

California Department of Water Resources
Division of Integrated Regional Water Management
Financial Assistance Branch
PO Box 942836
Sacramento, CA 94236
Attn: Ted Daum
Email: Theodore.Daum@water.ca.gov

October 18, 2013

RE: Comments for Draft Addendum – Appendix H – IRWM Plan Review Process

Dear Ted Daum,

In the spirit of the IRWM program collaborative process, in keeping with California Water Code (CWC) § 10530 *et seq.* and in order to comply with the Governor’s Executive Order B-10-11 we respectfully submit the following recommendations for the Draft Addendum – Appendix H - IRWM Plan Review Process.

Context for Consideration

CWC § 10541 (a) sets forth the intent of the IRWM grants program... “To enable broad and diverse participation in integrated regional water management plan development and refinement.” While all IRWMPs impact traditional Tribal Lands, representatives of California Indian Tribal Nations have repeatedly stated that they are excluded from the IRWMP process and associated funding opportunities, due to the current 2012 IRWM Program Guidelines, which fail to include Tribes. As a result, very few Regional Water Management Groups have included California Tribal Nations in governance roles and few Tribal projects have been funded.

In order to more closely align the IRWM Program and Guidelines, with the inclusionary intent of the program and the Governors’ Executive Order, Tribal Nation representatives and Tribal advocates have repeatedly asked DWR to provide information outlining how Tribes can assist DWR in making the appropriate changes to 2012 Guidelines and more recently to 2013 Guidelines.

In response, Tribal staff and advocates have been told that Proposition 84 language prohibits DWR from making changes. We could not find such prohibitory language in Proposition 84, which sets the minimum requirements of the IRWM Plan Standards. We did however find language in the IRWM CWC § 10541 (d) which grants DWR staff the authority to make changes as follows: “the department may periodically review and update the guidelines to accommodate changes in funding sources, statutory requirements, new commonly accepted management practices, and changes in state water management policy.” This language indicates that DWR staff does have the authority to make changes as Tribal Nations are requesting. As a result of our findings we have asked DWR to provide us with the specific language and citations that DWR staff interprets as blocking their ability to make needed changes. Most

recently we requested this information from Tracie Billington on October 1st at the Tribal Water Forum in Loleta, California. With this information Tribal representatives and advocates would like to assist DWR in removing these hurdles. We have not yet received a response to these requests and hope to have this information soon.

Appendix H is an example of DWR staff's ability to make changes to the Grant Guidelines, even after they have been submitted publically. The stated purpose of Appendix H is to assist DWR in the review of 2012 Plans. However, we are gravely concerned as this appendix continues to omit California Tribal Nations and also that it could be interpreted to prohibit Tribes from making the appropriate changes to the 2013 Guidelines; changes which would foster and strengthen the participation of California Tribal Nations.

Recommendations

We therefore submit the following recommendations should DWR move Appendix H towards adoption:

- 1) DWR should work with California Indian Tribes to create and add language to this appendix to insure that it does not limit DWR and Tribes from making the needed changes to 2013 Guidelines and that it will protect California Indian Tribes from further exclusion.
- 2) DWR should work with California Indian Tribes to revised the IRWM Plan Standard to explicitly include Tribal collaboration as criteria for each of the 16 IRWM Plan Standards and in particular in all areas where agencies, stakeholders or DACs are expected or are required to be provided the opportunity to participate including. This includes but is not limited to, the following recommendations:
 - a. Revise "Coordination with neighboring IRWM efforts and State and federal agencies" to "Coordination, collaboration and/or consultation with neighboring IRWM efforts, State and federal agencies and California Indian Tribes." (pg. 95)
 - b. Include an additional standard to: "Address specific benefits to California Indian Tribes/Native American Tribal Communities" near the standard of "Address specific benefits to DAC issues." (pg. 99)
 - c. Revise "Discuss potential impacts and benefits of plan implementation with IRWM region, between regions, with DAC/EJ concerns and Native American Tribal Communities" to state "Discuss and provide source documentation of the potential impacts and benefits of plan implementation with IRWM region, between regions, with DAC/EJ concerns and California Indian Tribes/Native American Tribal Communities."(pg. 100)
 - d. Recognize the jurisdiction of "California Indian Tribes" as land use planners and water managers explicitly in both current and future plan requirements under Relation to Local and Land Use Planning. (pg. 103)
 - e. Define and qualify all requirements under "Stakeholder Involvement" to specifically show how efficacy will be determined. (pg. 104)
 - f. Revise "Discuss involvement of DACs and tribal communities to "Illustrate the level of involvement of DACs, tribal communities and California Indian Tribes." (pg. 104)
 - g. Revise IRWM Plan Standard Matrix so that the standards related to California Indian Tribes are in one box to enable better participation.
- 3) DWR, in consultation with California Indian Tribes, should create a second 2012 Guidelines Appendix to address Tribal concerns and integrate these into future IRWM Guidelines.

- 4) DWR should clearly cite the specific language within Proposition 84, California Water Code (CWC) § 10530 *et seq.*, or other sources that DWR is interpreting as restricting their ability to revise 2012 Guidelines or to redraft the 2013 IRWM Guidelines.
- 5) DWR should provide a timeline and clearly outline the process for IRWM guideline revisions and/or related updates and allow California Indian Tribes a minimum of 90 days to review documents in keeping with state consultation and communication laws and policies currently in place and those development.
- 6) DWR should expedite meetings with California Indian Tribes in preparation for this Appendix and 2013 Guideline revisions.

Executive Order B-11-10 charged each state agency with creating policies and procedures wherein Tribes may provide meaningful input into the development of programs that affect them. California Indian Tribes/Native American Communities are included in the 2012 Guidelines, however Tribes were not included in the creation of this program or the guidelines which now govern the grants program. As a result Tribes are not included in ways that are effective and are omitted in crucial ways.

Therefore, we recommend that DWR does not adopt Appendix H as it stands, as it will weaken opportunities for California Indian Tribes to work with DWR staff to create future IRWM Guidelines wherein Tribes will be partners towards sustainable and equitable water management. Instead we strongly recommend DWR work with California Tribes on these and future Guideline revisions. This collaboration will lead to the creation and maintenance of respectful and equitable relationships between Tribes, local agencies, and community stakeholders in IRWM regions throughout the state. There are many California Indian Tribes already committed to working with DWR staff to increase Tribal participation in IRWMPs. Please assist us in creating and maintaining guidelines which will allow Tribes to do so.

If you have questions regarding these recommendations please contact us.

Respectfully submitted,

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