



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

October 13, 2015

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board



Subject: Comment Letter – Storm Water Resource Plan and Proposition 1 Funding Guidelines

Ms. Townsend:

The California Stormwater Quality Association (CASQA) appreciates the opportunity to provide written comments on the draft Storm Water Resource Plan Guidelines (Plan Guidelines) and draft Proposition 1 Storm Water Grant Program Guidelines (Funding Guidelines). Thank you also for eliciting oral comments by organizing and putting on the three Staff Workshops held around the state in late September through early October as well as the October 7 Board Workshop.

Our comments on the Plan and Funding Guidelines revolve around a few key principles:

- **Long-term view** - Although the level of Proposition 1 funding is significant, especially to stormwater management agencies, it is temporary and will all be spent in the relatively near future. Conversely, the Storm Water Resource Plan requirements will be in effect permanently. Additionally, the two draft sets of guidelines are based on two separate legislative bills that have different requirements. Therefore, despite the fact guidelines for both are being developed at the same time and there is some cross-referencing in the draft guidelines, it is important to keep the Plan Guidelines separate from the Funding Guidelines – lest the Funding Guidelines, which are naturally drawing more attention but will not be operative after the money is spent, unduly affect the Plan Guidelines that will be operative permanently.
- **Simplify, simplify¹** - CASQA promotes stormwater as a resource – it is one of three guiding principles in CASQA’s Strategic Vision. So to the extent SB 985 and Proposition 1 facilitate stormwater being used as a resource, CASQA is very supportive. However, CASQA and its member agencies need to balance their support for stormwater as a resource with all of the other elements of their stormwater management programs and with the other provisions in their stormwater permits. That need to balance, combined with the Prop 218 funding restrictions means it is important for the State Water Board to avoid designing either set of guidelines in ways that inadvertently create additional restrictions or requirements that already financially-strapped local governments will have to address to be eligible to apply for funding. One way to do so is to keep both sets of guidelines simple and true to the legislation that created them, only add detail as necessary to provide guidance, and avoid adding new concepts, restrictions, or requirements that are not present in the legislation.

¹ Henry David Thoreau

CASQA Comments on draft Storm Water Resource Plan Guidelines and draft Prop 1 Storm Water Grant Program Guidelines

- **Leverage** - With increased emphasis on watershed planning, agencies have expended significant time and resources developing planning documents in recent years. Existing plans such as Enhanced Watershed Management Plans, Water Quality Improvement Plans, Green Infrastructure Plans, Areas of Special Biological Significance Compliance Plans, and others should suffice for Storm Water Resource Plans where SB 985 requirements are addressed.
- **Equity** - Funding for the development of plans and implementation of projects should be distributed equitably across the State and should consider the conflict in timing for the development of Storm Water Resource Plans and the appropriation of funding under Proposition 1.

Detailed comments related to these principles and to some concerns are attached. Because both sets of guidelines are intertwined, many of the concepts are applicable to the Plan and Funding Guidelines alike. Where possible, we have included specific recommendations to address each concern.

In closing, CASQA would like to thank the State Water Board for the opportunity to comment on these important guidelines to ensure that funding allocations for stormwater planning and implementation projects are appropriate and equitable. These comments are offered for your consideration in an effort to provide clarity and greater equitability to the guidelines. Feel free to contact me with any questions at (805) 654-5051.

Sincerely,



Gerhardt Hubner, Chair
California Stormwater Quality Association

cc: CASQA Board of Directors and Executive Program Committee

Attachment 1 Comments - Storm Water Resource Plan Guidelines

Attachment 2 Comments - Proposition 1 Storm Water Grant Program Guidelines

ATTACHMENT 1 COMMENTS - STORM WATER RESOURCE PLAN GUIDELINES

1. Approval Process for Storm Water Resource Plans

Given the extensive requirements of SB 985, the Storm Water Resource Plans will be comprehensive planning documents comprised of detailed technical information, studies, and projects. Based on recent experience in developing these types of watershed plans within the Los Angeles and San Diego Regions, the resulting plans are voluminous, many averaging 1,000 pages in length to cover all of the required elements of the MS4 permits. Given the level of effort put forth in developing these comprehensive plans, it is important that existing plans satisfy the SB 985 requirements wherever possible, whether they are Enhanced Watershed Management Plans, Water Quality Improvement Plans, Green Infrastructure Plans, Areas of Special Biological Significance Compliance Plans, or others.

As stated in one of the public workshops, the State Water Board is anticipating dozens of project applications under the first solicitation for Proposition 1 funding this spring and will not have the capacity to review the Storm Water Resource Plans submitted with each application. The Plan Guidelines and the Funding Guidelines are both silent on the approval process.

State Water Board staff presented two options for determining whether the Storm Water Resource Plans meet the minimum requirements of the guidelines. This determination is necessary to deem project applications eligible for funding, regardless of how well a project fits the other funding requirements of Proposition 1. Option 1 is to modify the checklist in Appendix A of the Storm Water Resource Plan Guidelines to contain a certification statement to declare under penalty of perjury that the Storm Water Resource Plan is in conformance with the Storm Water Resource Plan Guidelines. Option 2 was to have Regional Water Boards review and approve the Storm Water Resource Plans.

We understand the resource limitations of the State and Regional Water Boards and believe that approval of the Storm Water Resource Plans should not hinder the distribution of much needed funding under Proposition 1. The process will be streamlined and more efficient using a certified checklist as described below.

Recommendation – CASQA supports a modified version of Option 1 to use a modified version of the checklist in Appendix A to certify that the Storm Water Resource Plans meet the mandatory requirements of SB 985. The checklist and certification should be limited to the first table only in Appendix A, as Plans need only meet the *mandatory* required elements of the Storm Water Resource Plan per the California Water Code. We also recommend the addition of a cross-reference column in the checklist to link the Water Code Section and Guidelines Section with the applicant's Storm Water Resource Plan Section (or section of the functionally equivalent document(s)) where the requirements are addressed. The information will be provided by the applicant, rather than just a checklist, and will provide more assurance that the Storm Water Resource Plan was properly developed and meets all of the requirements.

2. Inclusion of the Storm Water Resource Plan in the Integrated Regional Water Management Plans (IRWMP)

SB 985 amends the California Water Code (Section 10562(b)(7)) to state:

“Upon development, [the stormwater resource plan shall] be submitted to any applicable integrated regional water management group. Upon receipt, the integrated regional water management group shall incorporate the stormwater resource plan into its integrated regional water management plan.”

CASQA supports the inclusion of the Storm Water Resource Plan in the IRWMP as this will ensure cohesion between the watershed planning processes and allow for more collaboration on projects in the future. However, once the Storm Water Resource Plan is submitted to the IRWM Group, the agencies responsible for developing the Storm Water Resource Plan have limited control as to how and when the Storm Water Resource Plan is incorporated into the IRWMP. Incorporation of the Storm Water Resource Plan is the responsibility of the IRWM Group. We are concerned that the time required to *incorporate* the Storm Water Resource Plan into the IRWMP may be a bottleneck in the process with the potential to hinder funding approval for important projects. At the workshop on September 30, State Water Board staff explained that the threshold to meet this requirement is that the Storm Water Resource Plan only be *submitted* to the IRWM Group for inclusion in the IRWMP.

Recommendation – Language throughout the Plan Guidelines and the Funding Guidelines should be revised as appropriate to ensure that for projects to be eligible for funding, the Storm Water Resource Plan must be *submitted* to the IRWM Group for incorporation into the IRWMP.

3. Applicability of the Design Storm 85th Percentile, 24 Hour Storm Criteria

Section VI.C.2.b.1 of the Storm Water Resource Plan Guidelines recommends that the Storm Water Resource Plans “include an analysis of how collectively the projects and programs in the watershed will capture and use the proposed amount of stormwater and dry weather runoff”. That type of analysis will provide a big picture of the collective benefits to the watershed as a whole and is feasible, albeit challenging. However, (i) seeks a “demonstration that the ***collective performance of individual projects***...captures the dry weather runoff and, at a minimum, the first flush from an ***85th-percentile 24-hour storm event***” (emphasis added).

There are two key concerns with the application of the proposed design criteria:

First, the imposition of an 85th-percentile 24-hour design storm criteria is inappropriate and the requirement should be removed, as it is inconsistent with SB 985. Where feasible, projects should be sized in accordance with their local stormwater requirements. Within the Plan, each project should include the design storm used to size the project, rationale for the selected criteria, and an explanation of other benefits provided.

Second, although the collective benefits of a group of projects are important to the watershed from a holistic standpoint, project based design criteria is a more relevant metric for evaluation.

It is important that the Plan demonstrate each project’s individual ability to capture and/or treat dry weather runoff and an appropriate design storm. Project specific information could be used, along with the other benefits, to prioritize projects within the Plan. Collective benefits to the watershed could be provided, but should be optional and should not be used in individual project prioritization.

Recommendation - Section VI.C.2.b.1 of the Plan Guidelines should be amended to remove the 85th percentile 24-hour design storm criteria and to clarify that a demonstration of the individual project’s ability to capture and/or treat dry weather runoff and the appropriate design storm from their drainage area(s) be provided, as applicable. See suggested modifications below:

- i. A demonstration that ~~the collective performance of~~ individual projects (within the project areas of the watershed) captures and/or treats the dry weather runoff and, at minimum, the first flush from an appropriate design~~85th -percentil 24-hour~~ storm event based on available watershed-specific rainfall data for beneficial use and proposed multiple benefits. Projects should be sized consistent with local design criteria (e.g., municipal stormwater permits) where feasible. However, the volumetric threshold feasibly achievable may vary based on watershed characteristics and other water quality considerations; in such a case, the Plan must include discussion of the crucial multiple benefits resulting from the capture and use project, the criteria used to design the project, and the rationale for the selection of the design storm criteria. that do not meet the 85th -percentile, 24-hour storm threshold.

4. Programs that Include Multiple Projects

Section VI.D of the Plan Guidelines discusses the identification and prioritization of multiple benefit projects. Within the section, it is noted that Water Code Section 10562 requires identification of opportunities and projects that provide multiple benefits. These “opportunities” and “projects” mentioned in the Water Code are then interpreted as “projects or programs” within Section VI.D.1-2 of the Guidelines.

These “projects or programs” should include programs with multiple designated, although unspecified, projects and the individual projects should be eligible for funding under Proposition 1. At the September 30 workshop, State Water Board staff stated that *individual* projects must be included in the Storm Water Resource Plans to be eligible for funding. While this is ideal, it is also appropriate for Storm Water Resource Plans to identify programs that are inclusive of multiple projects or groups of projects, even though it may not be feasible to specify individual projects within the Storm Water Resource Plan.

For example, many of the watershed planning efforts have identified green infrastructure as a primary means to capture and treat dry weather flows and stormwater runoff. Due to the broad scope of the watershed planning efforts and the varied capital improvement programs within participating agencies, the plans typically identify a green infrastructure program as a recommended approach to meeting targeted load reductions. Through modeling, the plans often quantify the benefits to be realized through implementation of a specified area or acreage of implemented green streets. The participating agencies will then seek opportunities to implement

these projects within their capital improvement programs, therefore individual projects may not be identified within the plans. While not feasible to call out all individual projects within the Storm Water Resource Plan, those that meet the specifications of the described program should be eligible for funding.

Recommendation – The language “projects or programs” that is currently included in Section VI.D may well provide the flexibility needed to address the concern. To add clarity, CASQA recommends adding definitions for “projects” and “programs” to the definitions section of the guidelines to clarify that these can include *groups of individual projects of the same type* as long as multiple benefits can be quantified and demonstrated as they would be with individual projects.

The Funding Guidelines should also be amended for consistency. Projects included within a Storm Water Resource Plan as an individual project or as part of a program that complies with the SB 985 requirements should be eligible for funding.

5. Watershed Scale

Section VI.A contains guidelines for the appropriate scale of the watershed or sub-watershed to be addressed by the Storm Water Resource Plan and recommends the use of the CalWater Watersheds (Table 2). While these designations are appropriate in most cases, these are *guidelines* and should be established as such. Caveat #2 states that the largest practicable watershed should be used and that it should cross multiple jurisdictional boundaries, both of which are more restrictive than necessary and may prevent important projects from moving forward in smaller watersheds. Caveat #4 in the section sets a lower limit on the size of the watershed at 5-16 square miles for the Storm Water Resource Plan and is inappropriate.

There are small watersheds that have unique water quality challenges and are hydrologically independent from the larger surrounding watersheds as designated in Table 2. In some cases, those working on these small watersheds are approaching their issues on a watershed scale and have developed plans that may meet the requirements of the Storm Water Resource Plans. If these planning efforts meet the requirements of the Storm Water Resource Plan guidelines and are submitted to the applicable IRWM Group, they should not be precluded from funding due to the limited size of the watershed.

Recommendation – Section VI.A: Revise Caveat #2 as follows and remove caveat #4..

2. The watershed should be of adequate size~~the largest practicable~~ to allow for comprehensive and integrated storm water management ~~across multiple jurisdictional boundaries~~.

~~4. Watersheds smaller than the CalWater “Planning Watershed” size should not be used (smaller than 5 square miles in size); and~~

ATTACHMENT 2 COMMENTS - PROPOSITION 1 STORM WATER GRANT PROGRAM GUIDELINES

1. Planning Funds Appropriated to Individual Project Planning

Planning funds should be appropriated to any planning activities related to future projects and not limited to the development of Storm Water Resource Plans. The first solicitation under Proposition 1 is anticipated to include up to \$20,000,000 in funding for planning projects. As acknowledged in Section II.A.I of the Funding Guidelines, Water Code section 79704 authorizes these funds for "...planning and monitoring necessary for the successful design, selection, and implementation..." However, as drafted, State Water Board staff envisions appropriating all of the planning funds to the development of Storm Water Resource Plans.

While the development of Storm Water Resource Plans is an important use of the grant funds, it should not be the only eligible use of the planning allocations, as there are critical intermediary steps between plan development and project implementation. Implementation of watershed plans that meet the Storm Water Resource Plan requirements is in its infancy and projects typically are not ready to move forward. The projects may be developed at a conceptual level and lack the necessary planning and engineering for implementation. The development of feasibility studies, technical reports, and engineering design are necessary planning steps in between the development of the Storm Water Resource Plan and implementation of a project. Intermediate planning and engineering studies should be eligible for funding under the planning grant solicitation in order to progress towards implementation.

Recommendation – Modify Section III.B (Eligible Project Types), Appendix B-1 (Planning Proposal Application), and Appendix B-2 (Planning Proposal Evaluation Criteria) to broaden the scope of the planning grants allowing intermediary technical studies to meet funding guidelines. In order to ensure that some of the funds allocated for planning are used to develop Storm Water Resource Plans, the Funding Guidelines could include a minimum that must be provided for development of Storm Water Resource Plans (e.g., 50% of the \$20,000,000).

2. Timing of Storm Water Resource Plan Development and Funding Solicitation

The timing of the anticipated Proposition 1 solicitation creates a potential inequity between stakeholders across California as the majority of agencies have not developed Storm Water Resource Plans that will meet the requirements of SB 985. As currently drafted, the Proposition 1 funding will be weighted heavily toward implementation projects, with only 20% of Round 1 going towards planning projects. This distribution ensures that only a small percentage of agencies across California will be eligible for 80% of the funding (i.e., only those that have plans in place that meet the SB 985 requirements for a Storm Water Resource Plan).

Recommendation - In order to provide more equitability, CASQA has developed two recommendations for consideration.

- a. Work with applicants to ensure an equitable geographic distribution of funds under Proposition 1. Where regions without Storm Water Resource Plans apply for funding for projects that meet the intent of the grant program (e.g., green streets, retention basins), consider funding the planning needs of the agency within the Round 1 schedule and approving but deferring the Round 1 implementation funding until Round 2 (i.e., carry over the approved implementation funds to Round 2, contingent upon successful development of a Storm Water Resource Plan).
- b. Where existing plans need updating to meet SB 985 requirements, but identify watershed projects that meet funding requirements, allow a phased approach in which the plan is updated concurrent with or followed by project implementation. In order to accommodate these combined planning/implementation projects, the State Water Board could consider extending the grant timelines for Round 1 (currently presented in Table 3).

3. Storm Water Treatment Trains

Types of eligible projects should be consistent with the Proposition 1 legislation. Proposition 1 (Assembly Bill No. 1471) added Section 79747 to the California Water Code, which reads:

- (a) Of the funds authorized by Section 79740, two hundred million dollars (\$200,000,000) shall be available for grants for multibenefit stormwater management projects.
- (b) ***Eligible projects may include, but shall not be limited to, green infrastructure, rainwater and stormwater capture projects, and stormwater treatment facilities.***
- (c) Development of plans for stormwater projects shall address the entire watershed and incorporate the perspectives of communities adjacent to the affected waterways, especially disadvantaged communities. (**emphasis added**)

State Water Board staff included text specifying that stormwater treatment train facilities are eligible and included a definition of a Storm Water Treatment Train facility. This is not in the legislation and could be interpreted to preclude funding for a single BMP (e.g., a bio retention facility), even though it may provide multiple benefits and meet other grant requirements. While the guidelines do not state that projects have to be a part of a treatment train and do not appear to preclude single BMPs from funding as long as multiple benefits can be demonstrated, we suggest that the guidelines reflect the language in the California Water Code and not include references to stormwater treatment train facilities.

Recommendation – For consistency with California Water Code Section 79740, CASQA recommends that all references to *stormwater treatment train facilities* be removed from the Proposition 1 Storm Water Grant Program Guidelines.

4. Minimum Grant Amounts

Although minimum grant amounts are not specified under Proposition 1, the Grant Program Guidelines limit the minimum grant amount for implementation projects to \$500,000 (Section III.C – Table 1), effectively eliminating all projects less than \$1,000,000 total. While we understand that State Water Board resources are limited and fewer larger grants may take less staff to manage, we are concerned that this high of a minimum grant amount will exclude meaningful smaller projects. Since the grant funds can only be used for the stormwater resource aspects of a project, those portions may be a relatively small part of a larger project, such as a complete street project. A reduction in the minimum would also provide for a more equitable distribution of funds, as smaller projects are more likely to be implemented by DACs. Further, reducing the minimum grant amount for implementation projects would allow for more projects to be funded across the state.

Recommendation - In order to provide more equitability, CASQA recommends reducing the minimum grant amount for implementation projects funded under Proposition 1 to \$250,000.

5. Matching Funds for Disadvantaged Communities

As stated on Page 2 of the Funding Guidelines, up to ten percent (10%) of the SWGP funds (up to \$20 million) shall be allocated for implementation of projects that directly benefit a Disadvantaged Community (DAC), consistent with Water Code section 79725(b). The California Water Code further specifies that at least 10% of the funds available shall be allocated for projects serving severely disadvantaged communities.

The California Water Code does not limit the match waiver amount for DACs, it simply states that DACs are eligible for waivers. However, as documented in the Funding Guidelines, the State Water Board is proposing to require a 10% match for Group B Small (population <20,000) Disadvantaged Communities and 15% match for Group C DAC (population >20,000).

Disadvantaged communities, regardless of size, face significant difficulties in financing stormwater projects. For many larger DACs, any economies of scale are often very limited and frequently non-existent. Simply put, having more poor people seldom enhances the economics of a DAC. Just as the non-DAC communities have a single (50%) match, we highly encourage the State Water Board to create a single (10%) match requirement for all DACs.

Recommendation – Modify Table 2 to reflect a single match requirement of 10% across all groups meeting the definition of a disadvantaged community and/or an economically distressed area (see Appendix D). Modify Appendix A as appropriate to reflect a consistent single match requirement of 10% for disadvantaged communities and/or economically distressed areas.

6. Applicability of Matching Funds, Date of Eligibility

Dates for eligible matching funds should be set as early as possible to account for previous project related planning efforts. As drafted, the matching funds for planning grants are eligible for credit back to the approval of SB 985 (September 24, 2014). The corresponding date for implementation grants is currently set to the adoption of the Proposition 1 Storm Water Grant

Program Guidelines (anticipated to be December 1, 2015). For consistency, matching funds for implementation grants should be eligible back to the passing of Proposition 1 by the voters (November 4, 2014).

Recommendation – Adjust the date for eligible matching funds for the implementation grants to November 4, 2014 (Section III.D – Match Requirement).

7. Scoring Criteria

In Appendix C-2, Implementation Proposal Evaluation Criteria, the Eligibility Criteria section requires a "Yes" answer to all criteria questions (a "No" response to any question will deem the proposal ineligible for funding). Question #8 is a two-part question. The second part reads: "Will the proposed project negatively impact the water rights of other water users?" Since it seems that a "No" response is desired, this question needs to be reworded such that the desired answer is "Yes".

Also, the total points for the scored criteria do not match the possible points listed for each scoring area. For example, the work plan indicates that there are 40 points possible, but the total points add up to 35.

Recommendation – CASQA has developed two recommendations for consideration.

- a. Reword Question #8 as follows: Is the proposed project consistent with the applicant's water rights? ~~Will~~ Does the proposed project avoid negatively impacts to the water rights of other water users?
- b. Check Appendix C-2 for consistency in scoring throughout.