



CALIFORNIA FARM BUREAU FEDERATION

OFFICE OF THE GENERAL COUNSEL

2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5665 · FAX (916) 561-5691

Sent via E-Mail

Commentletters@waterboards.ca.gov

September 25, 2017



Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95812-2000

RE: Comment Letter –SEP Policy Amendment

Dear Members of the Board:

The California Farm Bureau Federation (“Farm Bureau”) is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 48,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

After a review of the proposed revisions to the Supplemental Environmental Project (“SEP”) Policy, Farm Bureau has the following general concerns. These comments are directed specifically at the Board’s immediate proposed policy amendment; however, they are also germane to the Boards’ larger enforcement program.

To avoid potential for such abuses from both a legal and equitable standpoint, several safeguards are needed. Unfortunately, it is not clear at the current time that any of the safe birds are sufficiently in place.

One such safeguard is a set of clear criteria to ensure that the supplemental environmental projects submitted to, and improved by the board are in fact effective, relevant and worthwhile projects. The current proposal’s notion of projects, for example, within "the same ecosystem," "the same watershed," "within 50 miles," or "of a different nature," or "in a different location," maybe insufficiently unrelated to the underlying violation.

NANCY N. McDONOUGH, GENERAL COUNSEL

ASSOCIATE COUNSEL:

CARL G. BORDEN · KAREN NORENE MILLS · CHRISTIAN C. SCHEURING · KARI E. FISHER · JACK L. RICE

Letter to Jeanine Townsend, Clerk to the Board

September 25, 2017

Page 2

A second safeguard consists of some set of protections to ensure fundamental fairness and proportionality in relation to both the offense or violation involved, and the circumstances of the individual or entity upon whom the penalty is imposed, or from whom the supplemental environmental project is extracted.

A third safeguard relates to fiscal and governmental separation between state budgetary authority for allocation of the funds derived from the fines and penalties collected on one hand, and the programs and enforcement activities imposing and collecting those same fines and penalties themselves on the other. (In other words, the funding sources for such programs and activities should be discretionary appropriations by the Legislature from the General Fund. There should be no dedicated "fund" to receive such monies, where this same fund is in turn used to finance and continually expand the program or activity funded without limit, public accountability, or ongoing legislative oversight.)

Lastly, there must be robust due process and administrative and judicial review protections to further hold potential abuses in check.

Since the Water Boards' current enforcement structure and proposed policy lack such controls, Farm Bureau is concerned that the potential for abuse could exist

Thank you for the opportunity to share these perspectives on the Board's proposed SEP Policy Amendment.

Very truly yours,



Justin E. Fredrickson
Environmental Policy Analyst

JEF