

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

RESOLUTION R5-2017-0400

APPROVING THE 2017 DISADVANTAGED COMMUNITY  
SUPPLEMENTAL ENVIRONMENTAL PROJECT LIST SUBMITTED BY  
THE ROSE FOUNDATION FOR COMMUNITIES AND THE ENVIRONMENT

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

1. The Central Valley Water Board is an agency of the State of California with the mission of preserving, protecting, enhancing, and restoring water quality within the Central Valley of California. In support of that mission, the Central Valley Water Board has the authority to enforce permit conditions and provisions of its Water Quality Control Plans 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 Central Valley 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. SEP settlements are memorialized in Stipulated ACL Orders. It is the policy of the State Water Board that all ACL Settlements be posted for a 30-day public comment period before they are finalized.
3. The State Water Board has adopted a Water Quality Enforcement Policy effective 20 May 2010 and a Statewide Policy on Supplemental Environmental Projects (SEP Policy) (dated 3 February 2009) 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. The Rose Foundation for Communities and the Environment (Rose Foundation) is a grantmaking public charity based in Oakland, California with extensive experience in managing federal Clean Water Act supplemental environmental project funds and supporting community-based environmental projects in the Central Valley and throughout California.
6. The Rose Foundation is ideally situated to work within these communities to develop SEPs for their benefit, as it has demonstrated that it has the institutional capacity, the proven track record, and the connections within disadvantaged communities to help promote the DAC SEP Program and to provide oversight of the SEPs themselves.


7. In March 2014, the Central Valley Water Board approved Resolution No. R5-2014-0040, which launched a program to promote the allocation of SEP monies to disadvantaged communities in partnership with the Rose Foundation (the "DAC SEP Program"). Under the DAC SEP Program, the Rose Foundation helps disadvantaged communities to develop SEP proposals, proposes a list of these proposals to the Central Valley Water Board on an annual basis (the "Disadvantaged Community SEP List"), and assists disadvantaged communities and their advocates in the implementation of these SEPs by providing third-party oversight as the SEPs are funded, implemented, and completed.
8. In April 2015, the Central Valley Water Board renewed Resolution R5-2014-0040 by adopting Resolution R5-2015-9001, which also approved the Rose Foundation's 2015 project list that was submitted on 30 January 2015.
9. On 12 September 2016, the Executive Officer for the Central Valley Water Board renewed this initiative again by adopting Resolution R5-2016-0902, which approved the Rose Foundation's 2016 project list that was submitted on 29 March 2016.
10. Annual updates to the Disadvantaged Community SEP List may be approved by the Central Valley Water Board's Executive Officer after providing the public with an opportunity to comment on the changes to the list.
11. The Rose Foundation has committed to proposing updates to the Disadvantaged Community SEP List each year. These lists are to contain a catalogue of SEPs that dischargers facing administrative civil liability may fund in lieu of making payments to the State Water Board's Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund. The Central Valley Water Board is committed to providing the public the opportunity to comment on revisions to the Disadvantaged Community SEP List when it is updated each year.
12. The Rose Foundation shall confirm how the funds were expended in an annual report to the Central Valley Water Board, due by 31 January each year.

**THEREFORE BE IT RESOLVED**, the Executive Officer, with the delegated authority of the Central Valley Water Board:

1. Approves the 2017 Disadvantaged Community SEP List, Attachment B to this Resolution. The Rose Foundation shall update the Disadvantaged Community SEP List by 31 January of each year. Board staff shall provide a 30-day public comment period on the updates to the Disadvantaged Community SEP List prior to the list being reviewed and approved by the Central Valley Water Board or the Board's Executive Officer.
2. Directs Board staff to work with the Rose Foundation to publicize the DAC SEP Program on the Central Valley Water Board's website, and to give serious consideration to all proposals that would include these SEPs as a part of the settlement of a discharger's potential civil liability.

3. Instructs the Rose Foundation to report back to the Central Valley Water Board by 31 January of each year, providing information regarding the expenditure of SEP funds during the preceding calendar year. Copies of this report shall be submitted to all dischargers that have contributed to projects that have received funding from the Rose Foundation in the prior year. The Rose Foundation shall also submit this report to the Division of Financial Assistance at the State Water Board under penalty of perjury, declaring that the funds submitted to the Rose Foundation have been expended on eligible SEPs. These reports shall be considered a final post-project accounting of expenditures, as additional reporting on individual projects would be unduly onerous.
4. Dischargers shall be able to select which projects from the Disadvantaged Community SEP List are funded with their financial contributions.
5. Dischargers that direct funds to the Rose Foundation for use in a SEP on the Disadvantaged Community SEP List will have an equivalent amount of administrative civil liability suspended at the time they make actual payment of the amount agreed to in the ACL Order to the Rose Foundation, provided that the ACL Order also states that the Central Valley Water Board is entitled to recover any funds that are not expended in accordance with the terms of the ACL Order,

*Patrick Pulupa for*  
I, PAMELA C. CREEDON, Executive Officer, on 23 June 2017 do hereby approve this Resolution under the delegated authority granted to me by the California Regional Water Quality Control Board, Central Valley Region.

  
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PATRICK PULUPA, Acting Executive Officer