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Re: Proposition 50, Chapter 8 Integrated Regional Water Management Grant Program
Guidelines Proposal Solicitation Packages, Round Two - Public Review Draft.

I would like to offer the following comments on behalf of my clients, the County of Plumas and the Plumas County Flood Control and Water Conservation District. We wish at the outset to make it clear that we do not intend on applying for additional funding under the "Round 2" cycle. Further, we offer these comments not just in regard to the subject guidelines, but also with an eye towards to the eventual Proposition 84 Grant program for Integrated Regional Water Management plans and projects. Therefore, our comments will be somewhat more general in nature and speak to matters with broader implications.

If you have any questions regarding these comments or wish to discuss these matters please do not hesitate to contact me. Additionally, I want to thank you for the opportunity to participate in the review of the Guidelines and look forward to working with you on the IRWMP effort.

Sincerely,

John S. Mills

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cc: Mr. Scott Couch, State Water Resources Control Board

1. Who may apply for implementation grants

In reviewing the criteria for applicants for grants we have some concerns regarding what could be a problem in future funding cycles. Theoretically, it would be possible for an entity which is not located within the geographic scope of the IRWMP Planning area to adopt the subject IRWMP (even after the fact as it were) and then apply for competing funding "inside" the plan area. This applicant would essentially be "riding the coat tails" of those who had developed the plan and using their efforts as a way to comply with a planning requisite to an implementation project absent any real commitment to the planning process or the community of place.

This case could involve an entity which is politically outside the region but has facilities, water rights, interests or ambitions of some sort inside the planning area. Without actually participating in the IRWMP planning process any entity could adopt the local IRWMP Plan. Once having done so they would be - theoretically - eligible to apply for implementation funding. While it is obvious that this is not what was envisioned in a collaborative IRWMP process, it is nonetheless permissible. This is perhaps something that was overlooked or unanticipated due to the assumption that no entity would conduct business in such a fashion. On the other hand, given the fact that California has a number of cases in which the owner of water storage, hydroelectric generation facilities and diversions are located in one part of the state (examples include East Bay M.U.D., the City and County of San Francisco, Pacific Gas and Electric, Southern California Edison, L.A.D.W.P. etc.) and their customers are in another, the notion is not inconsistent with our history of "governmental disconnection" between the resource and the beneficiaries. It would be preferable for DWR to clarify this point for two reasons.

First, any entity adopting a previously prepared IRWMP (by other parties) would be essentially bypassing the planning deliberations and regional governance structure resulting from the IRWMP, and devaluing the hard work of others. Should they prove able to move directly to implementation of projects by simply "sitting out" the difficult and timely effort of planning, they would undercut the whole theory of collaborative, integrated resources planning as well as bypassing the interests of the community of place.

Second, if the grant process were to allow such "cherry picking" by outside the area interests (absent a legitimate participation in the planning process) it would encourage a likely counter filing of applicants for projects in other parts of the state and simultaneously seriously damage the value in collaborative planning efforts. Such a state of affairs could be easily avoided by having DWR underscore the importance of the IRWMP Plan representing a legitimate partnership of communities of place and interest committed - in the administrative record - to the development of a truly collaborative plan which not only integrates resources but also local governments, agencies, businesses, and other key interests.

2. Governance

At the present time there is no requirement that the proposal for implementation grants be formally supported by the local governing structure of the IRWMP Plan (that is those participating as partners to develop and administer the plan). For example, if parties A, B, C and D all participate in the development and adoption of an IRWMP Plan there is no affirmative requirement that an application by one or more of the parties is actually supported by the other parties who

were partners in the plan.

Per the example above once the plan is adopted one or more of the parties (A, B, C, or D) could each apply for funding (separately), be found consistent with the Plan by their own local entities findings and end up competing with each other for funding within the planning area. While in its purest form this would appear to empower competition and advance the “best” projects, in reality I suggest it would ultimately destroy those things needed for collaborative planning to function: an open exchange of information, interagency and organizational communication, common data protocols, peer-to-peer communication, a modicum of trust and local plan consistency. Absent a functional IRWMP governance, review and judgment of projects to implement the plan, the plan would fail as a collaborative document in that no real decisions would be made in the plan, or by its partners.

This would become fairly confusing to DWR in its attempt to sit Solomon like in judgment on what would essentially be a local/regional semi-feudal dispute. It would seem prudent that regardless of which single or combination of partners in the IRWMP Plan (and within that geographic area) applied for implementation funds there should be two mandatory tests of essential compliance with the Plan’s governance process.

First, each application for implementation funding must be formally and affirmatively found consistent with the local IRWMP Plan by the Plan partnership membership. That is, those who developed and adopted the plan and who are eligible to apply for funding to implement the plan.

Second, if there are two or more, competing projects from within the IRWMP Plan areas - both found consistent with the IRWMP Plan by the IRWMP governing entity for the Plan - then DWR should look for letters of support or opposition from within the IRWMP Plan membership and regional community at large when evaluating competing funding proposals within the planning area.

It is critical to the viability of the IRWMP processes that the local and regional institutional capacity, forged in the fires of the planning process, be recognized as a legitimate forum for sorting out local differences in a regional context. If DWR through omission or commission aids in bypassing this forum, they in turn will have to take up the challenging role of mediating local conflicts in a grant application process. This is neither the proper role for DWR, or the best venue for such a responsibility.

3. Plan overlap

There are already cases of Integrated Regional Water Management Plans being developed and adopted which overlap with other (and in some cases preexisting) IRWMP Plans. While in some cases such overlap is justifiable, and may make perfect sense, it also permits a precedent which could be troubling to the IRWMP Program and DWR over time. Given the complex tapestry of governmental boundaries, overlying water interests and hydrologic and administrative relationships that predate the IRWMP program, it is to be expected that there would be some overlapping of interests and jurisdictions. However, the overlapping of plans in which one is being prepared almost in competition with the other for a resource, should not be encouraged with public funds. For example, where one Plan’s membership includes an agency that is regulatory specific to a resource and the other Plan’s membership is working on the same resource - absent participation of the regulating agency - it seems counterproductive to invest in the latter plan.

Rather than promulgating “nested” or partially overlapping plans DWR should rather encourage either that the plans be merged into one larger Plan, or that a cooperative “inter planning area” accommodation be developed. That is, each of the Planning areas, assuming they each have a legitimate reason for staying separate, coordinates, communicates and attempts to make each other’s efforts complimentary to the other, rather than inconsistent. Finally, there should be some deference given to those plans - nested or overlapping - in which the local governments, local water agencies, land management agencies and local non governmental organizations are joined as partnership participants.

4. Readiness to Proceed

A readiness to proceed preference (as proposed by DWR in its recent Calfed Watershed Program Prop. 50 RFP) is understandable in the context that DWR would prefer to have projects submitted in which the environmental analysis has already been completed. This would permit funding for projects to proceed to construction absent any further analysis required under the California Environmental Quality Act and/or the National Environmental Policy Act. Unfortunately, this criteria if applied universally and without recognition of special circumstances, will preclude many watershed restoration programs from implementation and significantly impact already disadvantaged communities.

For example developing a watershed restoration project to meet readiness to proceed criteria requires at least 12-18 months of intensive project work by watershed program staff in advance of the application for funding. This entails working with landowners, environmental consultants, local interest groups, sometimes tribes, and agencies. Investments in up front costs for such projects may be further increased due to NEPA requirements if a Federal participation or entitlement is required. Further adding to the problem is that in many areas of the State where these projects are located, the local communities are disadvantaged economically and therefore have scant funding to engage in these sort of pre-application investments. In these situations readiness to proceed, intended for the best of purposes, becomes a very real barrier to certain geographic areas of the state and certain types of projects. This is not a desirable program attribute.

In a recent case involving the Feather River Coordinated Resource Management (FRCRM) group’s recently completed Proposition 13 Red Clover/McReynolds Creek Restoration Project, the challenge of pre-application work was significant. Fortunately, the FRCRM staff (representing a functional community capacity created over many years of investment) were able to complete the requisite tasks. Total costs were \$188,000. Without the use of FRCRM staff, and instead having to use “all-in-one” or non-local consulting firms the costs would have been \$300,000 or more.

Beyond the financial impacts to predominantly rural disadvantaged communities there are technical and regulatory issues that militate against such costly, uncertain, locally borne investments up front. Most of the required permits have a defined time period - usually one year - in which to be implemented. The highly competitive, time consuming grant application process usually requires at least that amount of time. All of those funds and efforts are of course in the hope that the application will be approved.

Additionally, environmental survey protocols and NEPA format/process schedules frequently change from year to year requiring additional work to even qualify for permit time extensions. Significant is the fact that most source watersheds have large United States Forest Service and/or Bureau of Land Management public land ownership and management. That fact triggers additional NEPA responsibilities for those agencies which are beyond the U.S. Army Corps of Engineers 404 process.

Finally, DWR must recognize that mountainous source watersheds are located at high elevations above sea level and constrained to a short season for all field

related work. Obviously, this can change due to specific weather conditions for any given year, but a typical season is June to November in the higher Sierra Nevada watersheds.

The readiness to proceed criteria should be modified to recognize the very real world constraints it will place on disadvantaged communities (in both discretionary funding and institutional capacity), those areas in source watershed landscapes and for those IRWMP efforts with federal land management partners.

We would urge DWR to provide special waiver rules for these circumstances so as to allow these communities, areas and partnerships to fairly compete with the more affluent, less seasonally constrained applicants in other areas of the state.

In addition we recommend that DWR consider that planning grant funding should also be available to allow for simultaneous environmental analysis as part of an IRWMP (Prop. 84) Planning Grant. Such a provision could be of great help to disadvantaged communities.

Specifically, we request that DWR offer future planning grants with funding for an IRWMP Plan Program Environmental Impact Report (Section 15168 C.E.Q.A. Guidelines, also please see Sections 21083 and 21087 of the Public Resources Code. Also see *County of Inyo v. Yorty*, 32 Cal. App. 3d 795 [1973]).

A Program EIR can be a valuable tool to decision makers in the IRWMP planning process. It can provide valuable insights into the environmental tradeoffs of various types of regional strategies as well as the likely attributes and disadvantages - environmentally - of the State Water Plan Water Management Strategies as applied to the subject IRWMP region. Such an approach would provide DWR with a sounder understanding of how the IRWMP reconciles environmental tradeoffs at a broad program level. We strongly urge DWR to consider making Proposition 84 IRWMP planning grant funds available to fund Program EIRs. This is especially critical for disadvantaged communities (for reasons stated earlier), but also provides benefits for all areas of the state through the additional information available upon which to base plan alternatives.

DWR may wish to consult with the Governor's Office of Planning and Research as well as existing IRWMP groups to discuss the potential advantages to this approach as compared to the use in some cases of a Master EIR (Section 15175 C.E.Q.A. Guidelines). As IRWMP planning is an emerging discipline, there may be some consideration for DWR to fund "pilot" tests of each type of analysis and monitor which works best at the IRWMP level of planning.

As a final benefit it should be noted that in either of these alternatives, the subsequent project level analysis may be significantly reduced to the IRWMP implementing entity. This would also provide a benefit to disadvantaged communities as well as reduce the time needed to implement the IRWMP.

END