




## California Regional Water Quality Control Board, San Diego Region

**TO:** David W. Gibson  
Executive Officer  
Advisory Team

In reply refer to:  
631922:BGrieffey

**FROM:**   
James Smith  
Assistant Executive Officer  
Prosecution Team

**DATE:** December 3, 2013

**SUBJECT: Prosecution Team Response to December 22, 2013 Request for Additional Information on Draft Stipulated Order No. Order No. R9-2013-0137**

In addition to the City of La Mesa's (City) response to your November 22 letter requesting additional information on the proposed Supplemental Environmental Project (SEP), the Prosecution Team offers the following, in support of acceptance of the SEP.

Broadly, the Prosecution Team's evaluation process involved first ensuring the proposed settlement achieved the enforcement objectives of compliance, commitment(s) towards improvements, and deterrence, and next reviewing the City's SEP proposal for consistency with (1) the State Water Board Policy on Supplemental Environmental Projects; (2) the San Diego Water Board Practical Vision; and (3) statements concerning SEPs made by Board members at prior public meetings. While the Prosecution Team's evaluation of SEP proposals is always somewhat dependent on the specifics of each case, the general approach outlined above ensures that only valuable and worthwhile SEPs will be recommended by the Prosecution Team. Having passed this process, the Prosecution Team is confident the proposed SEP serves the interest of the Water Board and the community at large.

1. **SEP Policy.** The SEP is consistent with the SEP Policy<sup>1</sup> for the following reasons:
  - a. It goes above and beyond the City's otherwise applicable obligations. The City has certified that the project is not, and will not, be used as mitigation for other impacts;
  - b. Although not easily quantifiable, the proposed SEP directly benefits surface water quality and beneficial uses by:
    - i. Removing a 100-linear foot grouted rip-rap bank, thereby allowing for surface water infiltration and improved wildlife habitat.
    - ii. Removing approximately 31,000 square feet (i.e. the entire project area) of non-native/invasive plants and revegetating with native plants. This will allow

<sup>1</sup> [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/rs2009\\_0013\\_sep\\_finalpolicy.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf)

- for natural recruitment and use by native wildlife reliant on water-dependent habitat.
- iii. Removing trash and homeless encampments throughout the 31,000 square foot project area. This is expected to decrease the risk of pathogens in the waters and improve capacity for recreational uses;
  - iv. Improving aesthetic enjoyment and educating the local community on the value of native habitat and water quality; and
  - v. Maintaining the site in its improved state with a long term conservation mechanism.
- c. The scope of the SEP is sufficiently defined in Attachment B of Order No. R9-2013-0137;
  - d. The SEP provides a direct water quality benefit in one of the two watershed areas where the spills occurred;
  - e. As a condition of the Order (Recitals.17) and via the subsequent Clean Water Act Section 401 Water Quality Certification (401 certification), the City must demonstrate that the proposed SEP complies with CEQA and other applicable regulations;
  - f. The City has the authority, funding, and institutional stability to implement the SEP project at the proposed site; and
  - g. The SEP will have success criteria based on vegetative cover, percent invasive species cover, and CRAM<sup>2</sup> scores. Compliance with these criteria will be a condition of the 401 certification.
2. **Practical Vision.** Additionally, the proposed SEP is consistent with the San Diego Water Board's Practical Vision because it aids in the "Recovery of Stream, Wetland, and Riparian Systems." According to the Practical Vision, "Recovery of these systems involves both protecting areas that have remained relatively unscathed and *restoring the extent and the functionality of all kinds and parts of damaged and lost stream, wetland, and riparian systems, including floodplains.*" By accepting the SEP the San Diego Water Board is providing an additional method of incentivizing restoration opportunities for dischargers.
3. **Board Lessons.** Finally, our review benefited from lessons taken from prior public meetings of the Water Board. The Board has expressed an interest, most recently during the public board meeting concerning Order No. R9-2013-0032,<sup>3</sup> for liability settlements to be aimed at direct improvements to the existing water quality conditions.

The proposed SEP is consistent with Policy and Board direction, and it can serve as a lasting community asset. We acknowledge and support the Board's stated desire for transparency involving SEPs and look forward to further discussion at the Board meeting.

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<sup>2</sup> California Rapid Assessment Method. CRAM is a cost-effective and scientifically defensible rapid assessment method for monitoring the conditions of wetlands throughout California. Information available at: <http://www.cramwetlands.org/>

<sup>3</sup> Settlement Agreement and Stipulation for Entry of Order No. R9-2013-0032 for \$1,245,414, City of San Diego, Pump Stations 1 and 64 Sanitary Sewer Overflows, Adopted May 8, 2013.