

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,
SAN DIEGO REGION**

MEMO

**Item No. 11
Doc. No. 8**

TO: Michael McCann
Assistant Executive Officer

FROM:  Jeremy Haas
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Compliance Assurance Unit

DATE: November 3, 2009

SUBJECT: Review of City of San Diego Supplemental Environmental Project
Proposal, Lake Hodges Case

Background

In response to ACL Complaint No. R9-2009-0042, the City of San Diego submitted a proposal on October 26, 2009 for a Supplemental Environmental Project (SEP) titled "*Lake Hodges/San Dieguito Watershed Water Quality Monitoring Project.*" The ACL Complaint was issued in response to a sanitary sewer overflow into Lake Hodges, and the proposed SEP would fund a five-year water quality monitoring program in the Lake Hodges watershed.

This memo includes a review of Regional Board and SEP Policy criteria, but does not evaluate the merits or quality of the SEP. Because the prosecution team has been preparing for a public hearing on the ACL Complaint, it was able to only provide minimal technical support to the City on the SEP application process. For similar reason, this memo provides a cursory review of the proposal and does not include a recommendation in favor or against the SEP.

SEP Project Summary

The City would provide funds to a non-governmental organization, Coastkeeper, to perform sampling and field observations and measurements of dry and wet-weather urban runoff at four tributaries to Lake Hodges for a period of five years. Laboratory analyses would be performed by Coastkeeper and City laboratories. Work products would include monitoring reports and public presentations. The City estimates the five-year budget at \$170,000. It is unclear whether the full amount of this monitoring program is being requested by the City.

The City states the SEP would supplement an existing, discretionary Lake Hodges watershed monitoring program run by the Public Utilities Department that was greatly scaled back around 2005 as a result of funding constraints. It is unclear whether other agencies with an interest in Lake Hodges are participating in the watershed monitoring program or how this proposal complements other monitoring programs proposed for Lake Hodges.

Regional Board SEP Criteria

As proposed, the SEP proposal meets the general criteria that Regional Board staff presented to the Board in the September 2009 Executive Officer’s Report. Specifically, the project would qualify because the monitoring would be supplemental to existing requirements. This has been confirmed by watershed unit staff. Additionally, the following general criteria have been met:

General Regional Board SEP Criteria	Is Criteria Met?	Notes
Does the SEP further the mission of the Regional Board?	Yes	
Has the Discharger considered and committed to the SEP?	Yes	
Does the SEP have a definitive beginning and end, and is the SEP timely?	Yes	The proposed project would span from December 1, 2009 through November 3, 2014.
Is the SEP “shovel-ready;” Are permits, planning, and design complete?	Yes	The City proposes to start sampling in January 2010. Final design would depend on the amount of money allocated to the SEP
Are there measureable performance objectives?	Yes	These objectives are primarily related to water quality monitoring, analysis, and educational outreach.

State Water Board SEP Policy

As proposed, the SEP meets the general criteria in the State Water Board’s SEP Policy.¹ The \$170,000 is less than 50 percent, plus staff costs, of the recommended \$620,278 liability. If the Board chooses to direct funds to the SEP, then the Tentative Order would need to be revised in order to make it consistent with the SEP Policy. The following items would need to be included in the Order:

1. Quarterly reporting. The SEP Proposal includes only annual reporting to the Regional Board;

¹ Policy on Supplemental Environmental Projects, adopted February 3, 2009.

2. Final report. The Order must require the discharger to provide the Regional Board and the Division of Financial Assistance of the State Water Board with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. Where a third-party performed the SEP, that entity may provide the report and the certification;
3. Suspended liability per milestone. The Order must identify the amount of liability that will be permanently suspended upon the timely completion of each milestone;
4. SEP publicity. The Order must require that that whenever the discharger, or its SEP contractor, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Regional Board enforcement action;
5. Staff costs. The full costs of any required SEP oversight by the Regional Board must be covered by the discharger. SEP oversight will include review of quarterly reports (roughly eight hours per year for review and CIWQS entry), review of the final report (approximately 4 hours), and any necessary follow-up to each review;
6. Third-party expenditures. The Order must require a written acknowledgment and other appropriate verification and enforceable representation to the Regional Board by each third-party performing the SEP that any SEP funds it receives from the discharger will be spent in accordance with the terms of the order. The third-party performing the SEP must agree to an audit of its SEP expenditures, if requested by the Regional Board; and
7. Final audit. The Order must require the discharger to provide the Regional Board a final, certified, post-project accounting of expenditures, unless the Regional Board determines such an audit is unduly onerous and the Regional Board has other means to verify expenditures for the work. Such accounting must be paid for by the discharger and must be performed by an independent third-party acceptable to the Regional Board.

Recommendation

The prosecution team does not have a recommendation on approval of the SEP at this time because the team's efforts have been directed at preparing for the hearing.