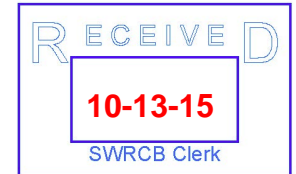




October 13, 2015

Ms. Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, CA 95814



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

Dear Ms. Townsend:

The County of Orange appreciates the opportunity to provide written comments on the draft Storm Water Resource Plan and Proposition 1 Funding Guidelines released August 26, 2015. We would also like to thank staff for organizing and participating in the workshop held at the Orange County Water District on September 30, 2015 so that we could provide verbal feedback.

Due to the interconnectedness of the Storm Water Resource Plan and associated grant program, general comments on both sets of guidelines are combined in this letter. Specific comments on guideline language will specify to which set of guidelines our comments apply.

General Comments

The County of Orange commends State Water Resources Control Board staff on providing the draft guidelines; however, we would appreciate clarifications and revisions to several key points. Additionally, we are compelled to voice our concerns on some fundamental points regarding the need for program flexibility as described below.

Overall Intent of Storm Water Resource Plans

1. **Conflict between Storm Water Resource Plan (SWRP) and Existing Regulatory Planning Efforts:** The SWRP guidelines require quantification of benefits based upon a combination of Integrated Regional Water Management (IRWM) framework elements, water use efficiency and supply, community involvement, water quality, green infrastructure and flood management. This requires a much higher level of analysis and amalgamation of processes and priorities than are currently required in municipal stormwater permits or total maximum daily loads (TMDLs) across the State, reaching well beyond the scope of current compliance requirements. Though some regions have completed or are in the process of developing watershed-based planning documents in compliance with municipal stormwater

permits, the potential result will be two parallel planning documents to comply with the requirements of both the SWRP guidelines and regulatory permits.

The guidelines suggest that development of a SWRP is voluntary and required only for garnering grant funding, eliminating this conflict. The County of Orange disagrees that development of a SWRP is indeed voluntary for the following reasons:

- a. All local governmental and water agencies will need to implement projects in compliance with existing state permits; in the absence of a regional SWRP, each agency would need to produce their own SWRP. This both runs contrary to the intent of a watershed-based planning approach and would be overly-burdensome for a singular agency without having prepared the majority of required elements of a SWRP apart from a regional effort.
 - b. Stormwater and non-stormwater capture projects that reduce or eliminate runoff are essential to reducing pollutants from municipal systems over the long-term. Significant efforts have already taken place to meet municipal permit and TMDL requirements; however, projects on a site-by-site basis will be necessary for watershed-based planning requirements going forward. For regions in the midst of preparing documents similar to but not in alignment with a SWRP under the auspices of meeting regulatory compliance, a separate SWRP will be required in order to fulfil implementation goals. Local agencies do not have the resources to fully fund stormwater and non-stormwater projects and rely on state funding through the Storm Water Grant Program to construct beneficial projects.
2. Intent and Purpose of SWRP: The County of Orange supports integration of stormwater, green infrastructure and IRWM for the purposes of planning. Indeed, the County of Orange, cities and stakeholders are currently developing a Water Quality Improvement Plan (WQIP) as part of a two-year public process for South Orange County to meet regulatory compliance requirements. A similar plan for North Orange County will succeed the WQIP, following the anticipated December 2015 MS4 permit adoption by the Santa Ana Regional Water Quality Control Board. Development of a SWRP in addition to and simultaneous with these regulatory-based watershed planning efforts has the potential to delay both development and implementation of prioritized projects in the region through competition for limited jurisdictional resources. Consideration should be explicitly given to regions in the midst of integrated watershed-based analyses in the SWRP and grant guidelines. Specifically, timelines for development of a SWRP should not impede development of or compliance with similar regulatory-based planning documents.

Additionally, funding for projects included in the expected implementation phase of the planning effort currently underway is essential. Requiring additional resources to develop a compliant SWRP in order to likewise comply with separate planning documents required by Regional Water Boards is burdensome and hinders this important process at a pivotal point. We understand the purpose of developing guidelines for a SWRP and associated grant program; however, the intent to integrate watershed planning efforts is less clear if compliance with water quality standards and planning efforts is not a priority.

Procedural: SWRP Submittal, Approval and Incorporation

3. SWRP Submittal: A completed SWRP is a funding eligibility requirement in the draft Storm Water Grant guidelines, the solicitation for which is expected in early 2016. Release of the draft SWRP Guidelines in late August 2015 provides agencies approximately six months to compile a plan that meets the required elements specified in the guidelines. For regions of the state where enhanced watershed-based planning is underway but not yet completed, this timeline does not provide adequate time to either develop a new plan or to conduct a comprehensive review of existing documents for demonstration of functional equivalency. Though \$20 million will be available state-wide for SWRP development (i.e. planning grants), the solicitation for these funds aligns with that of the first round of implementation funding, impeding regions in the midst of planning efforts from receiving implementation funds.

In order to maximize implementation of stormwater and dry weather runoff projects, it is imperative that projects included in an adopted IRWMP be eligible for both rounds of implementation funding. We request that the guidelines be modified to require a SWRP as a condition of a grant agreement within 90 days of funding award as suggested by State Water Board staff at the October 7, 2015 State Water Board meeting. This modification would provide more regional agencies additional time to develop a SWRP while aligning more closely with timelines for existing watershed-based planning efforts. Additionally, we believe this supports Senate Bill 985 (SB 985) and Water Code section 10562, which require a SWRP as a condition of receiving funds from any bond approved after January 2014.

4. Plan Approval & Criteria for Determining Functional Equivalency: Developers of a SWRP should have the flexibility to do so based upon timelines for existing watershed-based planning efforts and/or to develop a functionally equivalent plan that would require reference to a multitude of existing documents. We support and appreciate the State Water Board staff suggestion at both the September 30, 2015 workshop and October 7, 2015 State Water Board meeting of allowing applicants to self-certify using a version of Appendix A that provides reviewers a reference to applicable document(s) and assurance of how this document meets compliance. Without the option of including functionally equivalent documents by reference, compliance with the elements of a SWRP could include attachment and review of IRWMPs, TMDL Comprehensive Load Reduction Plans (CLRPs), NPDES watershed hydromodification and infiltration mapping, Urban Water Management Plans supplied by other agencies, etc. Additionally, allowing a checklist format would prevent IRWM regions from having to append a multitude of documents to IRWMPs; documents would instead be incorporated by reference. Approval by State Water Board staff would likewise require review of only those referenced document sections and/or description of those elements provided in the checklist, reducing the burden on staff.

The County of Orange recommends development of a modified Appendix A checklist whereby applicants cite documents and applicable analyses to certify the *mandatory* required elements of the SWRP and California Water Code are met. This can be accomplished by adding a certification statement to declare compliance under penalty of perjury as with other regulatory compliance documents.

5. Funding Applicants Required to Develop a SWRP: Project applicants not representing a public agency (e.g. disadvantaged communities or non-profit organizations) should not be required to develop their own SWRP. However, to provide for watershed-level integration of storm water

planning, non-public agency project applicants should be required to submit projects to the agency developing the SWRP for inclusion in the prioritization process for the region and thus on the SWRP project list.

6. Project Eligibility: Inclusion of all projects in an approved IRWMP as included as part of a functionally equivalent SWRP should be explicitly allowed in the guidelines. Project eligibility in the context of inclusion in a SWRP should be verified through the checklist approach detailed in **comment 3** above.

Procedural: SWRP Development and Overlap with Funding Solicitation

7. As noted in comment 2 above, a completed SWRP is an eligibility requirement to receive Storm Water Grant funding. As included in Section III.E of the Storm Water Grant Program Guidelines, the solicitation for round one of funding will be awarded in spring 2016, which would require release and approval of final guidelines by the State Water Board in late 2015 and a grant solicitation in early 2016. Overlapping the first round of implementation funding with development of SWRPs within this short timeframe has the potential to severely limit the number of agencies able to apply for first round funding. The few regions which have completed Enhanced Watershed Management Plans will be in a position to apply for round one funding; this will neither equate to equitable distribution of funding throughout the state nor maximize support for varied watershed areas. In addition to the recommended option provided in comment 2, the County of Orange supports the two alternative recommendations provided in the comment letter submitted by the California Stormwater Quality Association (CASQA). These are as follows (paraphrased):
 - a. Develop a process to equitably distribute funds across the state for the Stormwater Grant Program. This should include consideration for regions without a SWRP, allowing those regions to apply for planning funding under Round 1 and defer implementation funding that would have been allocated to Round 2, contingent upon successful development of a SWRP.
 - b. For regions that need to update existing plans to meet SWRP requirements but that have already identified multi-beneficial projects within the watershed area that meet funding requirements, the guidelines could allow a phased approach to update a plan to meet the requirements of the SWRP concurrent with or followed by project implementation. This would require an extension of the timeline included in Section III.E, Table 3.

Comments by Section – Storm Water Resource Plan Guidelines

Section V.C Submission to Entities Overseeing Integrated Regional Water Management Plans and Other Local Plans

8. As noted in the guidelines, Water Code section 10562 specifies that a SWRP be submitted and incorporated into a local IRWMP upon completion. The language does not specify how this submission and incorporation must be documented for compliance with SB 985. This requirement is also reflected in Section VI.E.2.a and Appendix C-1 of the guidelines, which require a SWRP to identify a timeline for *incorporating* the SWRP into existing IRWMPs and project inclusion in an IRWMP *and* SWRP submitted as an attachment to the application,

respectively. We strongly recommend that the guidelines specify that inclusion of a project in a SWRP be met through proof of *submission* to an IRWM region. Moreover, proof of submission would provide the IRWM region the ability to determine how the SWRP will be incorporated from a procedural standpoint, preventing delays to the stormwater grant application process. This option is likewise supportive of the adaptive management approach for updating and re-submitting modified SWRPs over time.

Additionally, inclusion of a SWRP with each project application will be overly burdensome, especially if regions opt for a functionally equivalent plan comprising multiple existing plans. For example, developing a functionally equivalent SWRP for Orange County could result in attaching more than 10-20 separate documents ranging from Urban Water Management Plans to IRWMP chapters to TMDL CLRPs. The guidelines should be amended to require submittal of a signed checklist as described in **comment 3** above, verifying compliance with SB 985 by citing the relevant document. Additionally, a brief description of how the referenced document meets the required elements of a SWRP should be included in the checklist format to assist State Board staff in reviewing plans for compliance. The checklist option would provide IRWM regions the ability to ensure documents referenced do not conflict with IRWMP priorities as well as provide a mechanism to incorporate a large volume of documentation by reference into the IRWMP.

Section VI.A Description of Watershed and Sub-watersheds

9. The geographic scale of the watershed region covered by a SWRP should not be obligated to follow natural boundaries. Final guidelines should continue to allow flexibility in defining the geographic extent of a region by allowing developers of a SWRP to define the watershed area according to hydrologic and/or jurisdictional boundaries; this will provide for definition of project areas in highly urbanized watersheds according to modified drainage area and compliance authority. Additionally, regulatory requirements are applied to regions based upon both hydrologic and jurisdictional boundaries in urbanized watersheds; development of a plan based upon watershed area as defined by NPDES permits and TMDLs should be considered.

Section VI.C.2.b.i Demonstration of Collective Performance of BMPs Based on the Design Storm 85th Percentile, 24-Hour Storm Criteria

10. The guidelines recommend quantification methods to identify and prioritize storm water and dry weather runoff capture projects, including “*demonstration that the collective performance of individual projects (within the project areas of the watershed) captures the dry weather runoff and, at minimum, the first flush from an 85th-percentile 24-hour storm event based on available watershed-specific rainfall data for beneficial use and proposed multiple benefits.*” Regions with infiltration challenges due to soil conditions, groundwater contamination issues, landslide potential, and liquefaction may not be able to meet this requirement. The County of Orange strongly recommends that this provision apply to individual BMP projects only; demonstration on a regional scale would limit projects that might provide benefits within the region. Specifically, the County of Orange recommends amending Section VI.C.2.b.i of the SWRP guidelines to clarify that capture of the 85th percentile, 24-hour storm event be required at the individual project level, as applicable, based upon the watershed-level analysis.

Storm Water Grant Guidelines

Section III.D Match Requirement

11. For implementation projects, eligible reimbursable expenses are only allowed to be applied to the funding match requirement if incurred after adoption of the Storm Water Grant Program Guidelines (expected in December 2015) and before the completion date of the project. Previous voter-approved state bond-based grant programs (i.e. Proposition 84) have allowed inclusion of eligible matching funds to the date of voter approval for the funding bond. For consistency with previous grant programs, we recommend modifying the eligibility requirement for matching funds to allow inclusion of expenditures back to the date of bond approval – November 4, 2014.

Thank you for the opportunity to provide comments. If you have any questions, please contact Jenna Voss at (714) 955-0652.

Very truly yours,


for Mary Anne Skorpanich, Deputy Director
OC Public Works