



VIA ELECTRONIC MAIL

June 30, 2015

Joe Karkoski, Manager, Bonds Section
Lisa Babcock, Chief, Underground Storage Tank Cleanup Fund Branch
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
gwquality.funding@waterboards.ca.gov

RE: Comments on Proposition 1 Groundwater Sustainability and
SB 455 Site Clean-up Subaccount Program Implementation
Requirements

Dear Mr. Karkoski and Ms. Babcock:

I am submitting comments on behalf of the California Water Association ("CWA"), which is a statewide association representing the interests of 113 water utilities subject to the jurisdiction of the California Public Utilities Commission. These companies are responsible for serving safe, high-quality drinking water to approximately 6 million Californians, including a significant number living in financially disadvantaged communities or eligible for low income rate assistance programs. CWA respectfully offers the following comments on the application process for grants and loans pursuant to Proposition 1 Groundwater Sustainability and SB 455 Site Clean-up Subaccount Program ("SCAP"), including the scoping questions posed by the State Water Resources Control Board ("SWRCB").

As public utilities defined as such under Section 216 (a) of the Public Utilities Code, CWA's members look forward to applying for grants and loans under the Proposition 1 Groundwater Sustainability program and SCAP. As taxpayers, our customers deserve access to government funding through their water utility to offset the cost of new groundwater regulations and environmental remediation to ensure reliable and clean water supplies. Therefore, CWA attended the workshop on June 4, 2015 and submit the following letter for your consideration as the SWRCB develops the guidelines under these statutes for program implementation.

Jack Hawks, Executive Director
California Water Association
601 Van Ness Avenue, Suite 2047
San Francisco, CA 94102-6316
415.561.9650
415.561.9652 fax
415.305.4393 cell
jhawks@calwaterassn.com
www.calwaterassn.com

Melissa Dixon, Administrative Director
California Water Association
1215 K Street, Suite 940
Sacramento, CA 95814
916.231.2147
916.231.2141 fax
mdixon@calwaterassn.com

CWA President
Greg Milleman
California Water Service Group
661.476.0574
gmlleman@calwater.com

CWA Vice Presidents
Lawrence Morales
East Pasadena Water Company

Keith Switzer
Golden State Water Company

Evan Jacobs
California American Water

CWA General Secretary and Treasurer
Leigh Jordan
Park Water Company
P.O. Box 7002
Downey, CA 90241-7002
562.923.0711
leigh@parkwater.com

CWA Billing Address
California Water Association
1215 K Street, Suite 940
Sacramento, CA 95814

CWA Mailing and Shipping Address
California Water Association
601 Van Ness Avenue, Suite 2047
Mail Code: #E3-608
San Francisco, CA 94102-3200

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 2 of 10

I. General Comments on SCAP and Proposition 1

A. Assuring Appropriations for Implementation of the Proposition 1 and SCAP Programs.

Proposition 1 § 79771 establishes a \$900 million fund, which, upon appropriation by the legislature, shall be available to fund expenditures on, and competitive grants and loans for projects to prevent or clean up contamination of groundwater, provided that at least: (i) \$80 million of the fund shall be available for grants for treatment and remediation activities [§ 79772]; (ii) 10% of the fund shall be for projects serving severely disadvantaged communities [§ 79774(d)]; and (iii) \$100 million shall be made available for competitive grants for projects that development and implement groundwater plans and projects established under Division 6 of the Water Code. SCAP establishes an account into which State Treasury monies shall be deposited on an annual basis [§ 25299.50.6(a)]. Upon appropriation by the legislature, those funds are made available to address expenditures that a water board or local agency incurs to remediate harm or threat of harm to human health, safety, and the environment caused by existing or threatened groundwater surface of contamination [§25299.50.6(b)].

Without a doubt, the cumulative total in funding available for groundwater clean-up is significant and provides a much-needed resource to augment the State's useable drinking water supply. But it is important to consider the very substantial costs associated with clean-up of groundwater basins, which are often not confined and are generally subject to a variety of contaminant sources. By way of example, funds actually recovered by certain CWA members for groundwater basin remediation activities have totaled \$100 million to \$350 million for each of three different, discrete operating units. Because costs associated with groundwater clean-up are so high, CWA suggests that the SWRCB provide continued leadership, and devote staff on a priority basis, to assuring that the legislature fully appropriates available funds from the Proposition 1 and SCAP accounts to generate tangible, material benefits for the State's groundwater supply.

B. Proposition 1 § 79704 requires water quality monitoring and watershed monitoring.

In determining requirements for monitoring that will be imposed on grant and loan recipients, CWA urges the SWRCB to consider that Prop 1 mandates priority issuance of grants and loans for small, disadvantaged, and severely disadvantaged communities. However, practical experience suggests that the magnitude of monitoring costs alone often make a clean-up project infeasible, especially for those types of communities. Therefore, in determining mandatory monitoring requirements that will encumber grants and loans, the SWRCB guidelines should ensure that monitoring

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 3 of 10

requirements imposed on funding recipients should: (1) be streamlined and site specific; (2) only consist of data collection that is necessary to evaluate the clean-up project; and (3) should only be imposed after a determination that other data available from other sources characterizing in the groundwater is insufficient to assess the effectiveness of the clean-up project.

The boards should also be directed to assure prompt compilation and open access to relevant data from other sources/sites, so that the SWRCB can effectively rely on such data to discourage duplicative and wasteful data collection exercises. Data collection and monitoring by grant recipients should be imposed only as needed to fill gaps or update stale data to provide an assessment of the effectiveness of the clean-up project. More specifically, CWA requests that the following be considered in determining monitoring requirements that will be imposed on any funding recipient:

- 1) *Exactly what questions are most important for the fund recipient to answer and what type of groundwater data is it most important to obtain for that purpose?*

Monitoring requirements are often imposed without determining the exact questions that need to be answered and the data that is necessary to answer the questions. As a result, monitoring requirements often are designed to obtain a large volume of data, without assuring that all data is useful for a specific purpose. CWA suggests that the primary question that should be answered is whether the clean-up project is resulting in meaningful progress toward remediation of the contaminants being addressed. Monitoring requirements should then be streamlined and tailored to focus on collecting only the data needed to answer that question, which will prevent a situation where monitoring costs preclude a clean-up project. In addition, the SWRCB should take care to assure that monitoring results are not used to eliminate or preclude funding of projects that do not yield data confirming attainment of groundwater quality objectives so long as the objectives show progress towards remediation. Too often, the quest for perfect monitoring results indicating attainment precludes projects that make good progress towards cleaning up contamination.

- 2) *What data is necessary in addition to already available information to assess the effectiveness of the clean-up program funded?*

In many cases, existing monitoring data may be sufficient to determine remedial progress, but additional and expensive monitoring requirements are imposed anyway, e.g., in a quest to obtain more general information about a particular

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 4 of 10

basin or as a substitute for site assessment data that is unavailable from other sources. CWA suggests that all existing data sources should be evaluated to determine the extent to which they may be sufficient in determining containment and remedial progress, and to the extent existing data is sufficient, such data should be relied upon to satisfy the requirements of § 79740, rather than imposing additional monitoring costs that make the clean-up project more expensive without actually contributing to remediation.

- C. Proposition 1 § 79771(a) states that funds can be granted or loaned for projects that prevent or clean up the contamination of groundwater that serves or has served as a source of drinking water.** While Proposition 1 § 79771(a) states that funds can be granted or loaned for projects that prevent or clean up the contamination of groundwater that serves *or has served* as a source of drinking water, CWA recommends prioritizing grants and loans for projects that prevent or clean up the contamination of groundwater that currently serves as a source of drinking water. Prioritizing clean-up of groundwater that is currently employed as a drinking water source would have the benefit of directly and immediately augmenting public drinking water supply, which is critical both in the short term, due to drought, and in the long term, due to demographic pressures in the state.

II. Proposition 1/SCAP Scoping Questions

- A. *What kinds of considerations other than those mandated by the statutes should be considered in evaluating projects and prioritizing issuance of grants/loans?*** In general, CWA suggests that the SWRCB should not impose additional arbitrary criteria on award or prioritization for award of funding other than the criteria specifically mandated for consideration by the legislature. For example, CWA discourages imposition of arbitrary caps on the availability of grants rather than loans, arbitrary limits on the types of pollutants that can be addressed, or arbitrary caps on the amount of funding available to certain types of recipients. CWA discourages such criteria particularly to the extent that imposition of such criteria would reduce availability of funds for clean-up projects in general, or for projects that are difficult, expensive or take a long period of time to implement because implementation difficulty and associated extended remediation time periods and costs are primary reasons that much needed remediation projects are not done. Instead, CWA suggests that the SWRCB should consider factors related to the cost-effectiveness and remediation benefit that a clean-up project would provide as the primary method of determining funding priorities.

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 5 of 10

- B. *Should the SWRCB prioritize short-term solutions, ongoing operations and maintenance, or permanent solutions differently?*** CWA recommends that prioritization focus primarily on the effectiveness and cost-benefit of a remediation project, rather than singling out particular implementation periods, types of remediation methodology (e.g., those requiring ongoing O&M or those that are permanent), or types of costs funded (e.g., capital costs v. O&M costs). If the remediation benefit of a clean-up project exceeds the costs of the project, and project progress towards remediation of a groundwater supply would be meaningful, then the project should be funded. CWA cautions, however, that when grants/loans are provided for capital expenditures, it is critical to assess and determine whether the project funded can be operated by the recipient as intended and to full remediation effect, both from a technological and financial perspective. Therefore, application requirements should include requirements designed to elicit information from applicants to allow the SWRCB to determine the ability of an applicant to properly operate and maintain a clean-up project as necessary to maximize remediation results and make progress toward groundwater supply remediation. Funds allocated to capital projects that are later abandoned or operated sub-optimally due to lack of technology, expertise, or ongoing funding would be wasted.
- C. *Should projects that address certain contaminants referenced in the statute be given higher priority than others?*** CWA recommends that prioritization should be determined by the progress towards a useable drinking water supply that is anticipated to result from the project, rather than by considering the particular contaminant that is under remediation. It may be that clean-up projects for certain contaminants may more often be funded, based on a particularly widespread or intractable problem associated with a certain pollutant. Nevertheless, funds should be widely available to remediate whatever contaminant precludes groundwater use in order to maximize the contribution the remediation projects make toward augmenting drinking water supply.
- D. *Should the timing of project completion or the time period for realization of project benefits be considered in prioritizing issuance of grants/loans?*** Consistent with a primary focus on prioritizing funding of remediation projects that are most cost-effective and provide high cost benefit, CWA suggests that the term of the project should be less important than the impact that the project is anticipated to have on augmenting useable groundwater supply. A longer-term, lower-cost project that will yield a useable drinking water supply for millions of people should be funded even if it may take longer to implement than a short-term project that results in a quick benefit, but only creates a useable drinking water supply for a small number people. In fact, there should be sufficient flexibility for the SWRCB to balance these types of considerations for all

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 6 of 10

projects, and then fund both types of projects where the remediation benefits warrant their approval as compared with other projects.

- E. *Should issuance of loans rather than grants be prioritized?*** CWA submits that the facts and circumstances related to the ability of the clean-up project, or its applicant to create a long-term funding source for repayment of the loans, should be the primary consideration in determining whether a loan or grant is provided, instead of imposing an arbitrary cap on grant availability. When financial circumstances or project attributes allow for the generation of a payment stream to service the loan, loans should be provided. When those circumstances do not exist, grants should be provided.
- F. *What kind of benefits should be prioritized?*** Consistent with CWA's mission and the stated intent and purposes of the two statutes, cost-effective clean-up projects that augment useable groundwater to provide a safe drinking water supply for the health and safety of California citizens and the environment should be prioritized.
- G. *What kind of limits should there be on grant funding amounts?*** CWA suggests that the SWRCB offer grants of varying sizes based on the number of service connections that will benefit from the award of the grant. This will ensure that projects of all sizes are able to compete for funding. These suggested grant amounts are based on recent project estimates for groundwater projects. Below, please find an outline of suggested grant amounts based on the population to be served:
- 1) Small Projects – less than 5,000 service connections, up to \$3 million total grant award;
 - 2) Medium Projects - 5,001 to 25,000 service connections, up to \$7 million total grant award;
 - 3) Large Projects - over 25,000 service connections, up to \$20 million total grant award; and
 - 4) Regional Projects – serving more than 100,000 service connections, up to \$40 million total grant award.

III. Proposition 1 Scoping Questions

- A. *How should we assess a community's ability to pay for operations and maintenance of a facility funded by Proposition 1 funds?*** As noted above, CWA supports SWRCB consideration of the ability of applicants applying for grants or loans for capital expenditures to determine whether the project funded can be operated by the applicant as intended and to full remediation effect, both from a technological and financial perspective. In answering this scoping question, CWA also suggests that the

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 7 of 10

SWRCB may find useful U.S. EPA's guidance for determining a funding applicant's ability to pay for brownfields clean-up projects. Based on EPA's brownfields guidance, CWA recommends that the application materials be designed to elicit the following information regarding an applicant's ability to pay:

- 1) Financial information relevant to an assessment of the applicant's ability not only to invest in clean-up project capital improvements, but also to pay financing, carrying, operation and maintenance costs of the clean-up project. Relevant financial information would include the agency's credit and bond rating, as well as information related to current and future projected agency revenues, expenses, and capital expenditures for that period of time that is reasonable based on the anticipated life of the clean-up project, and the time period for which it can be assumed that projections will be reasonably accurate.
- 2) Staffing resources, experience and expertise in the remediation technology proposed for implementation, including experience and expertise in operations and maintenance available to the applicant, either on staff or via stable consulting relationships, and related costs of maintaining sufficient staffing resources.

B. *What would constitute a reasonable effort to identify responsible parties and recover costs by parties receiving funds?* Proposition 1 §79771(c) states that parties receiving funding authorized by the proposition should "use reasonable efforts to recover the costs of groundwater cleanup from the parties responsible for the contamination." While U.S. EPA's brownfields regulations again are relevant and useful for answering the scoping question, the federal brownfields rules require only that applicants need to use reasonable efforts to identify responsible parties tied to a particular contaminated site, for example, the specific parties connected with particular petroleum-impacted parcels proposed for clean-up. It is far more feasible to identify parties associated with a particular contaminated parcel as required for brownfields funding because typically an applicant only needs to identify the chain of ownership and the operational history for a specified parcel to fulfill the requirement. It is far more difficult to identify workable criteria for using reasonable efforts to determine parties that may have contributed to basin-wide groundwater contamination. In light of the need to identify parties associated with groundwater contamination that involves multiple parcels, additional requirements that applicants retrieve and evaluate information available from government and/or watchdog databases may also be appropriate. To improve timely implementation and success of the clean-up project, CWA suggests that any additional criteria imposed on applicants by the SWRCB with respect to identification of potentially responsible parties (PRPs) associated with widely disparate contributions of contaminants to a groundwater basin

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 8 of 10

must include direct and detailed references to exactly the databases and information sources that must be retrieved and assessed to support an application. Only promulgation of direct, detailed requirements for determining PRPs can assist applicants in avoiding lengthy research and analysis projects to support an application, resulting in delayed funding and implementation of the actual clean-up efforts.

Similarly, under federal brownfields rules, EPA is only required to consider whether a funding applicant has used reasonable efforts to identify PRPs likely responsible for the contamination; the federal rules do not impose an obligation on applicants to affirmatively chase and try to recover clean-up costs from other PRPs, as is required by Proposition 1. Almost all efforts to recover funds from PRPs involve complicated, expensive and protracted legal action, typically requiring both administrative proceedings and litigation. Given the substantial cost and expense associate with such proceedings, which reduce funds available for actual groundwater clean-up, CWA urges the SWRCB to determine those efforts that constitute “reasonable efforts to recover” from PRPs in the context of the applicant’s own resources. A single lawsuit against well-financed PRPs, of course, could quickly overwhelm an applicant’s finances, particularly if the applicant is a small, disadvantaged or severely disadvantaged agency. Further, CWA suggests that “reasonable efforts” for applicants should consist of identifying *primary* (but not necessarily all) PRPs likely to have contributed to contamination in groundwater supply and notifying them of their potential responsibility. Identification of all PRPs associated with contamination of a particular groundwater basin would quickly become cost-prohibitive for most local agencies. Similarly, requiring applicants to pursue cost recovery against PRPs, rather than simply identifying and notifying them of their responsibility, is also likely to be prohibitively expensive and would preclude meaningful progress on groundwater clean-up for most if not all small, disadvantaged, and severely disadvantaged communities.

- C. *How should responsible parties’ unwillingness or inability to pay for the total cost of clean-up be evaluated?*** Proposition 1 §7977(b)(5) states that grants and loans should be prioritized for projects addressing contamination when responsible parties are unable or unwilling to pay. As noted, CWA suggests that whether a responsible party is unable to pay correlates closely with whether a responsible party has “ability to pay” and/or is viable for purposes of considering federal brownfields remediation grants as administered by U.S.EPA under their regulations. Accordingly, the information discussed in Section IV.A. above, which U.S. EPA considers in funding brownfields remediation grants, would be useful for the SWRCB to consider in evaluating Proposition 1 funding applicants.

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 9 of 10

Proposition 1, however, contrary to the federal brownfields rules, also requires consideration of whether a responsible party is unwilling to pay. Identifying criteria that will help the SWRCB determine if an applicant has determined whether a PRPs is unwilling to pay is difficult because, at least to some extent, all PRPs are typically unwilling to pay, and the SWRCB will have to be careful to adopt criteria for determining unwillingness to pay that will actually identify the degree to which a PRP is atypically recalcitrant, while at the same time avoiding an undue burden to the applicant in demonstrating a PRP's unwillingness to pay. From a practical perspective, CWA suggests that the SWRCB might elicit the following types of information to assess unwillingness of PRPs to pay for clean up:

- Any existing documentation of liability asserted against a PRP under the federal Clean Water Act, RCRA, CERCL or the Oil Pollution Prevention Act, and OPA, including notice letters, Notices of Violation, other enforcement filings or responses to any of those items; or
- In the absence of existing documentation, the issuance by an applicant of a demand letter and response letter, cc'd to the SWRCB and designed to ascertain a PRP's "unwillingness to pay for clean-up costs, as condition precedent receiving funding award. If no response is given, then the SWRCB should presume that the PRP is "unwilling to fund" clean-up for purposes of making awards.

IV. Other: FFAST Application Submittal – Applicant Identification

- ***2.1 Who is the Applicant? 6. Public Utility, not a water purveyor.*** The reference to the type of applicant should be corrected on the pre-application form to read "Public Utility." The following phrase, "not a water purveyor" should be deleted. Public Utilities are water purveyors and provide drinking water to customers.

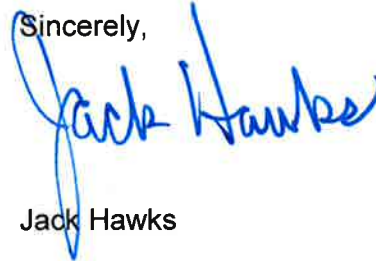
V. Conclusion

Thank you again for the opportunity to provide these comments and recommendations for SCAP program implementation. CWA's member water companies are eager to put the considerable funds to work to address eligible projects at sites in need of clean-up across the

Joe Karkoski and Lisa Babcock
June 30, 2015
Page 10 of 10

state. CWA is happy to be a resource to the SWRCB as program guidelines are further developed. Accordingly, if you have any questions or if any of these recommendations require further clarification, please contact me at 415-561-9650.

Sincerely,



Jack Hawks

cc: Members of the State Water Resources Control Board
Tom Howard, Executive Director
Darrin Polhemus, Deputy Director, Division of Financial Assistance
Leslie Laudon, Assistant Deputy Director, Division of Financial Assistance