



State Water Resources Control Board  
Attn: Jeanine Townsend, Clerk to the Board  
1001 I Street, 24th Floor  
Sacramento, CA 95814  
[commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov)

September 25, 2017

**Re: Comments on State Water Resources Control Board's "Policy on Supplemental Environmental Projects"**

Dear State Water Resources Control Board,

On behalf of the above organizations, thank you for the opportunity to comment on the draft "Policy on Supplemental Environmental Projects." (draft Policy) We appreciate the changes in the draft Policy made in accordance with AB 1071 (Atkins), in particular the amendments made to facilitate and aid disadvantaged communities (DACs) throughout the state. Below are some changes we believe will further strengthen the Policy and the Board's goal to implement the Human Right to Water.

**Human Right to Water and 50% Cap on SEPs**

We would like to thank staff for the inclusion of the human right to water throughout the draft Policy. It is vital that more funds are allocated to assist communities struggling to pay for water for all domestic uses. One of the most important changes included in the draft Policy is the explicit allowance for the Office of Enforcement to permit greater than 50% of a fine to be allocated to a SEP which benefits a DAC, an environmental justice community, a community with a financial hardship, or a project which will further the human right to water.

However, the draft Policy also permits the same incentive to apply to a project that is merely "located in" a DAC. (See Staff Report p. 5 ["SEPs may be approved in amounts greater than 50 percent if the SEP will be located in or benefit a DAC, an environmental justice community, or a community with a financial hardship, or if it furthers the human right to water."].) We acknowledge that the Policy does mention "located in or benefits a DAC", however this language is not strong enough to prevent projects which may in located in a DAC but which in fact harm or provide no benefit to the DAC.

Allowing projects that are merely located within a DAC will potentially permit projects that provide no direct benefit to a DAC – or even worse that are a net negative to the community – to be funded above 50% and/or be granted preference. Not all projects “located in” a DAC benefit the community, just as some projects located outside of the DAC may benefit it. A prime example from the transportation context is a rail line that passes through a DAC with no stop within or near a community. While the rail project is “located in” the DAC, it does not provide residents any direct benefit.

One can imagine similarly problematic projects within the SEP program under the current draft policy, which are located in a DAC and benefit the environment generally, but do not benefit a DAC. An example may be a dairy digester located in a DAC, which could provide environmental benefits to air and water quality as a whole, but which also results in increased freight traffic that is a net negative to local air quality within the DAC.

Incentivizing SEPs that are merely “located in” a disadvantaged community is also inconsistent with Public Resources Code § 71118, which mandates the establishment of policy on SEPs that “...benefits disadvantaged communities” and makes no mention of SEPs that are merely “located in” the DAC.

We thus recommend that the draft Policy be amended to remove the “located in” language, and instead require that a SEP provide a direct benefit to a DAC, EJ Community, or community with a financial hardship before it is entitled to preference or a lifting of the 50% cap.

### **Project Solicitation and Guidance**

We appreciate that the draft Policy directs OE to post a SEP proposal form on the SEP webpage, in order to solicit potential SEPs from the general public. We further appreciate that the policy states that the Regional Boards “may” choose to perform additional outreach to DACs, EJ Communities and communities with a financial hardship, in order to directly solicit SEP proposals from those communities.

We recommend, however, that the draft Policy be amended to go a step further – to require that the Regional Board perform additional outreach to DACs, EJ Communities, and communities with a financial hardship. Without additional outreach to these communities, the mere posting of a proposal form on the internet will likely have little effect on the number of proposals that are submitted that benefit DACs, EJ Communities and communities with a financial hardship. We specifically note that internet access is notoriously limited in many DACs, especially those in rural areas. Further, requiring meaningful community engagement will result in better projects with a greater chance of providing meaningful benefit to the impacted communities and region as a whole.

As such, we recommend that the permissive outreach in the draft Policy is made mandatory in the final version. We believe that this amendment will bring the draft policy in compliance with PRC § 71118(b)(1), which requires that the Policy contain a “public process to solicit potential supplemental environmental projects from disadvantaged communities.” The requested amendment is also consistent with the intent behind AB 1071 (2015), which established § 71118, that “all boards, departments, and offices within the California Environmental Protection Agency that have enforcement authority develop a policy on supplemental environmental projects that includes a focus on benefiting environmental justice communities and engaging community-based organizations through an accessible and open public process.”

We further note the draft Policy properly provides that Regional Boards may seek assistance from OE if they lack the resources to comply with solicitation requirements. Thus, lack of resources should not be a concern that supersedes the goal of ensuring that SEPs benefit DACs.

Finally, we agree with language in the draft Policy permitting Regional Boards and Divisions to give preference to SEPs benefitting DACs and other priority communities (p. 8), but again request that the language permitting preference be mandatory. SEPs that directly benefit DACs, EJ communities, and communities with a financial hardship should be granted preference over projects that do not, in order to address the legislature's declaration in AB 1071 that EJ communities are "disproportionately impacted from multiple sources of pollution, including air and water pollution, leading to higher rates of respiratory illness, hospitalizations, and premature death" and that they thus "need resources to appropriately address environmental health impacts and to implement community-led solutions." Other agencies, including the Air Resources Board and the Department of Toxic Substances Control Board, have implemented policies which include preferred SEP criteria, with benefitting a disadvantaged/EJ community as one of the priorities. We recommend that the SWB also implement such priorities into their SEP Policy.

### **Small settlements**

The accompanying Draft Staff Report on the Proposed Amendment to the Policy on Supplemental Environmental Projects is very helpful in comparing the proposed changes with the current Policy and the requirements set forth in AB 1071. One area the Staff Report highlights that has not been incorporated into the draft Policy is the ability of "several small settlements to go towards funding a larger SEP." Allowing smaller settlements to work together can help create a larger impact, especially in areas of contaminated drinking water supplies. For example, where a smaller settlement may be able to provide education to a community about their drinking water issues, a collection of settlements could provide education and work on a treatment facility or consolidation project so the community is educated AND provided a sustainable source of drinking water.

We recognize the concerns staff raised at the August 16th hearing on the difficulties of aggregating small settlements to fund larger SEPs. We agree that the aggregation of funds can stretch the ability to ensure that an adequate nexus continues to exist and it makes harder to ensure all parties maintain liability. Thus, it may not always be appropriate for aggregating funds, but if all parties share a nexus to the location and nature of a possible SEP, their joint contributions would provide a larger impact. This can be especially true in communities struggling to obtain safe and affordable drinking water. If there are multiple responsible parties who have contributed to contamination of drinking water supplies, jointly they can do more for the community than alone.

### **Nexus**

When a violation is impacting drinking water quality, the SEP must address the impacts the discharge has on the nearby communities. Allowing a discharger to complete a SEP that is up to 50 miles away does not help provide safe drinking water, and instead allows for the creation of hot-spots of contamination. This is especially true in the case of groundwater contamination due to the slow

transport time of contaminants as compared to surface water contamination. Thus, in the case of groundwater contamination in an area where there are communities reliant upon the groundwater for domestic needs, the SEP should be focused upon helping the impacted communities obtain safe and affordable water.

### **Oversight Costs**

Creating incentives for dischargers to pick SEPs located in communities which may not otherwise be able to afford the projects on their own is important. However, staff should also consider the financial capacity of the responsible party before allowing the party to fold in oversight costs into the total cost of the SEP they are responsible for. SEPs located within communities with financial hardships can provide tremendous benefit to the community, and all possible funding that is eligible to go to the project needs to be allocated to the project.

Thank you again for the opportunity to comment. We look forward to continuing to work with staff to ensure the SEP policy continues to be effective at righting harm to the environment and provides significant benefits to DACs.

Sincerely,



Debi Ores  
Attorney  
Community Water Center



Michael Claiborne  
Attorney  
Leadership Counsel for Justice and Accountability



Jennifer Clary  
Water Program Manager  
Clean Water Action