

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2008-0180

APPROVING SUPPLEMENTAL ENVIRONMENTAL PROJECT LIST
CRITERIA AND AUTHORIZING THE EXECUTIVE OFFICER TO ADMINISTER THE
SUPPLEMENTAL ENVIRONMENTAL PROJECT AND REGIONAL WATER QUALITY
IMPROVEMENT PROJECTS PROGRAM

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

1. Pursuant to California Water Code (CWC) § 13323, Executive Officers of Regional Water Quality Control Boards (Regional Water Boards) may issue administrative civil liability complaints (ACLCs) to any person violating the provisions of the Porter-Cologne Water Quality Control Act (CWC § 13000 et seq.), including dischargers violating waste discharge requirements, discharge prohibitions, enforcement orders, or other orders of the Regional Water Boards.
2. The State Water Board's Water Quality Enforcement Policy allows for a portion of certain penalties assessed by the Regional Water Boards to be directed towards water quality improvement projects within the region in which the assessments were made. These projects are referred to as Supplemental Environmental Projects (SEPs).
3. Selection and management of the SEP process is cumbersome and often burdensome on individual violators. In contrast to smaller, independent SEPs, large-scale, more comprehensive SEPs are often successful in reversing the negative impacts on the environment caused by illicit discharges, legacy pollutants or other factors.
4. There are desirable water quality improvement projects within each of the nine regions that are unfunded or under-funded. These regional projects, as identified by the Regional Water Boards, address problems requiring cleanup and abatement actions and other significant unforeseen water pollution problems that may not be undertaken in the absence of financial assistance (e.g., wastewater treatment facility projects in disadvantaged communities). These projects are referred to as "regional water quality improvement projects." With certain statutorily-defined exceptions, funds obtained by Regional Water Boards from ACL assessments and other enforcement actions are deposited in the State Water Pollution Cleanup and Abatement Account (CAA). This resolution creates a means for the Regional Water Board to address water quality protection needs of interest to it, other than through the use of a SEP, by allocating funds from the CAA, when available, for Regional Water Quality Improvement Projects (RWQIP).
5. The Regional Water Board will facilitate the SEP/RWQIP process by maintaining a list of prequalified projects that can be funded to offset portions of assessed penalties or that can improve water quality in the region. The SEP/RWQIP List will be available on the Regional Water Board's or State Water Board's website.

6. After the approval of this resolution, Regional Water Board staff will conduct a workshop designed to familiarize interested parties with the SEP/RWQIP Listing process, SEP/RWQIP qualification criteria, information required by the Regional Water Board for a SEP or RWQIP, and the SEP and Regional Water Quality Improvement Projects management process.
7. Notice of the proposed adoption of the SEP/RWQIP List Criteria was published on 23 November 2008. Interested Parties received notice by mail and comments were accepted until 5 December 2008.

THEREFORE BE IT RESOLVED BY THE REGIONAL WATER BOARD THAT:

The Regional Water Board hereby adopts the SEP/RWQIP List Criteria (**Attachment A**) and directs the Executive Officer to administer the SEP/RWQIP List and its associated maintenance activities, subject to the following provisions:

1. The Executive Officer will present annually to the Regional Water Board an update of the prequalified Supplemental Environmental Project and Regional Water Quality Improvement Projects List status and any modifications to the SEP/RWQIP List Criteria.
2. Dischargers may request to pay a portion of the ACL assessed against them by committing to appropriate SEPs as outlined within the guidelines of the State Board's Enforcement Policy. Individual dischargers may request to fund SEPs or portion of a SEP from the SEP/RWQIP List, or may submit their own SEP proposal.
3. Should a Discharger request to fund a SEP(s) on the SEP/RWQIP List, the Discharger will be required to submit a letter identifying the SEP. A Discharger may not fund a SEP consisting of any project that the Discharger is required to perform under any permit, regulation or law or that the Discharger has already committed to undertake independent of the enforcement action. The Regional Water Board, the Executive Officer or her delegate must approve the selection of the SEP requested prior to funding.
4. SEPs that have been successfully completed or SEPs that have been abandoned will be removed from the SEP/RWQIP List. Similarly, Regional Water Quality Improvement Projects that have been successfully completed or that have been abandoned will be removed from the SEP/RWQIP List.
5. ACL Orders allowing SEPs shall require the Discharger to ensure that for SEP(s) chosen for funding and successfully completed, the Discharger shall submit a Final Report to this Regional Water Board within 30 days following the date of completion. The Final Report shall contain an accounting of all funds received, monies spent, and receipts to substantiate each expense, as well as a detailed description of the SEP as actually completed. ACL Orders shall either require the Discharger to remit all unused funds to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of the completion of the project or include findings regarding other disposition of unused funds.

6. Regional Water Board staff shall continue the SEP/RWQIP List administration process. SEPs or RWQIPs meeting the qualifications and guidelines set forth in the Regional Water Board's SEP/RWQIP List Criteria (Attachment A) shall be considered for inclusion in the prequalified SEP/RWQIP List. The public will have a 30-day period to comment on any SEP/RWQIP proposed to be added to the SEP/RWQIP List. A listing of projects can be accessed by the following link: http://www.waterboards.ca.gov/centralvalley/water_issues/enforcement/index.shtml Regional Water Board staff will query periodically the SEP/RWQIP proponents in order to update the status of their application.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Water Quality Control Board, Central Valley Region, on 5 December 2008.

Original Signed by

PAMELA C. CREEDON, Executive Officer

16 December 2008

Date

ATTACHMENT A

Criteria for Accepting Supplemental Environmental Projects Proposals and Regional Water Quality Improvement Projects for Inclusion in the Qualified SEP/RWQIP List

Purpose

In order to streamline the process of selecting Supplemental Environmental Projects (SEPs) in enforcement cases brought against dischargers found in non-compliance with their regulatory measures, the Central Valley Regional Water Quality Control Board (Regional Water Board) will solicit proposals of projects that can be put on a list of prequalified SEPs. Once the proposed SEPs that meet the criteria are accepted, the Regional Water Board can add those proposed SEPs to its list of available qualified SEPs. This list of qualified SEPs can be used to select SEP projects proposed as settlement of ACLs in accordance with the State Water Board's Enforcement Policy. A list of prequalified SEPs will have multiple benefits for improving the water quality of the Region. It can also streamline and accelerate the process of selection and approval in settling enforcement matters. This effort responds to requests from the public and the regulated community to provide an efficient process for SEPs selection and approval that may have direct benefits to the water quality of the Region. The same criteria is applicable to the acceptance of Regional Water Quality Improvement Projects (RWQIPs), reference to SEPs should be interpreted as referring to RWQIPs also.

Selection Criteria

Under the authority of the California Water Code (CWC), the State Water Resources Control Water Board (State Water Board) and Regional Water Quality Control Water Boards (Regional Water Boards) may issue administrative civil liability complaints (ACLs) to dischargers in response to violations of waste discharge requirements, discharge prohibitions, enforcement orders, or other orders of the Water Boards. Assessments collected through the ACLC process are required by the CWC to be paid to the State Water Board Cleanup and Abatement Account (CAA) or other accounts as specified in law. The State Water Board administers the CAA, and funds are used to address important water quality cleanup and abatement activities throughout the state.

As an alternative to paying monetary penalties, the State Water Board's Water Quality Enforcement Policy recognizes that violators may fund important and valuable water quality improvement projects within the Region in which the assessment was made. These are known as Supplemental Environmental Projects or SEPs. SEPs have been used in every region in the state. SEPs are projects that (1) enhance the beneficial uses of the waters of the state, (2) provide a benefit to the public at large, and (3) are not otherwise required or would be greatly accelerated by the funding provided by the ACLC assessment. Examples of SEPs include pollution prevention projects, environmental restoration programs, environmental auditing, public awareness and education activities, watershed assessments, watershed management facilitation services, and non-point source program implementation.

The current State Water Board Enforcement Policy states: “Any public or private entity may submit a proposal to the State Water Board (or to the Regional Water Board for transmittal to the State Water Board) for a SEP that they propose to fund through this process. Staff at the State Water Board shall evaluate each proposal and maintain a list of candidate SEPs that satisfy the general criteria in subsection C of this section. The list of candidate SEPs shall be made available on the Internet along with information on completed SEPs and SEPs that are in-progress. When a Regional Water Board is considering allowing a discharger to perform a SEP in lieu of some or all of a monetary assessment, the Regional Water Board should direct the discharger to the list of candidate SEPs. The discharger may select a SEP from the list of candidate SEPs or may propose a different SEP that satisfies the general criteria for SEPs.” Currently the State Water Board is not actively maintaining a statewide list of SEPs. Based on the criteria outlined in this document the Regional Water Board will assemble and post on the Regional Water Board website the list of qualified SEPs to be used in this region. In addition, the Regional Water Board will use Internet listing services to keep the interested parties and the public up to date about any changes to the list or criteria.

The Regional Water Board is accepting project proposals for SEPs. Proposals should include:

1. A project title.
2. The organization proposing the project (project manager’s name, email address and phone number; type of organization {public, private, non-profit, etc.}).
3. A brief description of the project, including an explanation of how the project satisfies the criteria listed in **Attachment 1**. Attachment 1 consists of the criteria set forth in the Section IX of the Enforcement Policy. Any revisions to the Enforcement Policy shall supercede conflicting provisions of Attachment 1. Regional Water Board staff will update Attachment 1 to incorporate such revisions, when the revisions become effective.
4. A detailed description of the scope of work, work products (as applicable), and project milestones.
5. The names and statement of qualifications and experience for key project team members.
6. Total project cost. In addition, the amount of SEP funding sought and other existing funding sources. Matching funds, in kind services and leveraged projects are encouraged.

The total cost must be at least \$50,000 and must include the cost to cover independent third party oversight costs.

7. Detailed cost breakdown by task, including estimated hours and hourly rates for professional services, analytical costs, equipment and reproduction costs, construction of improvements, etc.
8. Project schedule, including proposed start and completion dates, individual task durations or an estimated timeline. The schedule shall include proposed deadlines

for completing work products and project milestones (e.g. completion of task 1 three months after obtaining funding, etc.). Inclusion of a Gantt chart that illustrates the project schedule is encouraged (please see an example of a Gantt chart included in **Attachment 2**). The schedule should include deadlines for submitting progress reports, at least quarterly for projects with duration of six months or longer.

9. As appropriate, proposals should also identify:
10. the particular water body that will benefit from the SEP,
11. beneficial use and/or pollutant(s) to be addressed by the project.
12. End product. This may include project reports, educational materials, brochures, water quality data, etc. If educational materials or other outreach materials are included in the project, a complete description of how the materials will be distributed or otherwise made available, who will distribute the materials, and how the materials will benefit water quality. If data will be generated for use by public and private entities, define who will receive the data, in what form the data will be provided, the intended use of the data, and a description of the quality assurance/quality control procedures that will be used to validate the data (this may include third party peer review of the study and resulting data).
13. Project Evaluation Assessment. Any SEP proposal shall include a section that will designate an independent third party that will oversee the progress of the project and will assess the successful implementation of the project based on the criteria outlined in the proposal. A third party assessment report must be included in the Final Report submitted to the Regional Board after the completion of the project.

We recommend limiting the proposals to five pages. A suggested format is included as **Attachment 2** to this document. Proposals will be accepted on an on-going basis. Proposals should be submitted by mail, email or fax to:

Central Valley Regional Water Quality Control Water Board,
ATTN: SEP/RWQIP Proposal
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Fax: 916-464-4775

For questions regarding the CV Regional Water Board list of SEPs, contact Regional Water Board staff at 916.464.4736

Attachment 1

General SEP/RWQIP Qualification Criteria

All SEPs/RWQIPs approved by the State Water Board or Regional Water Board must satisfy the following general criteria:

- (a) In general, an SEP shall only consist of measures that go above and beyond the obligation of the discharger. For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP. However, in case of a non-discharger proposal, this criterion may not be appropriate to consider at the time of submittal.

- (b) The SEP should directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to:
 - (i) monitoring programs;
 - (ii) studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
 - (iii) water or soil treatment;
 - (iv) habitat restoration or enhancement;
 - (v) pollution prevention or reduction;
 - (vi) wetland, stream, or other waterbody protection, restoration or creation;
 - (vii) conservation easements;
 - (viii) stream augmentation;
 - (ix) reclamation;
 - (x) public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.);
 - (xi) watershed assessment (e.g., citizen monitoring, coordination and facilitation);
 - (xii) watershed management facilitation services; and
 - (xiii) non-point source program implementation.

- (c) The SEP/RWQIP shall not directly benefit the State Water Board or Regional Water Board functions or staff. For example, SEPs/RWQIPs shall not be gifts of computers, equipment, etc. to the State Water Board or Regional Water Board.

- (d) The SEP/RWQIP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity (e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger's project(s).

Additional SEP/RWQIP Qualification Criteria

The following additional criteria should be evaluated by the State Water Board and Regional Water Board during final approval of SEPs/RWQIPs proposed by the discharger:

- (a) The SEP/RWQIP should, when appropriate, include documented support by other resource agencies, public groups and affected persons.
- (b) The SEP/RWQIP should, when appropriate, document that the project complies with the California Environmental Quality Act.
- (c) Regionwide use/benefit - Some projects may benefit the specific watershed yet still provide added value regionwide or even statewide. For example, development of a spill prevention course could benefit not just the local watershed but the whole region or state if properly packaged and utilized. Likewise, a monitoring program for a particular water body could also provide information that staff could use in assessing other discharges, spills, 401 certifications or flood control activities in a river. Projects, which provide the State Water Board or Regional Water Board with added value, are encouraged.
- (d) Combined funding - Some projects use seed money to create a much greater or leveraged impact. Often other agencies will contribute staff time, laboratory services, boat use, or other services as part of a monitoring project. While the applicant may propose to spend hard money on equipment or materials, they may be donating expertise and labor to accomplish a much larger project. Matching funds, in kind services and leveraged projects are encouraged.
- (e) Institutional stability and capacity - The Regional Water Board shall consider the ability of the discharger or third party contractor to accomplish the work and provide the products and reports expected. This criterion is especially important when a Board receives money as the result of a settlement and must then select and fund projects proposed from many sources.
- (f) Projects that involve environmental protection, restoration, enhancement or creation of waterbodies should include requirements for monitoring to track the long-term success of the project.

Nexus Criteria

An SEP must have a nexus (connection or link) between the violation(s) and the SEP. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. An SEP must meet one or more of the following criteria. SEP approval is more likely for projects meeting more criteria. This criteria may not be specifically applicable for a SEP submitted in advance to be accepted to the SEP/RWQIP List, however it is outlined for general information purposes. In addition, the nexus criteria may be inapplicable to a proposal for a RWQIP, however it should address a water quality issue within the Central Valley Regional Water Board's jurisdiction.

Geographic Nexus - The proposed project should have a geographic link or nexus with the area where the water quality problem or violation occurred. For example, a spill to a river might require a plan to improve habitat or fish populations in the river in the general area of the spill. Work in a tributary watershed might be appropriate depending on the circumstances, however, work in a far different part of the region or state would likely not meet the geographic nexus criteria.

Spill Type or Violation - The proposed project should be related to the specific spill type or violation. For example, an SEP for a sewage spill ACL could include holding spill prevention workshops for other dischargers in the general area (both a geographic and violation type nexus). The workshops should go beyond what is necessary just to address mandatory work, equipment, and improvements required to correct the nature of the violation.

Beneficial use protection - Where specific beneficial uses were affected by the violation, it is appropriate to design SEPs that address protection and improvement of those uses. Where fish populations and habitats are affected, efforts to improve habitats and populations would be ideal, especially in the same watershed. Water quality monitoring, including flows, channel morphology, and habitat characteristics would be appropriate projects. In this case, the nexus is between the type of violation and the specific beneficial uses impacted. It is also important to keep endangered species issues in focus and to consult with the Department of Fish and Game, the National Marine Fisheries Service, and US Fish and Wildlife Service about impacts of violations on these species and possible SEPs.

Attachment 2

Project Title _____

Geographic area of interest: _____

Name of responsible entity: _____

Estimated cost for project completion: _____

Contact information: Name _____

Address _____

Phone _____ email _____

Brief description of the project:

Water Body, beneficial use and/or pollutant addressed by this project

- (a) Include a statement that the proposed project is not independently required of any discharger or proposed as mitigation to offset the impacts of a discharger's project(s).
- (b) Explain how the SEP/RWQIP will directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State.
- (c) Include a statement that the SEP/RWQIP shall not directly benefit the State Water Board or Regional Water Board functions or staff.
- (d) Include a brief description of the schedule of activities, deliverables and associated timeline chart.
- (e) Include an estimate of the cost of third party oversight for the project (typically between 6% to 10% of the total cost) and which third party organization will provide independent oversight of the progress and completion of the project.
- (f) All SEP/RWQIP proponents accepted on the SEP/RWQIP List shall notify Regional Water Board staff of the receipt of any other funding from any voter approved Propositions, section 319 of the Clean Water Act, Grant Programs, or other source.

The proponent/auditor of each SEP/RWQIP shall provide documentation to the Regional Water Board illustrating that the monies received through other sources will not fund projects that are already funded or plan to be funded with SEP/RWQIP monies. This notification and clarification shall accompany the SEP/RWQIP developer's workplan, and shall be updated in the event of any funding source changes.

SEP/RWQIP Proposal (SAMPLE)

Overview:

The Fishery & Wildlife Coalition of California (FWCC) is proposing to develop a monitoring plan and to provide a full year of Great Fish monitoring on the Mighty River. The monitoring will consist of two phases: 1. Upstream adult passage and spawning distribution (Fall, 2007). 2. Spawning production and juvenile out migration (Spring, 2008). Monitoring will focus on the historic spawning reach from High Road to Key Falls. The proposed monitoring is an essential component for future watershed planning and targeted restoration. Additionally, the project will provide essential, basic life history data that is crucial for the management of Great Fish on the Mighty River.

Project:

The FWCC will develop a monitoring plan for the Great Fish of the Mighty River. Monitoring goals will include documenting run timing and abundance, mapping spawning distribution, and estimating juvenile production via out migration surveys. The monitoring will consist of three tasks:

Task 1 - Project Management

Project management encompasses all QA/QC activities, database management, quarterly and final reporting, and all necessary costs directly associated with specific project oversight. It also allows for in the field for inspection of work in progress and training purposes.

Task 2 - Escapement

Total escapement and will be estimated using the standard Peterson Index (Lincoln Index) as employed by Snider and Reavis (2000).

Task 3 – Outmigration

The FWCC will operate a screw trap at river mile 6.7 to estimate outmigration timing and production relative to total escapement.

[As proposed, the above work is consistent with and supports the objectives of the Comprehensive Assessment and Monitoring Program (CAMP) established by Section 3406(b)(16) of the CVPIA (CAMP, 2004). The proposed work is fully supported by the USFWS and CDFG for the Mighty River.]

Cost:

The estimated total cost of the project is \$110,000. \$100,000 will be dedicated to the development and implementation of the proposed monitoring program. \$10,000 is dedicated for the oversight of the project's implementation.

Implementation:

Upon approval and funding, the FWCC will begin development of the monitoring plan. Upstream migration surveys will begin in October 2007 through January 2008. Outmigration surveys will begin in March 2008 and continue through late May or early June of 2008. A final report will be delivered to Discharger no later than August 31, 2008.

Deliverable:

- a) Within 30 days of issuance of the funding, provide a copy of the partnership agreement.
- b) September 30, 2007. Provide a copy of the monitoring plan.
- c) August 31, 2008. Provide a final report on the findings in scientific format.

Each calendar quarter beginning August 1, 2007 and ending August 31, 2008 provide a report on the status of the project including all invoices paid to the consultant working on the project.

Third Party Oversight

The Oversight Group was selected to provide oversight for the implementation of the project. The Oversight Group will provide a final assessment report to the project proponent within 21 days after the completion of the project outlining how the project met the goals of the proposal.

Sample Gantt Chart

