~~Storm Water Projects as long as they are not required as part of a National Pollutant Discharge Elimination System permit~~

**Page 4: Definitions: “Small Disadvantaged Community”**

Issue: This definition refers to “a community with a population of less than 20,000,” but “community” is not defined in the revised policy. Especially in coastal California municipalities and in the San Francisco Bay Area, severely disadvantaged areas exist, but often within large communities where other neighborhoods are not so deprived.

Request: Please clarify how you will delineate “small disadvantaged communities”: We recommend census block groups, which are smaller than census tracts.

**Page 6: IV.A.2 Priority Classes**

Issue: It’s not clear how climate change fits into priority classes A through E. We believe that climate change is an urgent challenge for all of us, and that CWSRF projects designed to either mitigate climate change by reducing greenhouse gas emissions, or support adaptation to effects of climate including sea level rise, should be given high priority – certainly higher than Priority Class E, “Other Projects.”

Request: Please add a relatively high-priority class for projects that address climate change and/or its effects.

**Priority Class B: Pollution of Impaired Water Bodies**

Issue: We support prioritizing projects that address 303(d)-listed impairments. However, this language is confusing, as all 303(d)-listed waters have water quality objectives that are not being attained, unless they are in the process of de-listing. In addition, “Projects required to correct conditions...” implies implementation of an approved TMDL; however, TMDLs normally do not require specific means of compliance.

Recommended change:

Projects designed to address impairments of ~~required to correct conditions where the Regional Water Board Executive Officer certified that the water quality objectives for water body listed on the CWA 303(d) listed~~ water bodies are not being attained.

**Page 7: Sustainability Points**

Request: For reasons stated above, we ask that you add a Sustainability Point for projects that address climate change and/or its effects.

Issue: “Pollution prevention” is missing from the list of expanded use project types in 3.e. We believe that pollution prevention measures, including source control, can be just as beneficial and cost effective as the resource-saving project types listed here, and is a key objective of many expanded use projects.

Recommended change:

- e. The project incorporates wastewater or storm water/urban runoff pollution prevention, recycling, water conservation, energy conservation, low impact development, or reduced use of other vital resources

**Page 9: V. Match Financing. C. Match Terms**

Issue: As the Division is well aware, expanded use projects are often difficult for municipalities to fund because match financing is not readily available. These projects are rarely supported by bond financing; imposing fees is very difficult due to Proposition 218. We ask that the Division reconsider exclusion of expanded use projects from match financing opportunities.

Recommended change:

...The principal amount of the financing agreement includes both the amount received from the State Water Board and the match contributed by the recipient. ~~Planning, and design, and expanded use~~ Planning, and design, ~~and expanded use~~ financing agreements cannot use match financing.

**Page 10: D. Match Disbursements 1. Allowances (soft costs)**

Issue: We understand that up-front payment of the non-construction match by the recipient is a reasonable requirement for large capital projects. For smaller, and potentially more dispersed and incrementally implemented expanded use and estuary enhancement projects, however, soft cost allowances (supporting project management, for example) are paid incrementally over the life of a project.

Request: We ask that the Division revise this section for expanded use projects, so that a soft cost billing schedule like that described below in 2. Construction or Equipment Procurement Costs is an option for projects that cannot be managed any other way.

**Page 11: VIII. Planning/Design Financing A. Planning/Design Application Requirements**

Issue: Similar to the previous comment, our experience with expanded use-type projects indicates that planning, design, and implementation or construction may be managed together, and thus included in one coherent application. We ask that you except expanded use projects from the requirement to separate planning/design and construction into two distinct agreements.

Recommended change:

...~~Except for expanded use projects~~, all planning/design work identified in the scope of an executed planning/design financing agreement must be completed prior to approval of a construction or implementation financing agreement.

**Page 30: X. Expanded Use Construction/Implementation financing**

Issue: Consonant with the foregoing comments, we suggest that the title of this section omit the words “Construction/Implementation.”

Recommended change:

X. Expanded Use ~~Construction/Implementation~~ Project Financing

**X.C.1. Eligible Project Costs**

Issue: Please see our comment above, on the definition of “Expanded Use Project.” The exception noted in the footnote is so important to the NEPs that we ask the Division to incorporate it into the text of the Policy.

In addition, we believe that restriction of eligibility to 1) “construction of facilities,” and 2) “publicly owned” stormwater projects severely constrains potential projects that the NEPs or our partners may propose to further the goals of our Comprehensive Conservation and Management Plans.

Recommended change:

1. Eligible Project Costs

- a. Construction of facilities ~~or design/implementation of expanded use projects that to treat, reduce, or prevent NPS or point source pollution not regulated by an National Pollution Discharge Elimination System permit<sup>2</sup>~~, including reimbursement of planning, design, environmental documents, project administration, and construction management ~~for facilities construction;~~
- b. Costs necessary to implement nonstructural components of water quality control projects;

<sup>2</sup>~~Storm water projects are eligible for funding under section IX of this Policy if they have a National Pollutant Discharge Elimination System permit and are publicly owned.~~

**Page 32: XI.5. Disadvantaged Business Enterprise (DBE)**

Issue: We recommend the following clarification to (b), which specifies “options” for compliance. The options are not clear.

Recommended change:

- b. The recipient must submit all completed DBE forms from the selected contractor with the final budget approval package per section XI(c)(2) below. 1) If the recipient has not taken acceptable “good Faith” efforts, the Division cannot accept the award of the construction contract. 2) If the recipient has taken acceptable “Good Faith” efforts and no qualified DBE has bid on the project, the recipient may select the next low, responsive and responsible bidder. Alternatively, 3) it may rebid the contract...

Again, we commend the Division of Financial Assistance for undertaking this important revision to the CWSRF Policy, and we thank the State Water Board for the opportunity to submit these comments. All three of California’s National Estuary Programs appreciate the Division’s support for implementation of our comprehensive management plans and for estuary protection statewide.

If you have any questions about our comments, or would like to discuss the issues we raise here, please call Judy Kelly, 510.622.2334 or email her at [judy.kelly@waterboards.ca.gov](mailto:judy.kelly@waterboards.ca.gov).

Sincerely,



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