

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

RESOLUTION NO. R6T-2014-0014

**LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM**

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) finds:

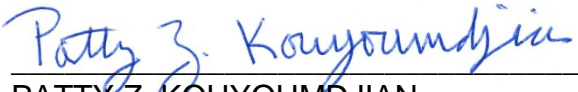
1. The Lahontan Water Board has for approximately one year been evaluating its Enforcement Program and has identified a number of actions that will improve the program's efficiency and effectiveness. One such action is the development of a region-specific program for identifying, approving, and implementing Supplemental Environmental Projects (SEPs).
2. The Lahontan Water Board supports including SEPs as a part of administrative civil liability settlements. SEPs provide a strategic mechanism to make a portion of civil liabilities available for the kinds of projects identified as priorities by the Lahontan Water Board.
3. Currently, extensive Lahontan Water Board staff resources are spent negotiating, developing, and overseeing SEPs. This process has typically been conducted in confidential settlement negotiations, and by the very nature of confidentiality does not provide public transparency in how various SEPs are proposed to the Lahontan Water Board.
4. A region-specific SEP program will provide guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Resources Control Board's SEP Policy.
5. As a part of the region-specific SEP program, the Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP accounts and to implement SEPs consistent with the Lahontan Water Board's expressed priorities.
6. Using SEP accounts with partner organizations is expected to reduce staff's SEP oversight costs over time. The partner organizations will be responsible for the development and administration of the SEPs.
7. Using SEP accounts will direct monies toward projects that are already vetted through local stakeholder processes and increase the transparency in how SEP monies are used.

8. The Lahontan Water Board considers a pilot program to be an appropriate mechanism to explore the feasibility of implementing SEP accounts before implementing this program on a region-wide basis. Such a pilot program is the subject of a separate Resolution.
9. The Lahontan Water Board has notified interested parties through the Lahontan Region of its intent to adopt this Resolution by posting to a list server and on the Water Board's web site.
10. The Lahontan Water Board, in a public meeting, heard and considered all comments regarding the Resolution.

THEREFORE, BE IT RESOLVED THAT:

1. The Lahontan Water Board approves the Lahontan Water Board SEP Program (Attachment A).
2. The Lahontan Water Board directs staff to post the Lahontan Water Board SEP Program in a prominent location on the Lahontan Water Board's web site.
3. The Lahontan Water Board directs staff to delay full implementation of the Lahontan Water Board SEP Program until a pilot program with the Truckee River Watershed Council is completed.
4. The Lahontan Water Board authorizes the Lahontan Water Board Executive Officer to modify the attached Lahontan Water Board SEP Program (and its respective attachments) for minor technical changes or for consistency with updated requirements and policies.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on February 12, 2014.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Attachment A: Lahontan Water Board SEP Program

LAHONTAN WATER BOARD SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM

INTRODUCTION

The State Water Resources Control Board (State Water Board) adopted a policy addressing Supplemental Environmental Projects (SEPs) on February 3, 2009 (State Water Board SEP Policy). The State Water Board SEP Policy identifies criteria to ensure that selected projects have environmental value, further the enforcement goals of the State Water Board and its regions, and are subject to appropriate input and oversight by the regional water boards.

At its June 2013 meeting, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) established a subcommittee to work with staff and the State Water Board's Office of Enforcement to develop a region-specific SEP program. The region-specific SEP program is intended to provide guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Board SEP Policy.

GENERAL GUIDANCE

The Lahontan Water Board supports including SEPs as a part of administrative civil liability settlements. SEPs provide a strategic mechanism to make a portion of penalty monies available for the kinds of projects identified as priorities by the Lahontan Water Board. Such projects can help mitigate environmental degradation caused by water quality violations near the area where degradation occurred.

It is recognized that the discharger must propose, or at least agree to, a SEP as part of resolving an administrative liability action. Any proposed SEP must conform to the criteria established by the State Water Board SEP Policy. While a proposed SEP must go above and beyond what is otherwise legally required for a discharger to comply with applicable laws and regulations, a SEP may be considered for a project that is identified on the Lahontan Water Board's Triennial Review List or on any other list of priority projects the Lahontan Water Board has established.

The State Water Board SEP Policy also states there must be a nexus between the violation and the SEP. Nexus means there must be a relationship between the violation and the SEP, either in the nature of the violation (i.e., type of waste discharge) or in the geography of the violation. When evaluating the geographic nexus, the Lahontan Water Board will consider projects within the entire Lahontan, not just within the watershed where the violation(s) occurred. The Lahontan Water Board prefers SEP projects be located close to where the violation(s) occurred, but recognizes this is not always possible.

SEP ACCOUNTS

The Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP accounts and to implement SEPs consistent with the Lahontan Water Board's expressed priorities. The partner organizations will maintain a list of potential projects that are eligible to be considered for SEPs within their respective watershed areas.

In watersheds where the Lahontan Water Board has entered into a Memorandum of Understanding with partner organizations (see Attachment 1) that have agreed to create a SEP account, dischargers may choose to direct up to 50 percent of a liability to the appropriate SEP account to fund projects with a distinct environmental benefit. In areas where there are no appropriate groups with whom to partner, or where a potential group exists but does not have sufficient institutional capacity, Lahontan Water Board staff will conduct outreach and work with potential partners to bring them to a point where a partnership would be viable. Alternatively, when a penalty is assessed for violations in a geographic area with no developed partnership agreement, a programmatic nexus may be used to direct a portion of the penalty to an existing partner organization.

The partner organizations will act as a bursar of the SEP account funds, directing the funds toward projects according to an agreement established with the Lahontan Water Board. Penalty portions that are negotiated to be directed into a SEP account may be used to fund a complete project or series of projects, or they may be used to partially fund a larger project. The partner organization may also use SEP accounts to leverage other sources of funding.

The use of SEP accounts has many advantages. It directs monies toward projects that are already vetted through local stakeholder processes and thereby allows for broad-based local participation and input regarding the use of penalties to directly enhance water quality in the Lahontan Region. It increases transparency in how SEP monies are used. It helps link the Lahontan Water Board with planning by local stakeholder groups, helping to harmonize the development of plans and criteria between and among stakeholders. It strengthens relationships between the Lahontan Water Board and local stakeholders.

Further, engaging our local watershed partners to manage SEP accounts provides a high level of certainty that a watershed project selected by a discharger for a SEP will be completed as required. Partner organizations will be identified and selected based upon many factors, including their longevity, their financial stability and accountability, and their successful track record of funding and implementing watershed projects. Furthermore, potential projects will be identified and vetted based upon specific minimum criteria to be eligible for consideration as a SEP. These factors reduce the risk to dischargers considering whether to direct liability amounts to fund a SEP implemented by a third party. Some dischargers may still elect to perform SEP projects themselves, particularly public entities. However, a pre-approved list of SEPs performed by pre-vetted third parties should help non-public entities select SEPs that will be approved by the Lahontan Water Board.

Using SEP accounts is likely to reduce staff oversight costs since Lahontan Water Board staff will not need to help develop a SEP or oversee its implementation. The partner organization will be responsible for most of the administration of the SEP because it will produce and submit an annual report regarding the disposition of SEP account funds and the status of the liability-funded projects. The list of potential projects will be maintained by the partner organization instead of Lahontan Water Board staff. The project list will be updated, modified and re-prioritized as the partner organization works with its stakeholders, and the Lahontan Water Board will have the opportunity to express its priorities to the partner organization during that annual update process.

PARTNER ORGANIZATION QUALIFICATION CRITERIA AND IMPLEMENTATION

The Lahontan Water Board will develop partnerships with watershed-based groups that use stakeholder processes to identify and prioritize projects that may be eligible for funding from SEP accounts. Examples of such groups are the Truckee River Watershed Council and the Inyo Mono Integrated Regional Water Management (IRWM) Group. The Lahontan Water Board will identify potential partners throughout the Lahontan Region and develop separate partnership agreements with each one. Once a partnership agreement is developed and finalized through a Memorandum of Understanding (see Attachment 1), dischargers will be able to direct portions of liability amounts to the partner organization.

Eligible organizations include local public agencies, regional public agencies, state agencies, nonprofit organizations (501[c][3]), federally-recognized Native American Tribes¹, public colleges, and federal agencies. Eligible organizations shall demonstrate experience in project management, multi-agency collaboration, stakeholder involvement and collaboration, regional approaches to water management, water management involvement in land use decisions, and implementation of project monitoring to evaluate results of current practices. Ineligible organizations include for-profit organizations, private organizations, and 501(c)(4) organizations.

Organizations interested in developing SEP account partnerships with the Lahontan Water Board shall submit the following information.

- A mission statement for the organization's goal to address watershed-based issues.
- A description of the organization's governance structure.
- A description of how the organization's governance structure addresses and ensures the following:
 - Public outreach and involvement processes
 - Effective decision making

¹ Federally-recognized tribes must waive their sovereign immunity in order to be eligible to manage SEP accounts.

- Balanced access and opportunity for participation in selecting potential SEP projects for consideration
 - Effective communication – both internal and external to the watershed(s) area(s)
 - Long-term successful implementation of watershed projects
 - Coordination with neighboring watershed efforts and state and federal agencies
 - The collaborative process(es) used to select and prioritize potential watershed projects
 - How interim changes and formal changes to watershed project lists will be performed
 - Updating or amending watershed project lists
- A description of the organization’s process to incorporate local stakeholder outreach and input in selecting and prioritizing potential watershed projects. Local stakeholders shall include the following, as applicable to the watershed(s):
 - Wholesale and retail water purveyors
 - Wastewater agencies
 - Flood control agencies
 - Municipal and county governments and special districts
 - Electrical corporations
 - Native American Tribes
 - Self-supplied water users
 - Environmental stewardship organizations
 - Community organizations
 - Industry organizations
 - State, federal, and regional agencies or universities
 - Any other interested group appropriate to the region, including private citizens.
- A description of the organization’s experience for completing water quality projects.
 - A description of the organization’s accounting practices, including a description of how its annual financial statements are prepared and audited.

The Lahontan Water Board will enter into formal agreements (Memorandums of Understanding) with organizations that satisfactorily demonstrate proficiency with the above-listed criteria. A template agreement (Attachment 1) has been developed, which can be tailored to meet specific regional watershed issues. The selected partnership organization will be responsible for further refining their individual watershed project lists in order to develop a SEP-specific project list.

The agreement between the Lahontan Water Board and each partner organization will specify requirements (see SEP Qualification Criteria section, below) for using the SEP monies deposited in individual SEP accounts. Generally, these requirements will be similar throughout the region, but some variation will be allowed to meet the specific needs of a partner organization’s geographical area. The requirements will include

annual reporting on projects in progress and completed with SEP monies deposited to the SEP accounts. The requirements will specify that partner organizations must provide a proposed project list to be funded with SEP monies during the upcoming biennium, along with a proposed budget for each project. The agreement will also include obligations on the partner organization to comply with certain provisions in Section H of the State Water Board SEP Policy.

The agreement between the Lahontan Water Board and each partner organization will require the partner organization to develop an individual contract with any discharger who elects to direct a portion of its liability to fund implementation of a SEP. The contract between the partner organization and the discharger shall include specific language (Attachment 2) in addition to any other terms negotiated between the partner organization and the discharger.

SEP QUALIFICATION CRITERIA

To be considered for a SEP, a proposed project must satisfy all conditions outlined in the State Water Board SEP Policy, and must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the state. Specifically, the Lahontan Water Board generally prefers on-the-ground projects that have already completed CEQA review and that provide a direct benefit to water quality. Less weight may be given to technical studies, especially when a watershed plan already exists for a geographic area being considered for a SEP. However, if no watershed plan exists for a watershed, then studies that lead to the development of a watershed plan or IRWM Plan may have higher priority than on-the-ground projects in that watershed. For example, using funds to develop salt and nutrient management plans where none exists may have a higher priority than some on-the-ground projects.

The Lahontan Water Board encourages partner organizations to identify portions of potential SEP projects that can be funded in either Planning/Assessment phase or in an Implementation phase. Eligible implementation projects may include project-level planning, design, construction, construction management, implementation, and monitoring to implement full scale on-the-ground mitigation. Eligible planning/assessment projects may complete an assessment, study, or design identified as a high priority in a TMDL; may prepare studies, strategies, management plans, tools for management plan development, and similar items; fill recognized data gaps; consolidate previously-completed planning work in a watershed; or provide other planning efforts as identified through the partner organization's stakeholder process.

The following additional criteria will be used by partner organizations to select and prioritize potential projects for consideration as SEPs:

- Projects that address public health and safety issues or concerns.
- Projects that address environmental health and safety issues or concerns.
- Projects that offer multi-regional or statewide benefit.
- Projects in process that need additional funds to bring the effort to completion.
- Projects that address environmental justice concerns.

- Projects that improve efficiencies (databases, automation, system enhancements, etc.).
- Projects that support a Lahontan Water Board, CalEPA, Legislative, or Governor's Office priority (see State Water Board's Strategic Plan Update and the CalEPA Strategic Vision Goals).
- Leveraged projects where matching funds are being provided.
- Projects that support the Lahontan Water Board's triennial review process.

PUBLIC REPORTING

The Lahontan Water Board will post on its website by March 1 of each year a list of all SEPs completed the prior year and information on the status of SEPs in process the prior year. The Lahontan Water Board will also post each partner organization's list of projects and subsequent updates that may be considered as SEPs. Approved agreements with each partner organization will also be posted on the Lahontan Water Board's website.

Attachments: 1. Template Partner Organization/Lahontan Water Board Agreement
2. Template Language for Partner Organization/Discharger Agreements

MEMORANDUM OF UNDERSTANDING

**LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT
ACCOUNT PROGRAM WITH
[NAME OF PARTNER ORGANIZATION]**

This document shall serve as a Memorandum of Understanding by and between the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) and the PARTNER ORGANIZATION for the Supplemental Environmental Project (SEP) Account program authorized by the Lahontan Water Board's SEP Program, approved by Resolution No. R6T-2014-0014 (Lahontan Water Board SEP Program). The terms and conditions of this Memorandum of Understanding (MOU) govern PARTNER ORGANIZATION'S obligations to identify projects that may qualify as SEPs, to implement SEPs consistent with the Lahontan Water Board SEP Program, and to use the funds transferred to it by a discharger in accordance with the Lahontan Water Board's authorizing Administrative Civil Liability Order. This MOU is effective upon its execution by PARTNER ORGANIZATION and the Executive Officer of the Lahontan Water Board.

1. PARTNER ORGANIZATION shall incorporate the SEP Qualification Criteria identified in the Lahontan Water Board SEP Program to identify potential projects that may qualify as a SEP. This shall be incorporated within the PARTNER ORGANIZATION'S stakeholder process used for identifying potential projects.
2. PARTNER ORGANIZATION shall submit to the Lahontan Water Board Executive Officer on a biannual basis a list of potential projects that have been identified pursuant to Paragraph 1, above. The first such list shall be submitted by [DATE] and every two years thereafter.
3. When a discharger is under Order of the Water Board to pay a liability for violations, PARTNER ORGANIZATION shall enter into a direct contract with any Discharger who elects to direct a portion of its liability to fund implementation of a SEP identified on the PARTNER ORGANIZATION's list of potential projects noted in Paragraph 2, above. The contract between the PARTNER ORGANIZATION and the discharger shall include specific language noted within Attachment 2 to the Lahontan Water Board SEP Program.
4. PARTNER ORGANIZATION shall provide quarterly reports of progress on each SEP to the Designated Lahontan Water Board Representative commencing on the first day of the fiscal quarter after a contract with a discharger becomes effective and continuing through submittal of the final reports described below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

5. On or before the applicable SEP Completion Date, PARTNER ORGANIZATION shall submit a certified statement of completion of the SEPs (“Certification of Completion”). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Lahontan Water Board Representative by a responsible corporate official representing PARTNER ORGANIZATION. The Certification of Completion shall include following:
 - a. Certification that the SEP has been completed in accordance with the terms of this MOU, the Lahontan Water Board’s authorizing Order and the Lahontan Water Board’s SEP Program. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate the completion of the SEP and the costs incurred by PARTNER ORGANIZATION.
 - b. Certification documenting the expenditures by PARTNER ORGANIZATION during the completion period for the SEP. PARTNER ORGANIZATION’S expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Lahontan Water Board for oversight. PARTNER ORGANIZATION shall provide any additional information requested by the Lahontan Water Board Representative which is reasonably necessary to verify SEP expenditures.
 - c. Certification, under penalty of perjury, that PARTNER ORGANIZATION obtained all necessary permits and followed all applicable laws and regulations in the implementation of the SEP, including but not limited to the federal Clean Water Act, the Porter-Cologne Act, and the terms of any permits issued for the SEP.
6. To ensure compliance with the California Environmental Quality Act where necessary, PARTNER ORGANIZATION shall provide the Lahontan Water Board with the following documents from the lead agency prior to commencing SEP construction:
 - a. Categorical or statutory exemptions relied upon by the Lead Agency;
 - b. Negative Declaration if there are no potentially “significant” impacts;
 - c. Mitigated Negative Declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - d. Environmental Impact Report (EIR).

7. In addition to the certification, upon completion of the SEP and at the written request of the Lahontan Water Board Executive Officer, PARTNER ORGANIZATION AND DISCHARGER, at THEIR sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Lahontan Water Board Executive Officer providing such party's(ies)' professional opinion that PARTNER ORGANIZATION has expended money in the amounts claimed. The audit report shall be provided to the Designated Lahontan Water Board Representative within three (3) months of notice from the Lahontan Water Board Executive Officer to PARTNER ORGANIZATION AND DISCHARGER of the need for an independent third party financial audit. The audit need not address any costs incurred by the Lahontan Water Board for oversight.
8. Upon PARTNER ORGANIZATION'S satisfaction of its SEP obligations under this MOU and completion of each SEP(s) and any audit requested by the Lahontan Water Board, the Designated Lahontan Water Board Representative shall send PARTNER ORGANIZATION AND DISCHARGER a letter recognizing satisfactory completion of THEIR obligations under the terms of each applicable Order authorizing the completion of a SEP. This letter shall terminate any further MOU and other applicable Order obligations of PARTNER ORGANIZATION AND DISCHARGER.
9. In the event that PARTNER ORGANIZATION and each applicable discharger are not able to demonstrate to the reasonable satisfaction of the Lahontan Water Board Executive Officer that the entire amount of funds allocated under an Order authorizing a SEP has been spent to complete the components of the SEP for which a discharger is financially responsible, the discharger shall pay to the State Water Board Cleanup and Abatement Account or Waste Discharge Permit Fund, as appropriate, the difference between the funds allocated under the Order authorizing a SEP and the amount the PARTNER ORGANIZATION and the discharger can demonstrate was actually spent on the SEP. Alternatively, the Lahontan Water Board may approve the use of the surplus funds for a different SEP consistent with the Lahontan Water Board's SEP Program and with the State Water Resources Control Board's SEP Policy.

IT IS SO AGREED.

California Regional Water Quality Control Board – Lahontan Region

By: _____
Patty Z. Kouyoumdjian
Executive Officer

Date: _____

PARTNER ORGANIZATION

By: _____
[NAME OF PERSON]
[TITLE OF PERSON SIGNING]

Date: _____

ATTACHMENT 2

TEMPLATE LANGUAGE FOR PARTNER ORGANIZATION/DISCHARGER AGREEMENTS

This document shall serve as a Memorandum of Understanding by and between PARTNER ORGANIZATION (XXX) and DISCHARGER (XXX) for the Supplemental Environmental Project (SEP) authorized by California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) Order No. R6-xxxx-xxx (the Order) and described in detail therein (the Project).

1. Pursuant to the terms of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order entered into between the Lahontan Water Board Prosecution Team and DISCHARGER, DISCHARGER agrees to donate, and PARTNER ORGANIZATION commits to receive funding in the amount of \$xxx,xxx (Funding) to be utilized for implementation of the Project.
2. As a condition to the donation, PARTNER ORGANIZATION agrees as follows:
 - a. To serve as the Implementing Party for the Project, as detailed in the Order;
 - b. To cooperate with DISCHARGER to meet the SEP requirements set forth in the Order, the terms of which are attached hereto as Exhibit X;
 - c. To return to DISCHARGER any unexpended portion of the Funding to the extent not spent on the Project.
3. PARTNER ORGANIZATION agrees that should it publicize the Project it shall state in a prominent manner that the Project is being funded as part of a settlement of an enforcement action by the Lahontan Water Board against DISCHARGER.
4. This MOU and the parties' relations shall be construed and governed by the laws of the State of California without regard to conflict-of-laws rules or principles.
5. Nothing contained in this MOU shall at any time constitute, be deemed to constitute or be construed to create a relationship among DISCHARGER and PARTNER ORGANIZATION of partnership, joint venture, agency, or any other relationship creating fiduciary, quasi-fiduciary or similar duties and obligation, or that would otherwise subject DISCHARGER and PARTNER ORGANIZATION to joint and several or vicarious liability in favor of any third party.
6. PARTNER ORGANIZATION acknowledges that the Funding is the full extent of DISCHARGER's obligation hereunder and that PARTNER ORGANIZATION is responsible for securing sufficient other resources as may be needed to complete the Project in accordance with the Order in the event the Project cannot be completed with the amount of Funding being provided by DISCHARGER.

7. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

(SIGNATURE BLOCKS FOR PARTNER ORGANIZATION AND DISCHARGER)