



Inland Empire Waterkeeper

*Advocacy • Education • Restoration • Enforcement*

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November 13, 2017

**SENT VIA EMAIL:** [Michelle.Beckwith@waterboards.ca.gov](mailto:Michelle.Beckwith@waterboards.ca.gov)

RE: Consideration of Settlement Agreement and Stipulation of Entry of Administrative Civil Liability with California Department of Transportation and Atkinson Contractors LP - Comments

Michelle Beckwith  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

Dear Ms. Beckwith,

On behalf of Inland Empire Waterkeeper (“Waterkeeper”), please accept the following comment letter regarding the November 6, 2017 settlement agreement and stipulation of entry of civil liability between the Executive Officer of The Regional Water Quality Control Board, Santa Ana Region (“Regional Board”) and the California Department of Transportation and Atkinson Contractors LP (collectively “Settling Parties”).

Waterkeeper would first like to emphasize its support for the enforcement action in question. We are encouraged by the Regional Board’s vigor in responding to the Settling Parties’ alleged violations of the MS4 Permit and the General Permit. In addition, we are encouraged by the settlement agreement’s stipulated liability amount of \$488,909. Our hope is that this considerable settlement amount will work to dissuade future violations and encourage implementation of Best Management Practices within the region.

We would like to indicate our disappointment in the fact that the settlement amount is to be deposited into the state’s Cleanup and Abatement Account (CAA). We strongly believe that this settlement amount would have been better served if they were dispersed to local and/or regional Supplemental Environmental Projects (SEPs).

The Inland Empire area has demonstrable need for funding of SEPs. The Regional Board’s list of approved SEPs (revised on April 15, 2015) indicates multiple local projects that could be funded from the stipulated liability amount of \$488,909. The list includes the need for \$10,000 to \$12,500 to “establish baseline water quality data for 3 linear miles of Temescal Wash” in the Riverside area.<sup>1</sup> Funding for this project would have been easily accomplished from the stipulated liability

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<sup>1</sup>[https://www.waterboards.ca.gov/santaana/water\\_issues/programs/sep/docs/Approved\\_SEPs\\_April\\_2015.pdf](https://www.waterboards.ca.gov/santaana/water_issues/programs/sep/docs/Approved_SEPs_April_2015.pdf)

amount, and the Regional Board would have been granted the benefit of funding for data monitoring to prevent future discharge violations in the region. In reality, the depositing of the stipulated liability amount in the CAA will be “used to address important water quality cleanup and abatement activities throughout the state.”<sup>2</sup> There is no guarantee that the funds from the CAA will be used locally or regionally.

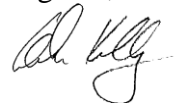
Waterkeeper would like to meet with the Regional Board in the near future to discuss what steps can be taken to encourage funding of local and/or regional SEPs in future settlement agreements.

One proposed step to encourage local funding would be for the Regional Board to update its website to include the most up-to-date information regarding SEPs. Currently, the Regional Board’s website has an approved list of Supplemental Environmental Projects.<sup>3</sup> However, this list has not been updated since April 15, 2015. This document is meant to indicate the current funding and status for each SEP project. Yet, the document is over two years out-of-date. Regional Board members may subsequently be utilizing an inaccurate document in assessing the funding of SEP projects. The Regional Board is encouraged to update this document as soon as possible.

Another proposed step would be for Waterkeeper to work with the Regional Board on alternative settlement structures that could provide some level of funding to SEPs. We recognize that defendants may prefer CAA settlement structures, as they help alleviate liability in a more expedient manner. We would like to discuss this issue with the Regional Board and work to establish strategic plans to facilitate the Regional Board’s medium and long-term priorities through its SEPs. The practice of gathering necessary data from the Inland Empire’s waterways is a useful tool that could be supported by targeted SEPs. These data feeds into the Regional Board’s ability to protect our waterways and restore their beneficial uses and should be supported. Waterkeeper looks forward to discussing strategic SEPs and how the Regional Board’s enforcement can capture the harm caused by polluters while investing in the Inland Empire’s future.

On behalf of Waterkeeper, we would like to thank you once again for your efforts to respond to violations of the MS4 Permit and the General Permit by the Settling Parties in this case. We look forward to working with the Regional Board in the near future to ensure that future cases consider regional and/or local SEPs. Please do not hesitate to contact our office to discuss this matter further. Thank you for your consideration of this comment.

Regards,



Colin Kelly  
Senior Staff Attorney  
Inland Empire Waterkeeper

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<sup>2</sup>[https://www.waterboards.ca.gov/santaana/water\\_issues/programs/sep/docs/sep\\_solicitation\\_ltr\\_2015.pdf](https://www.waterboards.ca.gov/santaana/water_issues/programs/sep/docs/sep_solicitation_ltr_2015.pdf)

<sup>3</sup> [https://www.waterboards.ca.gov/santaana/water\\_issues/programs/sep/](https://www.waterboards.ca.gov/santaana/water_issues/programs/sep/)