

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

RESOLUTION R7-2019-0037

**ESTABLISHING PROCESS FOR THE SUPPLEMENTAL
ENVIRONMENTAL PROJECT PROGRAM**

WHEREAS, the California Regional Water Quality Control Board, Colorado River Basin Region (Colorado River Basin Water Board) finds:

1. The Colorado River Basin Water Board is the state agency with primary responsibility for coordination and control of water quality within the Colorado River Basin Region. The board's mission is to preserve, enhance, and restore the quality of water resources and drinking water for the protection of the environment, public health, and all beneficial uses for the benefit of present and future generations.
2. The Porter-Cologne Water Quality Control Act (Water Code §§ 13000 et seq.) grants the Colorado River Basin Water Board the authority to implement and enforce water quality laws, regulations, policies, and plans to protect the groundwater and surface waters of the state within the Colorado River Basin Region.
3. The Colorado River Basin Water Board may impose administrative civil liability (i.e. monetary penalties) for a variety of water quality violations through administrative civil liability (ACL) orders. (Wat. Code, § 13323.) The board may allow a settling party to satisfy part of the monetary assessment imposed in an ACL order arising out of a settlement by completing or funding one or more Supplemental Environmental Projects (SEPs). (Wat. Code, §§ 13385(l), 13399.35; see generally Gov. Code, 11415.60.)
4. A SEP is defined as "an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty." (Pub. Res. Code § 71118(a)(3); see also Wat. Code §§ 13385(l)(2), 13399.35(b).) A SEP must improve, protect, or reduce risks to public health or the environment.
5. On December 5, 2017 and effective on May 3, 2018, the State Water Resources Control Board (State Water Board) adopted a revised *Policy on Supplemental Environmental Projects* (SEP Policy), which provides a framework for the Water Boards to use in exercising their enforcement discretion to determine appropriate settlements with SEPs.
6. Among other things, the Policy authorizes a discharger that has been assessed an ACL by a Water Board to satisfy up to 50 percent of their total liability by funding an eligible SEP.¹ A greater percentage of the total liability may be used where there is a compelling justification, as approved by the Director of the Office of Enforcement. Up to one hundred percent of the total liability may be used if the SEP is located in or

¹ For settlements of mandatory minimum penalties of \$15,000 or less, the entire penalty amount may be directed to be expended on a SEP without prior approval.

benefits a disadvantaged community,² an environmental justice community,³ or a community that has a financial hardship,⁴ or where the SEP substantially furthers the human right to water.⁵ That portion of the liability (i.e. SEP dollar amount) is suspended until the discharger demonstrates successful completion of the SEP, at which time it is dismissed.

7. Typical SEPs include, but are not limited to, the following types of projects:
 - a. Public health projects that further the human right to water and/or sanitation in a community;
 - b. Pollution prevention projects that prevent pollution at its source, before it is generated;
 - c. Pollution reduction projects that result in a decrease in the amount and/or toxicity of any hazardous substance, pollutant, or contaminant entering any waste stream;
 - d. Environmental restoration and protection projects, such as those benefiting surface water or groundwater quality and enhance the condition of the ecosystem or immediate geographic area adversely affected by the violation;
 - e. Assessment and audit projects, such as pollution prevention assessments, environmental quality assessments, compliance audits, or studies and monitoring programs; and
 - f. Environmental compliance promotion projects that provide training or technical support to members of the regulated community other than the settling party.
8. SEPs can provide environmental and/or public health benefits in addition to those achieved by compliance with applicable laws. Therefore, SEPs are an important component of the Colorado River Basin Water Board's enforcement program, although they may not be appropriate in the settlement of all cases. Such projects can help mitigate environmental degradation caused by water quality violations near the area where degradation occurred.
9. The Colorado River Basin Water Board recognizes that SEPs provide a strategic mechanism to make a portion of ACLs available for the kinds of projects identified as priorities by the board. The Colorado River Basin Water Board hereby prioritizes SEPs that address problems specific to the following:
 - a. The Salton Sea watershed;
 - b. The New River;
 - c. The protection of groundwater resources; and
 - d. Environmental justice communities, disadvantaged communities, and communities that have financial hardship.
10. The Colorado River Basin 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

² As defined in Health and Safety Code section 39711.

³ As defined in Government Code section 65040.12, subdivision (e).

⁴ As defined in 2017 SEP Policy at p. 10.

⁵ As defined in Water Code section 106.3.

watershed plan or Integrated Regional Water Management (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.

THEREFORE, BE IT RESOLVED THAT:

1. The Executive Officer develop a regional SEP List containing potential projects that may be selected by parties to settle a portion of an ACL, to be published in a prominent place on the Colorado River Basin Water Board's website.
2. The SEPs on the list be sorted by watershed, as identified in the *Water Quality Control Plan for the Colorado River Basin Region* (Basin Plan). The list shall also include information on project description, category, location, cost, expected benefits, and the potential to benefit disadvantaged communities, environmental justice communities, communities with a financial hardship, and the human right to water.
3. Colorado River Basin Water Board staff develop a solicitation letter and application materials (such as proponent list form, application form, Frequently Asked Questions) that reflect the board's established priorities and State Water Board policies.
4. SEP proposals initially be solicited by sending the solicitation letter and application materials to the following types of entities within the Colorado River Basin Region:
 - a. Dischargers;
 - b. Tribes;
 - c. Non-Governmental Organizations;
 - d. Environmental Justice Communities;
 - e. Disadvantaged Communities;
 - f. Communities with Financial Hardship;
 - g. Public Agencies; and
 - h. Local Governments.
5. Colorado River Basin Water Board staff conduct proactive public education and outreach concerning the SEP process, including by holding workshops to receive input and actively solicit proposals from regional stakeholders.
6. Colorado River Basin Water Board staff evaluate SEP proposals received and determine whether the SEP meets the SEP Policy criteria and the Regional Water Board's priorities, at a minimum on an annual basis.
7. The Executive Officer accept applications on a continuing basis, review applications as resources allow, add new projects to the SEP List at any time, and remove projects from the SEP List if a project is no longer considered applicable or eligible (following notice to the project sponsor).
8. Following a determination by Colorado River Basin Water Board staff that a proposed SEP is eligible, the SEP shall be placed on the regional SEP List.

9. All settlements involving SEPs be subject to the final review and approval of the Colorado River Basin Water Board. Placement of a particular project on the SEP List does not guarantee approval by the board.
10. In addition to publishing the regional SEP List, Colorado River Basin Water Board staff compile an interested parties list that, while they may not have specific projects on the list, could be contacted at the time of settlement for a SEP proposal.

I, Paula Rasmussen, 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, Colorado River Basin Region on June 13, 2019.



Paula Rasmussen
Executive Officer