

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF MARCH 14-15, 2013

Prepared on February 19, 2013

ITEM NUMBER: 8

SUBJECT: Supplemental Environmental Projects

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SUMMARY

At its May 2012 meeting, the Board discussed various policy issues regarding the approval and use of Supplemental Environmental Projects (SEPs). The Board asked staff to schedule a more-comprehensive discussion on the topic. In this report, staff recommends that the Board continue to support the direction of SEP funds to the Low Impact Development Initiative (LIDI) and the Central Coast Ambient Monitoring Program (CCAMP) as high-priority, established, long-term projects. CCAMP collectively includes the Water Board's surface water monitoring program and the newer groundwater assessment and protection program. The State Water Board's Office of Enforcement (as required by the Enforcement Policy) has also approved LIDI and CCAMP as SEPs.

This does not mean that all SEP funds must go to LIDI and CCAMP. A discharger can propose other projects, which then must be approved by the Office of Enforcement and the Central Coast Water Board or by the Executive Officer if the settlement is less than \$300,000. A discharger can also choose to submit settlement funds to the State Water Board's Cleanup and Abatement Account, and not propose a SEP.

LIDI and CCAMP are excellent SEP projects because they address high priorities and they require no significant additional oversight if SEP funds are added. Staff's ability to effectively oversee and track other SEPs has been a serious issue for our office and other regional boards, and remains so as our staff numbers continue to decline. While third-party groups often emphasize that their proposed projects would not require Water Board oversight, the Water Board must oversee SEPs per the State Water Board's Enforcement Policy. This oversight is not negotiable. We currently do not have the staff resources to oversee other SEPs.

Another issue is that dischargers are liable for the full amount of an approved SEP. If the SEP is not completed for any reason, the discharger remains liable for the original, total amount of the SEP. Some dischargers are not willing to accept this risk. Some dischargers prefer to minimize this risk by choosing to fund LIDI and CCAMP as "preapproved," established, long-term projects where noncompletion is much less of an issue. Some dischargers also choose to forego a SEP entirely and pay their penalties to the State Board's Cleanup and Abatement Account for the same reasons.

Staff recommends that the Water Board and Executive Officer continue to direct SEP funds toward LIDI and CCAMP and consider other proposed SEP proposals that are in line with the Water Board's highest priorities only when the Water Board has the staff resources to competently oversee other SEPs.

DISCUSSION

What Are Supplemental Environmental Projects?

A SEP is defined in the statewide *Supplemental Environmental Project Policy* as a project completed or funded by a discharger to satisfy part of a monetary assessment imposed in an administrative civil liability (ACL) order in lieu of paying the liability in cash. The SEP Policy specifies criteria that a project must meet. The criteria include the following:

- A SEP must consist of measures that go beyond the otherwise applicable obligations of the discharger. The SEP shall not be an action, process, or product that is otherwise required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s).
- The SEP shall directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State.
- There must be a nexus between the violations and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar, violations will occur in the future.
- A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff. Any indirect benefits provided to members, staff, or family shall be only those that are enjoyed by the public generally. A SEP shall not benefit or involve friends of members, staff, or family where there could be an appearance of undue influence, suggesting an actual or apparent conflict of interest for the Water Boards.
- A SEP is a project or group of projects, the scope of which is defined at the time the SEP is authorized by a Water Board. The placement of settlement funds into an account or fund managed by a Regional Water Board that is not authorized by statute or otherwise allowed by the State Water Board is not permissible. If a Regional Water Board wishes to establish any fund that is designed to receive money that is paid by a discharger to resolve a claim of liability under the Water Code, the Regional Water Board should obtain the express authorization of the State Water Board. Such authorization will be subject to conditions that the State Water Board may place on such a fund.

The SEP Policy states, "each Regional Water Board will maintain a list of the SEPs that it has authorized pursuant to an order. The list of authorized SEPs shall be available on the Regional Water Board's web site. A Regional Water Board also may maintain and post on its web site a list of environmental projects that it has pre-approved for consideration as a potential SEP. Each Regional Water Board may determine when and how it wishes to consider an environmental project for placement on its list of potential SEPs."

How Are SEPs Approved?

SEPs must be proposed by the entity against whom the Board is taking enforcement action. The Board cannot require a SEP as part of an action. In cases where the liability is less than \$300,000, the Central Coast Water Board has delegated its authority to approve settlements and administrative civil liability orders to the Executive Officer. If a discharger proposes a SEP in a case with liability less than \$300,000, staff evaluates and approves the SEP. In cases with liability over \$300,000, the Board will decide whether to adopt the proposed enforcement action with the SEP, and may direct the Executive Officer to settle the case with certain terms. In the

cases over \$300,000, dischargers have the option to present their SEP proposals directly to the Board.

Dischargers are Liable for Completing SEPs

Dischargers are ultimately liable for the completion of the SEP. If a SEP is not completed for any reason, the discharger is liable *for the entire original amount of the SEP*. For example, if the discharger proposes a SEP that costs \$100,000 as part of a settlement with the Water Board, and the Water Board approves it, and the SEP is implemented but cannot be completed for any reason, the discharger is liable for completing the SEP, or, for submitting the original \$100,000 to the State Water Board's Cleanup and Abatement Account. Some dischargers are not willing to accept this liability and choose not to propose a SEP, and instead submit the settlement amount to the State Water Board's Cleanup and Abatement Account. Other dischargers choose to fund SEPs that have minimal risk regarding completion, such as LIDI and CCAMP.

Another reason some dischargers choose LIDI and CCAMP as preapproved projects is to avoid the time involved in developing a SEP or submitting a SEP for review and approval.

SEPs Require Significant Staff Resources

The Central Coast Water Board has long supported dischargers' use of SEPs. They can be an effective method of improving water quality outside of the Board's standard programs. However, oversight of SEPs requires significant staff time. If a discharger proposes a SEP, staff must review the proposal, the scope of work, and any contracts required; draft and finalize a settlement agreement; review progress and monitoring reports and invoices; and make field visits to confirm the required work is being done. In some cases, staff oversight lasts for years to verify project effectiveness. These tasks are performed by technical staff and management. However, the Water Boards are becoming almost entirely fee-based (program funding comes from discharger fees). Therefore, in addition to not having staff to oversee SEPs, there is little or no funding for staff to oversee SEPs. Currently, one staff person spends a significant amount of time tracking existing SEPs that we have approved in the past. Also, incorporating an individual SEP into an ACL order or settlement agreement typically extends the time required to complete the enforcement action by several months.

For several years, during the late 1990s and through 2008, the Central Coast Water Board and staff were inundated with hundreds of project proposals for SEP and grant funding. Staff and the Water Board approved a wide range of SEPs that were managed by many individual organizations. The number of approved SEPs led to a serious problem because we lacked the ability to properly track and oversee the SEPs, even though they were implemented and managed by other organizations. Other Regional Water Boards experienced the same problem. The State Board's Office of Enforcement conducted an informal audit and determined that many SEPs across the State were not properly managed or implemented, some were never completed, and the Regional Water Boards lacked the staff resources to properly oversee the SEPs. This led to revisions in the State Board's Enforcement Policy that restrict the use of SEPs. Today, only half of a settlement amount can go to a SEP and the SEP must meet specific criteria. Nevertheless, the issue of properly tracking and overseeing SEPs remains. This is even more important today as our staff numbers continue to decline and our ability to fund staff oversight is almost nonexistent. The Water Board dealt with the SEP oversight issue by establishing the LIDI and CCAMP projects as SEP funding options.

SEPs Should Address the Board's Highest Priorities

Many of the SEPs that the Board has previously funded, while good projects, did not address the Water Board's highest priorities. This was often rationalized on the basis of maintaining good relations with third parties. However, as noted above, our water quality priorities must take precedence over other benefits, especially with our declining resources and the directive from the State Board's Enforcement Policy. The Board has established LIDI and CCAMP as top priorities for SEP funding, and since the projects are established and ongoing, no significant additional staff oversight is necessary when SEP funds are added. In addition, these established projects reduce the discharger's risk of liability for an SEP's not being completed.

Low Impact Development Initiative (LIDI)

The mission of LIDI is to support the vision of healthy watersheds through the implementation of LID design principles, hydromodification controls, and sustainable development throughout the Central Coast Region. In 2008, the Central Coast Water Board established a Low Impact Development Endowment Fund (LID fund) with the Bay Foundation of Morro Bay. This fund provides support for the LIDI, which is housed under a branch of the UC Davis Extension's Land Use and Natural Resources Program. LIDI services focus on the planning, design, and implementation of LID projects and programs. This includes regional training, regulatory compliance, site specific project designs, and large-scale, long-term, community-level planning.

LIDI recently helped obtain grants totaling over \$1.5 million for the following projects:

[Atascadero Zoo Parking Lot](#)

A retrofit parking lot project that will integrate LID features with parking and enhancements for visitors to the Atascadero Lake Park. This project was funded by an Urban Greening Grant from the California Strategic Growth Council.

[Paso Robles 21st Street Complete Green Street](#)

A five block street corridor improvement that incorporates complete and green street strategies. This project was funded by an Urban Greening Grant from the California Strategic Growth Council.

More information on these projects is available on the LIDI website (under LID Projects):
http://centralcoastlidi.org/Central_Coast_LIDI/Home.html

LIDI and Water Board staff are also implementing the Joint Effort to develop hydromodification criteria for Central Coast municipalities. LIDI and Water Board staff obtained a \$600,000 grant from the State Water Board to hire scientific experts and implement this project. Because of this Joint Effort, the Water Board adopted hydromodification criteria in September 2012.

LIDI also provides technical consulting services on development projects. The developer for a very large development in the future growth area of Salinas recently indicated a desire to work with LIDI on its project design.

LIDI has also developed technical guidance for municipal agencies and project developers, including LID Parking Lot guidance for designing LID or "green" parking lots. The amount of impervious surface and heavy automobile use associated with parking lots makes them a significant source of stormwater runoff and pollutants. Incorporating LID strategies into new or retrofitted parking lots supports our community and environment. *Central Coast Plant Guidance for Bioretention* helps designers select plants suited to the Central Coast for bioretention features, such as bioretention swales, flow-through planters, and rain gardens.

LIDI has also conducted many educational workshops throughout our Region over the past few years and has received outstanding feedback overall on its education, outreach, technical advice, and other services.

Central Coast Ambient Monitoring Program (CCAMP)

The Central Coast Ambient Monitoring Program consists of both surface water and groundwater components. The CCAMP surface water program has been in existence since 1998. In 2000, when the State Water Resources Control Board's Surface Water Ambient Monitoring Program (SWAMP) was originated, CCAMP began operating under the umbrella of this state-wide monitoring program. As such, CCAMP monitoring and data handling adhere to rigorous SWAMP requirements for field methods, analytical methodologies, data documentation, quality assurance, and data reporting. In 2012, the CCAMP budget is approximately 50% from State SWAMP funds and 50% from the CCAMP endowment, held at the Bay Foundation of Morro Bay. The endowment is used for staffing, equipment, contract services (such as software and web support), some analytical costs, and special projects. The SWAMP budget is used to support the private laboratory contract, as well as for analytical services such as toxicity testing, bioassessment sample analysis, sediment chemistry, and associated quality assurance and data management support. The CCAMP endowment has provided invaluable support for CCAMP operations, allowing them to maintain their own sampling crew. This has vastly leveraged funding they get from SWAMP because the cost of sampling a site is extremely high when contracted through the State's master contract (\$1000 or more per site visit, plus analytical costs). CCAMP makes nearly 600 site visits in any given year; the only way they can afford to do this is by use of their own sampling crew. Because of this cost-efficiency, the CCAMP program has been able to build a significant data resource over the years to characterize the Region's waters.

The CCAMP surface water program has collected a robust dataset at over 180 sites in nearly 100 waterbodies throughout the Region, and has conducted special studies in harbors, along beaches and in coastal lagoons. CCAMP have collected enough data now that some sites show statistically significant trends, some in response to known management actions. At the coastal confluences trend sites there are 10-year time series, which provides valuable statistical power to show change. CCAMP surface water data has provided an enormous amount of support to the work of the Water Board. Most TMDL staff analyses rely heavily on CCAMP data, as does the 303(d) listing process, which identifies impaired waterbodies throughout the Region. CCAMP surveys of Water Board staff users show frequent use of data in formal planning documents, development of permits and orders, letters, enforcement actions, informal correspondence, and other staff decision-making. The CCAMP website received an average of almost 200 user "hits" per day in 2010-11. CCAMP plans to expand monitoring efforts to include a more robust assessment of riparian health throughout Central Coast creeks and rivers, more deployed instrumentation in lower watersheds for assessing loading of pollutants to the ocean, more monitoring to assess upper watershed health and the status of our highest quality habitats, and more partnering and leveraging of local monitoring efforts.

The groundwater program, also known as CCAMP-Groundwater Assessment and Protection (GAP), is developing and implementing a regional groundwater assessment and protection program. The program is starting with two projects: 1) technical assistance to local agencies to help build the groundwater database infrastructure of CCAMP-GAP and 2) a regional outreach and sampling program for domestic well owners to address the severe health threat from nitrate pollution in domestic wells. In addition, these funds may be available for compliance assistance with the groundwater sampling requirements of the Central Coast Water Board's Irrigated Agriculture Order. CCAMP-GAP will also implement other groundwater-related special projects

with the purpose of evaluating, restoring, or protecting the beneficial uses of groundwater or protecting public health.

Staff Oversight

Because LIDI and CCAMP are established, ongoing projects, no significant additional oversight is necessary as additional SEP funds are directed to these projects.

State Water Board Approval

The State Water Board Office of Enforcement has approved both LIDI and CCAMP as appropriate SEPs. This prior approval significantly speeds up the process of finalizing enforcement actions.

The State Water Board's Cleanup and Abatement Account Is Also an Option

Dischargers may choose to pay settlement amounts to the State Water Board's Cleanup and Abatement Account (CAA) rather than propose a SEP. The CAA's primary purpose is to provide public agencies with grants to clean up pollution in cases where no viable responsible party is available. In addition, agencies can apply to the CAA for grants to do habitat restoration, studies, monitoring, and planning activities. Non-governmental agencies can partner with an appropriate local agency or with the Central Coast Water Board to apply for funds.

COMMENTS

Staff solicited comments on this staff report by sending it to the Grants Funding Opportunities Lyris list and by posting it on our website. Morro Bay National Estuary Program and Regional Water Management Foundation submitted comments. Their letters are attached and staff's responses are provided here.

Morro Bay National Estuary Program

MBNEP describes successful projects that have been funded by past SEPs, including riparian fencing that has shown to decrease bacteria concentrations in creeks. MBNEP supports LIDI and CCAMP, but asks that the Water Board consider expanding the list of approved SEPs to include "additional established, long-term programs."

Staff Response: Staff acknowledges the success of other SEPS and the great work that MBNEP and other organizations have done. There are many great projects that could use SEP funding. However, staff continues to recommend that the approved list only include LIDI and CCAMP at this time due to our declining staff resources and inability to pay for staff oversight.

Regional Water Management Foundation

In a letter dated October 16, 2012, the Foundation proposes that the Water Board direct SEP funds to the Santa Cruz Integrated Regional Water Management Plan (IRWMP). The letter describes the IRWMP and how its objectives are in line with those of the Water Board. The letter includes a table listing IRWMP projects. The Foundation's consultant, Monica Reid, also sent an email on December 18, 2012, with additional comments. Ms. Reid asks that staff acknowledge the Foundation's SEP proposal and that it should be considered "in the same light as LIDI and CCAMP."

Staff Response: Staff also acknowledges the great work done by Santa Cruz IRMWP agencies. Staff agrees that many of the proposed projects would benefit water quality and target high priorities. However, the projects in described in the Foundation's proposal are not established, ongoing projects in the sense that LIDI and CCAMP are. The Foundation's projects would still require significant staff resources and funding to develop settlement agreements, track projects, and provide contract oversight. Also, the Santa Cruz IRWMP agencies have successfully obtained tens of millions of dollars in IRWM funding—any additional SEP funding from the Water Board (usually tens of thousands of dollars per project) would be minor in comparison.

RECOMMENDATION

Staff will continue to direct SEP funds toward LIDI and CCAMP in settlements approved by the Executive Officer, and as part of Board-approved enforcement actions. Staff will consider other SEPs that are aligned with the Water Board's top priorities only when staff resources and funding for staff oversight become available.

ATTACHMENTS

1. Morro Bay National Estuary Program letter, July 15, 2012
2. Regional Water Management Foundation letter, October 16, 2012
3. Email from Monica Reid, 12/18/2012.