

The ENVIRONMENTAL JUSTICE COALITION FOR WATER

PO Box 188911
Sacramento, CA 95818-8911



Tel: (916) 432-EJCW (3529)
www.ejcw.org

BY ELECTRONIC MAIL TO <CRAIG.CROSS@WATER.CA.GOV>

April 11, 2016

Craig Cross
California Department of Water Resources
Division of Integrated Regional Water Management
Financial Assistance Branch
Post Office Box 942836
Sacramento, CA 94236

Subject: Comments on Draft 2016 Proposition 1 IRWM Guidelines, Draft Disadvantaged Community Involvement Program Request for Proposals, and Draft Proposition 1 Planning Grant Proposal Solicitation Package

To whom it may concern:

The following comments on the Draft 2016 Proposition 1 IRWM Guidelines, Draft Disadvantaged Community Involvement Program Request for Proposals, and Draft Proposition 1 Planning Grant Proposal Solicitation Package (collectively, hereinafter, "guidelines") are submitted on behalf of The Environmental Justice Coalition for Water (EJCW).

Who we are: EJCW is non-profit organization that supports a statewide coalition of grassroots groups and intermediary organizations building a collective, community-based movement for democratic water allocation, management, and policy in California. EJCW's mission is to educate, empower, and nurture a community-based coalition that serves as a public voice and an effective advocate for environmental justice issues in California water policy. We envision all communities throughout California having equitable access to safe, clean, and affordable water for personal, domestic, cultural, ceremonial, subsistence, and recreational uses. To that end, EJCW empowers the most under-served communities, including those of low-income and communities of color throughout California to advocate for and access safe, clean, and affordable water.

Background: It is important to note, at the outset, the importance of implementing the provisions of Proposition 1 that are intended to benefit Disadvantaged Communities well. Proposition 1 has more money and attention dedicated to the needs of Disadvantaged Communities than any water bond before it. The Integrated Regional Water Management Program (IRWMP), as a whole, stands at a cross-roads, with many calling for it to demonstrate the value of the public resource investments it continues to attract in order to justify its continuation. We believe the way in which these initial efforts to address the needs of Disadvantaged Communities are implemented through the State's Proposition 1 Disadvantaged Community Involvement and Technical Assistance programs will factor heavily into whether IRWMP will continue to enjoy public support.

Building social resilience and human infrastructure. The Disadvantaged Community Involvement and Technical Assistance programs must be administered with a view to more than just getting projects funded and even more than just getting the right people at table. The programs must also facilitate the development of functional, equitable, sustainable water governance through IRWMP and more, a system of shared benefits, and the alleviation of undue water-related burdens and building of long-lasting capacity that comes from efficient investments in human capacity, physical assets, and the power of networks of relationships (social and political capital).

Moreover, this particular set of resources come at a time when IRWMP is faced with both potential synergies and tensions with each groundwater basin's implementation of the Sustainable Groundwater Management Act (SGMA). The more critically overdrafted the groundwater basin, the more dire the stakes are for the Disadvantaged Communities located in and dependent on that basin. We view the DAC Involvement and Technical Assistance programs as both an integral and necessary part of building the capacity of Disadvantaged Communities to participate in and see some meaningful benefit from SGMA implementation.

Comments. With the above principles at their core, EJCW offers the following comments on the Draft 2016 Proposition 1 IRWM Guidelines, Draft Disadvantaged Community Involvement Program Request for Proposals, and Draft Proposition 1 Planning Grant Proposal Solicitation Package ("guidelines").

1. California's Human Right to Water policy requires careful consideration

California's Human Right to Water Policy applies to the Draft 2016 Proposition 1 IRWM Guidelines, Draft Disadvantaged Community Involvement Program Request for Proposals, and Draft Proposition 1 Planning Grant Proposal Solicitation Package, as they "establish" "grant criteria" "pertinent to" "human consumption, cooking, and sanitary purposes".

California Water Code section 106.3 states¹:

- (a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.
- (b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.
- (c) This section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b).
- (d) This section shall not apply to water supplies for new development.
- (e) The implementation of this section shall not infringe on the rights or responsibilities of any public water system.

Following from the passage of Assembly Bill 685 in 2012, past water bond guidelines have been subject to Section 106.3's requirement to "consider" the Human Right to Water, but have made rather cursory reference to its terms and objectives -- the universal realization of access to "safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes" within California. We believe these draft guidelines require greater attention to the application of the Human Right to Water as evidence of DWR's thoroughgoing "consideration" of the policy.

To aid DWR in this process, we make reference to the following guidance documents:

- UC Berkeley report:
[https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL\(1\).pdf](https://www.law.berkeley.edu/files/Water_Report_2013_Interactive_FINAL(1).pdf)
- OCHCR SR Handbook:
<http://www.ohchr.org/EN/Issues/WaterAndSanitation/SRWater/Pages/Handbook.aspx>
- SWRCB Human Right to Water Implementation Resolution:
http://www.waterboards.ca.gov/board_info/agendas/2016/feb/021616_6_with_draft_resolution.pdf
- State Water Plan 2013 Update, Objective 13.

2. Two project solicitations are better than one

Throughout DWR's process of collecting public input on the draft guidelines, the question has been posed whether one or two project solicitations would be better. This question strikes at one of our core assertions: that the benefits of Proposition 1 should be made as broadly accessible to the communities most in need of them as possible. Many of the communities most in need will require several years of capacity building and assistance in order to advance a project proposal for funding. While there are undoubtedly some efficiencies that would be gained from proceeding with a single project solicitation, we fear that the timeline proposed for

¹ Available online at: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wat&group=00001-01000&file=100-113>.

that single solicitation -- roughly early- to mid-2018 -- would leave behind a too significant number of the communities most in need of assistance, the project development phases of which would simply not yet have matured to the point that they could be put forth competently and competitively on that timeframe.

Consequently, we endorse having two project solicitations, so long as a meaningful amount of funding remains accessible in the second solicitation and that second solicitation falls towards the latter end of the performance period, e.g., mid- to late-2019. Our understanding is that the first of two solicitations would occur in late 2017, if not early 2018.

3. DAC Involvement performance period should be at least 3 years, subject to extension for good cause

In its public input processes, to-date, DWR has posited a two-year performance period. This timeframe seemed to be tied to the idea that there might be a single project solicitation. The experience of the seven IRWM Disadvantaged Community Pilot Projects and other regional Disadvantaged Community studies and planning projects suggest that a two-year performance period will be too fast for many regions to execute, while meeting the important, longer-term objectives described elsewhere in these comments, such as skill-based training and other capacity-building, relationship-building and the establishment of governance mechanisms based in mutual trust and support, among others.

As above, we endorse having two project solicitations and believe that a three-year performance period for DAC Involvement would be better suited to the timeline for the two project solicitations. Moreover, as discussed below, we encourage DWR and the State Water Board to coordinate the relevant timelines for performance under both the DAC Involvement and Technical Assistance programs, so that the synergistic benefits of having the two implemented in tandem can be realized. This objective would be better served by having a three-year performance period for DAC Involvement.

4. DAC Involvement should be coordinated with State Water Board's implementation of Prop 1 TA to maximize benefits to Disadvantaged Communities

Among various aspects of their implementation, we encourage DWR and the State Water Board to coordinate the relevant timelines for performance under both the DAC Involvement and Technical Assistance programs, so that the synergistic benefits of having the two implemented in tandem can be maximized. For example, as of the writing of these comments, the State Water Board has indicated it may allow those groups providing technical assistance under the Technical Assistance program to do so over a four-year timeframe, theoretically making it possible that technical assistance resources would be available to Disadvantaged Communities putting forward project proposals in what could be the second of two IRWMP project solicitations.

To the degree that data are collected in both the DAC Involvement and Technical Assistance programs, both agencies should coordinate the collection of those data in a statewide database, as described below.

5. Establish deadline by which DAC Involvement proposals must be put forward and work to support funding areas that need help reaching consensus with a back-up plan

To ensure that Disadvantaged Communities located within each and every IRWMP region that is eligible to receive DAC Involvement monies do, in fact, see benefit from the DAC Involvement Program, establishing a deadline by which DAC Involvement proposals must be submitted to DWR, subject to extension for good cause, is reasonable. Moreover, we endorse the phasing of the proposal process such that there would be a deadline for the initial draft proposal, which would be subject to review, feedback, and possible revision by DWR with the applicant(s), followed a reasonable time thereafter by a deadline for the final proposal, again, subject to extension for good cause.

This phased approach would allow time for some of the benefits of coordinating within and among funding areas to manifest in the final proposals and shed light on any areas that are having problems agreeing on a funding area-wide approach.

In the end, no IRWMP region should fail to have a competent plan and entity (or team of entities) guiding its DAC Involvement program forward. In some instances, this could mean that a funding area's plan or DWR would assign the lead role in implementing an IRWMP region's DAC Involvement program to a third party, not previously a part of that region's Regional Water Management Group.

6. SB 208 should be interpreted to apply to sub-funding area grants, at option of each IRWM region, project proponent, and beneficiary community involved

To the degree that DWR feels itself to be within a reasonable interpretation of SB 208, SB 208 should be interpreted to allow IRWMP regions, project proponents, and beneficiary communities to seek up to 50% of DAC Involvement project costs at project initiation. Though most, if not all, of the DAC Involvement program disbursements to funding areas will exceed the maximum grant threshold for the application of SB 208, DWR can and should make resources available up front, so that some of the costly and time-sensitive project activities, including community-based surveys and needs assessments conducted by residents of Disadvantaged Communities, themselves, will be able to get off the ground, where proceeding on a reimbursement basis may not prove timely. For example, anyone hired on a temporary, hourly basis must be paid for any work performed within at least a two-week pay period.²

² See California Labor Code section 201.3, stating: "if an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall

Thereafter, IRWMP regions, project proponents, and beneficiary communities should be allowed to seek additional installments, pursuant to SB 208, such that the obligation to spend down 50% of total project monies does not negatively impact the quality of the project by rushing it unnecessarily.

7. Funding area-wide needs assessment should occur prior to and guide any subsequent intra-funding area allocation

In keeping with the principle that the DAC Involvement program is intended to be about much more than simply getting funding for individual projects that benefit Disadvantaged Communities, it is our strong belief that DAC Involvement monies should be used to undertake a Needs Assessment. In some areas, for all practical purposes, this will mean initiating a new assessment. In other areas, it will mean augmenting an existing effort.

It follows from the conduct of a needs assessment that the needs (and assets) uncovered should inform a plan of action to both prioritize and meet those needs, over time, including potentially well beyond the performance period for Proposition 1 DAC Involvement.

Examples of how regional Disadvantaged Community needs assessments of one variety or another can be found on DWR's website.³

While the term, Needs Assessment, is used, here, that concept, in fact, encapsulates a considerable amount of nuance. For example, several IRWMP regions have made effective use of mapping relevant public and private data, much of which requires some tenacity and skill just to access. Once available, those data can illustrate patterns that more isolated and narrative data won't necessarily reveal. This, then, provides a roadmap, literally, in most instances, to where "hidden" Disadvantaged Communities might reside. These areas are then included when the more face-to-face community survey techniques are used, including targeted interviews, door-to-door canvassing, questionnaires, surveys, and so on. This phase then reveals a much more detailed understanding of the community circumstances that can, in turn, be integrated with the already mapped data to further fill out the landscape of need, inform additional data needs from the target communities, lead to possible solutions, including consolidation and regional solutions, act as an institutional repository of regional, community, and project level information, and so much more.

A companion assertion to the above is that DWR should not feel obligated to adhere to a pre-determined agreement among IRWMP regions within a funding area until after the adequacy of each region's plan to understand and address Disadvantaged Community needs has been established. This should include an examination of the quality of communications infrastructure,

be due and payable not later than the regular payday of the following calendar week", available online at: <http://law.onecle.com/california/labor/201.3.html>.

³ See: http://www.water.ca.gov/irwm/grants/p1_dac_involvement.cfm.

i.e., need for back-and-forth communication, routine and ad hoc forums, places to collaborate, etc.

8. DWR should set some minimal methodological and substantive standards for Needs Assessment

Either borrowing from the Disadvantaged Community pilot projects already undertaken or, better yet, borrowing from them and pulling together a representative working group at the outset of the DAC Involvement program, DWR should establish some minimum methodological and substantive standards and deliverables for the assessment of Disadvantaged Community needs.

9. Statewide database needed

We believe there would be great value to the statewide IRWM Program and each individual region to consolidate the results of that needs assessment into a single database, which could serve as a source of guidance for the DAC Involvement program, as it advances, a basis for program evaluation at multiple scales, a body of information around which to convene important conversations of statewide importance and common to each region in the state, and a means to set priorities and justify additional public investment in the future.

This effort should be funded by DWR either directly or indirectly through the IRWMP regions.

10. Statewide supra-coordination needed

DWR should build into the guidelines and associated documents a means by which some level of statewide coordination can be funded and encouraged, if not required. This forum would serve its most important functions early in the implementation of the DAC Involvement program by bringing all those involved in the program to the table to share promising practices, solutions to challenges or hazards that may have been encountered, etc.

11. Evaluation should be built into the DAC Involvement Program from the very beginning

Following from the establishment of some methodological and substantive standardization, DWR should ensure that program evaluation will be built into the program from the initial plan proposal phase. This may take the form of funding areas needing to choose from list of objectives and evaluation criteria pre-approved and suggested by DWR or by otherwise stating objectives along with a rationale for their inclusion, tied to local circumstance. In the absence of any plan for evaluating performance, program applications should lay out a clear, time-delimited plan to arrive at those goals and objective statements by engaging affected communities in the work of generating them.

12. Pre-MHI studies should be an eligible program cost

A portion of the DAC Involvement monies should be available for pre-MHI studies -- the initial examination of what the results of a full MHI survey might be, so as to inform whether that full MHI survey would, in fact, be beneficial to the community, understanding that there are reasons why conducting a MHI survey in a community that appears to be at the margins of Disadvantaged status and coming up with a negative (non-DAC) result would be disadvantageous, in addition to being a waste of resources.

13. All RWMG meetings should be publicly noticed and consolidated on DWR website

All Regional Water Management Group meetings should be publicly noticed and DWR should maintain a public web page or calendar that lists the details of those meetings, including any agenda, time, and location information.

14. DAC Involvement monies should be available to cover community travel and other necessary supports

Past water bonds have challenged the ability of community members to participate in IRWMP activities by either making travel reimbursement and other participation supports, i.e., mileage, gas, public transportation, etc., childcare costs (stipend), time (stipend or \$15/hour minimum wage), categorically ineligible or unclear. We would like to see those kinds of costs outlined as eligible program costs and accompanied by a reasonably straightforward process, i.e., no requirement to participate in a defensive driving course, sign-on as a volunteer or employee of DWR, etc.

Additionally, from time to time, it may be necessary to the participation of community leaders that the DAC Involvement program provide access to other resources, such as phone and internet service, which we would also like to see included clearly in eligible program costs.

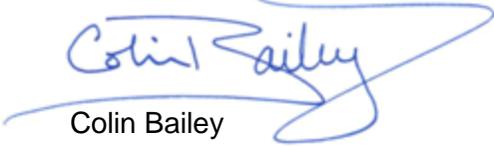
15. An evaluation of each IRWMP region's governance and capacity to support DAC Involvement should be mandatory

Every IRWMP region should be required to examine and evaluate how its governance structures and institutional capacities either help or hinder meaningful participation by Disadvantaged Communities. This should include an examination of any conflicts of interest, i.e., where same agency that manages RWMG also manages the DAC Involvement grant, whether there is a "pay to play" regime, whether express or de facto, the accessibility of meeting times and locations, language accessibility, and so on.

Any obstacles identified should be the subject of remedial action, which may call for "institutional therapy", i.e., mediation, reworking of systems, resetting of mutual expectations, roles, and responsibilities of all parties, and the resources to support proper functioning and execution thereof.

This concludes these comments.

Submitted by,

A handwritten signature in blue ink that reads "Colin Bailey". The signature is stylized with a large, sweeping flourish that extends to the right and loops back under the name.

Colin Bailey
Executive Director
The Environmental Justice Coalition for Water