

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
North Coast Region

RESOLUTION NO. R1-2019-0046

**RESOLUTION APPROVING A LIST OF POTENTIAL SUPPLEMENTAL
ENVIRONMENTAL PROJECTS (SEPs) FOR CONSIDERATION IN ENFORCEMENT
SETTLEMENT NEGOTIATIONS AND APPROVING THE PROCESS FOR
MAINTAINING THE LIST**

WHEREAS, the California Regional Water Quality Control Board, North Coast Region, (hereinafter the Regional Water Board) finds that:

1. The Regional Water Board is an agency of the State of California with the mission of preserving, protecting, enhancing, and restoring water quality within the North Coast Region of California. In support of that mission, the Regional Water Board has the authority to enforce applicable provisions of the Clean Water Act, the California Water Code, and the Water Quality Control Plan for the North Coast Region (Basin Plan) by issuing Administrative Civil Liability Orders (ACL Orders).
2. Dischargers who wish to settle alleged water quality violations may offer to complete Supplemental Environmental Projects (SEPs) that offset the financial liability that may otherwise be imposed by the Regional Water Board; dischargers may fund SEPs in lieu of submitting payments to the State Water Resources Control Board's (State Water Board) Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund. A SEP is memorialized in a Settlement Agreement and Stipulated ACL Order. A Settlement Agreement and Stipulated ACL Order must be posted for a 30-day public comment period before it is finalized.
3. The State Water Board adopted a Water Quality Enforcement Policy effective October 5, 2017, and a Statewide Policy on SEPs (SEP Policy), effective May 3, 2018, that together regulate the use of SEPs statewide.
4. The SEP Policy defines SEPs as, "... projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger.... SEPs are an adjunct to the State and Regional Water Quality Control Boards' enforcement program and are never the basis or reason for bringing an enforcement action."
5. Assembly Bill 1071, signed October 2015, requires, in part, that all boards, departments, and offices within CalEPA that have enforcement authority, develop an annual SEP list designed to benefit environmental justice (EJ) communities and disadvantaged communities (DACs).

6. The SEP Policy requires each Regional Water Board to maintain and post on its website a list of potential SEPs. The potential SEP list must include information on project description, category, location, cost, expected benefits, and the potential benefit to disadvantaged communities, environmental justice communities, communities with a financial hardship, and the human right to water.
7. Pursuant to the statewide SEP Policy, dischargers that have been assessed an ACL (monetary penalty) by a Water Board may choose to satisfy up to 50 percent of their total liability by funding an eligible SEP¹. That portion of the liability to be applied toward a project is suspended until the discharger can demonstrate successful completion of the proposed project, at which time it is dismissed. A discharger can either conduct the SEP itself, or contract with a third party for completion of the project.
8. On May 28, 2019, Regional Water Board staff sent a letter soliciting project proposals from various agencies and organizations throughout the North Coast Region. In addition, staff posted information and a link to an application form on the Regional Water Board website, which can be found at this address:
https://www.waterboards.ca.gov/northcoast/water_issues/programs/enforcement/
9. On October 17, 2019, at a regularly scheduled Board meeting open to the public, Regional Water Board staff presented to the Regional Water Board an initial list (Attachment 3a) of potential SEPs (SEP List) for its consideration and approval and an initial list of project ideas and concepts (Attachment 3b) requiring additional scoping in order to be approved as potential projects.
10. Staff anticipate that maintaining and keeping the list of approved SEPs and list of project ideas up-to-date will be resource-intensive. One way to streamline this effort is to delegate to the Executive Officer the ability to accept, review, and add new projects to the lists at any time, on a continuous basis. Staff will log project proposals and concepts as received and review proposals as resources allow.

THEREFORE, BE IT RESOLVED THAT:

1. The Regional Water Board adopts this Resolution No. R1-2019-0046 and approves the initial October 2019 SEP List for the North Coast Region (Attachment 3a). Projects on the SEP List are immediately available to applicable and interested dischargers during enforcement settlement negotiations, subject to review by the Prosecution Team to confirm project eligibility per SEP Policy criteria. Final review and approval of a SEP is subject to Regional Water Board or Executive Officer approval.

¹Where there is a compelling justification due to exceptional circumstances, the Director of the Office of Enforcement may authorize a SEP in excess of 50 percent of the total monetary penalty. For settlements of violations subject to mandatory minimum penalties (MMPs) pursuant to Water Code section 13385 (h) or (i) where the penalty amount is \$15,000 or less, the entire penalty amount may be directed to a SEP. For MMPs over \$15,000, \$15,000 plus 50% of the remaining liability may be spent on a SEP.

2. For purposes of administrative streamlining, the Regional Water Board grants the Executive Officer the discretion to accept applications on a continuous basis, review applications as resources allow, add new projects to the SEP List at any future time as he/she deems appropriate, and remove projects from the SEP List if a project is no longer considered applicable or eligible (following notice to the project sponsor).
3. The Regional Water Board directs the Executive Officer and/or staff to report at least annually on changes made to the list; utility of the list in settlement of enforcement cases; any enforcement cases settled using projects not included on the list; and any recommended changes or improvements to the procedures or process for soliciting, screening, listing, and using projects, and for maintaining the SEP List.

I, Matthias St. John, Executive Officer, do hereby certify that this Resolution with all attachments is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, North Coast Region, on October 17, 2019.

Matthias St. John
Executive Officer