

**JANUARY 2017 PRE-APPROVED LIST OF
SUPPLEMENTAL ENVIRONMENTAL PROJECT AND
ENHANCED COMPLIANCE ACTION CONCEPTS**

California Regional Water Quality Control Board, San Diego Region

Staff Report

for

Tentative Resolution No. R9-2017-0014

Supporting a List of
Supplemental Environmental Projects (SEPs) and
Enhanced Compliance Actions (ECAs) for Consideration in
Enforcement Proceedings

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By

Deborah Jayne, Senior Environmental Scientist
Chiara Clemente, Senior Environmental Scientist
Rebecca Stewart, Sanitary Engineering Associate

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Introduction

The Porter-Cologne Water Quality Control Act (Porter-Cologne Act, California Water Code, Division 7) authorizes the Regional Water Boards to impose administrative civil liabilities (i.e. monetary penalties) for water quality violations alleged in an Administrative Civil Liability (ACL) Complaint. Pursuant to the State Water Resources Control Board's (State Water Board) Policy on Supplemental Environmental Projects ([2009 SEP Policy](#)), SEPs are defined as projects that enhance the beneficial uses of the water of the San Diego Region, provide a benefit to the public at large, and (at the time they are included in the resolution of an ACL action) are not otherwise required of the discharger. SEPs are intended to *restore* the environmental harm resulting from the violation(s) alleged. Pursuant to the State Water Board's Water Quality Enforcement Policy ([2010 Enforcement Policy](#)), ECAs are defined as projects that enable a discharger to make capital or operational improvements beyond those required by law and are separate from projects designed to merely bring a discharger into compliance. ECAs are intended to *prevent* additional or future impacts to beneficial uses and are typically proposed by municipalities.

In accordance with Government Code section 11415.6 and the statewide SEP and Enforcement Policies, dischargers that have been assessed an ACL by a Water Board may choose to satisfy up to 50 percent of their total liability by funding an eligible SEP or ECA. That portion of the liability (i.e., SEP or ECA dollar amount) 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 or ECA itself, or contract with a third party for completion of the project.

In October 2015, [Assembly Bill 1071](#) was signed into law requiring, 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).

In November 2013, the San Diego Regional Water Quality Control Board (San Diego Water Board) adopted "[Resolution No. R9-2013-0153, A Resolution in Support of the San Diego Water Board Practical Vision, titled "Healthy Waters, Healthy People."](#) Through the adoption of this Practical Vision, the San Diego Water Board established five regional priorities to pursue through the year 2020. These five priorities include (1) making the best possible use of resources for the purpose of protecting the health of Region's water; (2) implementing the "Framework for Monitoring and Assessment in the San Diego Region"; (3) advancing the Recovery of the Region's Stream, Wetland and Riparian Systems; (4) conducting Proactive Public Outreach and Communication with an emphasis on outreach to EJ and DACs; and (5) achieving a Sustainable Local Water Supply.

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The San Diego Water Board has subsequently adopted a series of supporting resolutions that generally serve to confirm, emphasize, and further explain the overall regional priorities it established in the Practical Vision. For purposes of this resolution, the three most relevant are: (1) [Resolution R9-2015-0020 in Support of Funding Projects that Further the Practical Vision Priorities with Consideration to Environmental Justice and Disadvantaged Communities and the Recovery of Stream, Wetland, and Riparian Systems](#); (2) [Resolution R9-2015-0041 to Support Restoration of Aquatic Ecosystems in the San Diego Region](#); and (3) [Resolution R9-2016-0200 endorsing the 2016 Community Outreach Strategy: Proactive Public Outreach and Communication](#).

To promote the San Diego Water Board's established regional priorities, meet the intent of Assembly Bill 1071, and facilitate use of high quality SEPs and ECAs, staff developed the "January 2017 Pre-Approved SEP/ECA Concept List," hereinafter "SEP/ECA List" (Supporting Document 3 in agenda materials). The SEP/ECA List will assist enforcement proceedings by presenting interested dischargers with a list of project "concepts" that have been reviewed and pre-approved by the Board's Prosecution and Advisory Team representatives independent of, and in advance of, any specific penalty action. Although the projects on the SEP/ECA List have been pre-approved in concept by the San Diego Water Board or its delegate, if selected by a discharger, the project proposal may require significant augmentation to reflect issues such as timing, cost, and nexus relative to the specific settlement order; all of which remains subject to the Water Board's ultimate and final approval.

SEP/ECA Project Solicitation

In developing the Water Board's SEP/ECA solicitation and application materials, staff established six basic "[Eligibility Requirements](#)" (a.k.a., eligibility criteria) specifically designed to reflect the Regional Water Board's established priorities and State Water Board policies.

1. Does the project address an environmental justice (EJ) issue or benefit a disadvantaged community (DAC)?
2. Does the project address DAC water related infrastructure needs?
3. Does the project promote preservation or restoration of aquatic ecosystems in the San Diego Region?
4. Does the project implement or further the recovery of streams, wetlands, and riparian systems?
5. Does the project implement or further the monitoring and assessment framework in Chapter 2 of the San Diego Water Board's Practical Vision?
6. Does the project implement or further a strategy for achieving a sustainable local water supply?

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On June 23, 2016, the San Diego Water Board officially announced its “Call for SEP and ECA Proposals” for possible inclusion on the Board’s upcoming SEP/ECA List. The solicitation and application materials were posted on the Water Board website and distributed and consisted of (1) [Revised Project Application Form](#); (2) [Application Checklists](#) (consisting of “Eligibility Requirements”, “Project Attributes”, and “Applicant Attributes”); and “[SEP/ECA Q&A](#)” (Supporting Document 5 in the agenda materials). The four-month solicitation period closed on October 20, 2016.

In addition to web posting and routine notification of all known interested parties, the San Diego Water Board also conducted a [SEP/ECA Public Workshop](#) on July 19, 2016. The workshop was designed to inform the public and EJ Communities about the solicitation and application materials, as well as the Board’s selection priorities as stated in the Eligibility Requirements. At the July 19, 2016 SEP/ECA Public Workshop, staff offered one-on-one proposal writing assistance to anyone developing a SEP or ECA that would specifically benefit EJ or DACs. In addition, staff announced the SEP/ECA Solicitation/Call for Projects at a well-attended July 2016 environmental justice workshop on climate change in Barrio Logan, as well as at several community outreach meetings that the San Diego Water Board held with stakeholders throughout the Region.

Project Evaluation Methodology

The San Diego Water Board received a total of 42 timely applications, of which 13 proposed projects would directly benefit EJ or DACs. After a preliminary review for completeness and compliance with the Eligibility Requirements, each application was independently evaluated by each member of the Review Team (comprised of representatives from both the Board’s Prosecution and Advisory Teams). Proposed projects were evaluated based on how well they matched the desirable “Project Attributes” and “Applicant Attributes” stated in the Application Checklists. After independent evaluation, the Review Team convened for a group discussion of each application and to develop a consensus recommendation.

Every application was placed into one of the four following categories: (1) Strongly Support; (2) Support; (3) Contingent; and (4) Not Eligible. Applications listed in the first two categories, “Strongly Support” and “Support” comprise the staff’s recommended January 2017 SEP/ECA List. Applications in the “Contingent” category were deemed to need additional information or commitment in order to complete the evaluation, and are being returned to the applicants for augmentation. Contingent applications may be resubmitted to the San Diego Water Board in the future provided that the stated contingency is adequately addressed. Applications in the “Not Eligible” category may also be re-submitted in the future provided that the stated basis for ineligibility is adequately addressed. In the case of the latter two categories, the proponents are welcome to augment and resubmit their applications for future consideration.

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Results and Recommended List

Staff's recommended January 2017 SEP/ECA List is comprised of the 25 proposed projects categorized as "Strongly Support" and "Support," 8 of which directly benefit EJ or DACs, and 4 of which benefit the Tijuana River Valley. Twelve of the applications received were categorized as "Contingent," of which 5 would likely benefit EJ or DACs, with 2 benefitting the Tijuana River Valley. Five of the applications received were deemed "Not Eligible" at this time.

Pre-Approved SEP/ECA Concept List Availability

Upon adoption of Resolution, R9-2017-0014, the approved January 2017 SEP/ECA List will be posted on the Water Board's website along with links to each proposal's full application. At that time, the SEP/ECA List and project applications will be available for review by interested dischargers and the public alike.

Adding to SEP/ECA List -- Continuous Solicitation and List Update

Staff anticipates that maintaining and keeping the SEP/ECA List up-to-date (i.e., adding new projects) will be resource intensive. Because project ideas are constantly evolving, it would be most efficient to allow ongoing maintenance and updating of the SEP/ECA List in the future. This administrative streamlining would allow the San Diego Water Board to accept, review, and add new projects to the SEP/ECA List. Project proposals will be logged in as received and reviewed as resources allow. If after a thorough review, using similar eligibility requirements and selection methodology (to the evaluation process described herein), the Review Team recommends that a new project(s) be added to the SEP/ECA List, the Review Team may request that the Executive Officer approve the recommended project(s). Upon Executive Officer approval, the newly approved project(s) will be added to the SEP/ECA List.

Third Party Administration of SEP/ECA List and Project Management

The use of a third party administrator could be of great benefit and time savings to the San Diego Water Board. As an example, in Region 5, a third party administrator under contract with the State is responsible for the collection and deposition of SEP and ECA funds into an interest-bearing escrow account. The aggregated funds are then made available for funding select SEP and ECA projects. This service is provided in exchange for an added overhead fee, and in the case of Region 5, includes project management, routine accounting, and progress and final reporting to their Regional Water Board.

The San Diego Water Board could seek a third-party administrator for the following contractual objectives:

1. Allow SEP/ECA checks to be written directly to the third party administrator who assumes liability from the discharger;
2. Allow the third party administrator to deposit and aggregate SEP/ECA funds in an interest bearing account and distribute funds as deemed appropriate for the purpose of funding SEP and ECA projects specifically approved by the San Diego Water Board, or its delegate;

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3. Manage ongoing SEP and ECA projects including providing oversight, accounting, and quarterly and final reporting to the San Diego Water Board;
4. Solicit for and propose new SEP/ECA projects for San Diego Water Board (or delegate) approval; and
5. Manage and update (i.e., add new approved projects to) the SEP/ECA List as authorized by the San Diego Water Board (or its delegate).

Although staff has begun a search for a suitable third party with which to contract for this purpose, no party is recommended at this time. At such time as a suitable party is identified, staff would develop appropriate contract language in consultation with legal counsel and the third party.

“January 2017 Pre-Approved SEP/ECA Concept List”

The “January 2017 Pre-Approved SEP/ECA Concept List” is presented below and in Supporting Document 3 of the agenda materials.

January 2017 List of pre-approved SEPs and ECAs San Diego Regional Water Quality Control Board

SEP Number	Watershed/ Hydrologic Unit	Project Name
STRONGLY SUPPORT		
SEP2016-0020	San Juan Creek	San Juan Creek Estuary Restoration Opportunities Assessment
SEP2016-0018	San Luis Rey River	The Septic System Maintenance and Best Management Practices Rebate Program
SEP2016-0008	Los Peñasquitos Creek	Los Peñasquitos Lagoon Inlet Restoration Project
<i>SEP2016-0035</i>	<i>Mission Bay</i>	ReWild Mission Bay
SEP2016-0036	San Diego River	San Diego River Restoration and Monitoring
<i>SEP2016-0009</i>	<i>Otay River/Sweetwater River</i>	Ocean Connectors Habitat Restoration and Education Program
<i>SEP2016-0015</i>	<i>Tijuana River</i>	Tijuana River Watershed Sediment Management Plan

Projects in Bold and Italic are located in Environmental Justice/Disadvantaged Communities

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SEP Number	Watershed/ Hydrologic Unit	Project Name
SUPPORT		
SEP2016-0040	Regionwide	<u>Evaluating BMP Effectiveness for Human Pathogens</u>
SEP2016-0041	Regionwide	<u>Creating Tools to Assess Adverse Effects of Organic Matter Pollution on Estuarine Sediment</u>
SEP2016-0003	Laguna Coastal Streams; Aliso Creek; Salt Creek; San Juan Creek; San Clemente Coastal Streams; San Mateo Creek	<u>Cleanup OC</u>
SEP2016-0010	Santa Margarita River	<u>Santa Margarita River Estuary Water Quality and Habitat Assessment</u>
SEP2016-0017	San Luis Rey River	<u>The Conservation Plans and Nutrient Reduction BMPs Implementation Program</u>
SEP2016-0019	San Luis Rey River	<u>San Luis Rey Watershed Non-Native Plant Control</u>
SEP2016-0022	San Luis Rey River	<u>Monitoring the Health of Our Waters through Bioassessment-San Luis Rey</u>
SEP2016-0007	Escondido Creek	<u>Escondido Creek Invasive Plant Removal</u>
SEP2016-0023	Carlsbad HU	<u>Monitoring the Health of Our Waters through Bioassessment-Carlsbad</u>

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January 2017 List of pre-approved SEPs and ECAs San Diego Regional Water Quality Control Board

SEP Number	Watershed/ Hydrologic Unit	Project Name
SUPPORT		
SEP2016-0011	San Dieguito River	<u>San Dieguito River Invasive Plant Removal and Restoration</u>
SEP2016-0024	San Dieguito HU	<u>Monitoring the Health of Our Waters through Bioassessment-San Dieguito</u>
SEP2016-0025	Peñasquitos HU	<u>Monitoring the Health of Our Waters through Bioassessment-Penasquitos</u>
SEP2016-0026	San Diego HU	<u>Monitoring the Health of Our Waters throught Bioassessment-San Diego River</u>
<i>SEP2016-0029</i>	<i>Otay HU</i>	<u>Monitoring the Health of Our Waters through Bioassessment-Otay</u>
<i>SEP2016-0027</i>	<i>Pueblo San Diego HU</i>	<u>Monitoring the Health of Our Waters through Bioassessment-Pueblo</u>
<i>SEP2016-0028</i>	<i>Sweetwater HU; Otay HU; Tijuana HU</i>	<u>Monitoring the Health of Our Waters through Bioassessment-Sweetwater, Otay, Tijuana</u>
<i>SEP2016-0030</i>	<i>Tijuana HU</i>	<u>Monitoring the Health of Our Waters through Bioassessment-Tijuana</u>
<i>SEP2016-0034</i>	<i>Tijuana River</i>	<u>Treatment of Tamarisk within the Tijuana Slough National Wildlife Refuge</u>

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SEP/ECA Projects Categorized as “Contingent” and “Not Eligible”

Project proposals placed into the “Contingent” and “Not Eligible” categories are shown below and in Supporting Document 4 of the agenda materials.

PROPOSED JANUARY 2017 CONTINGENT PROJECTS (R9)

SEP Number	Watershed/ Hydrologic Unit	Project Name	Contingencies
<i>SEP2016-0006</i>	<i>Regionwide</i>	<u>Butts to Watts Cigarette Litter Prevention and Recycling Program</u>	<i>Include long term maintenance commitment by the discharger. Include justification of recycling cost or reduce. Only sites within EJ communities will be considered for funding.</i>
SEP2016-0039	Aliso Creek	<u>Aliso Creek Mainstem Ecosystem Restoration Project</u>	Demonstrate project is a viable restoration project with water quality benefits through 401 process. Only willing to fund restoration components. Include support from interested parties. Consider including functional assessment success criteria. Consider augmenting with treatment control best management practices.
SEP2016-0016	Agua Hedionda Creek	<u>Caulerpa Taxifolia Monitoring-Inner Basin, Agua Hedionda Lagoon</u>	Justify and describe survey area. Demonstrate how this project will coordinate with dredging surveys.
SEP2016-0012	Los Penasquitos Creek	<u>Los Peñasquitos Lagoon Phase 1A</u>	Demonstrate illicit sediment and dry weather flows from the watershed have been eliminated prior to inclusion on the list.
SEP2016-0013	Los Penasquitos Creek	<u>Los Peñasquitos Lagoon Phase 1B</u>	Demonstrate illicit sediment and dry weather flows from the watershed have been eliminated prior to inclusion on the list.

Projects in Bold and Italic are located in Environmental Justice or Disadvantaged Communities

PROPOSED JANUARY 2017 CONTINGENT PROJECTS (R9)

SEP Number	Watershed/ Hydrologic Unit	Project Name	Contingencies
SEP2016-0032	San Diego River	Las Colinas Channel Improvements	<p>Demonstrate project is a viable restoration project with water quality benefits through 401 process.</p> <p>Only willing to fund restoration components.</p> <p>Include support from interested parties.</p> <p>Consider including functional assessment success criteria.</p> <p>Include a discussion of all existing treatment control best management practices to treat trash and WQIP listed priority pollutants in the project watershed (or service) area.</p>
SEP2016-0033	San Diego River	Sycamore Creek Restoration	<p>Demonstrate project is a viable restoration project with water quality benefits through 401 process.</p> <p>Include support from interested parties.</p> <p>Consider including functional assessment success criteria.</p> <p>Include a discussion of all existing treatment control best management practices designed to treat trash and WQIP listed priority pollutants in the project's watershed (or service) area.</p>
SEP2016-0042	San Diego River	Famosa Slough Storm Drain Pipe	<p>City of San Diego needs to be a coapplicant for modification to their municipal storm sewer system.</p>
SEP2016-0037	San Diego Bay	Paradise Creek Restoration Project at Highland Avenue	<p><i>Demonstrate project is a viable restoration project with water quality benefits through 401 process.</i></p> <p><i>Include support from interested parties.</i></p> <p><i>Consider including functional assessment success criteria.</i></p> <p><i>Include a discussion of all existing treatment control BMPs designed to treat trash and WQIP listed priority pollutants in the project's watershed (or service) area.</i></p>

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PROPOSED JANUARY 2017 CONTINGENT PROJECTS (R9)

SEP Number	Watershed/ Hydrologic Unit	Project Name	Contingencies
<i>SEP2016-0038</i>	<i>San Diego Bay</i>	<u>Paradise Creek Restoration Project at West Avenue</u>	<p><i>Confirm that RGP 63 mitigation requirements have been fulfilled. Demonstrate project is a viable restoration project with water quality benefits through 401 process.</i></p> <p><i>Consider including functional assessment criteria.</i></p> <p><i>Include a discussion of all existing treatment control best management practices designed to treat trash and WQIP listed priority pollutants in the project's watershed (or service) area.</i></p>
<i>SEP2016-0014</i>	<i>Tijuana River</i>	<u>Tijuana River Valley Property Acquisition/Restoration</u>	<p><i>Include commitment for long-term maintenance on purchased properties.</i></p>
<i>SEP2016-0002</i>	<i>Tijuana River</i>	<u>Tijuana River Floating Trash Capture System</u>	<p><i>Add co-applicant that will be responsible for operation and maintenance after installation.</i></p> <p><i>Include additional justification for non-construction costs.</i></p>

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PROPOSED JANUARY 2017 PROJECTS NOT ELEGIBLE (R9)

SEP Number	Watershed/ Hydrologic Unit	Project Name	Basis for Inelegibility
SEP2016-0001	Aliso Creek	Aliso Creek Urban Runoff Education & Reduction	Activities identified are legally required of the municipal storm water co-permittee.
SEP2016-0004	Dana Point Harbor	Dana Point Harbor Copper Reduction Program	Success criteria is insufficient to demonstrate water quality benefits.
SEP2016-0005	San Mateo Creek; San Clemente Coastal Streams; Dana Point Coastal Streams; San Juan Creek	WHALES: Watershed Heros-Actions Linking Education to Stewardship, South Orange County	Success criteria is insufficient to demonstrate water quality benefits.
SEP2016-0021	Regionwide	The Industrial General Permit Educational Workshop	Industrial General Permit trainings are planned and conducted by the State Water Resources Control Board.
SEP2016-0031	Escondido Creek	Master Drainage Facility Condition Assessment and Replacement	Activities identified are legally required of the municipal storm water co-permittee.

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