

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2023-0011**

ADOPTING COMPREHENSIVE PROJECT AND FUNDABLE PROJECT LISTS FOR THE SITE CLEANUP SUBACCOUNT PROGRAM (SCAP) AND DELEGATING AUTHORITY TO THE DEPUTY DIRECTOR OF THE DIVISION OF FINANCIAL ASSISTANCE (DIVISION) TO AMEND THE LISTS, APPROVE EXPENDITURES AND PROJECT FUNDING, EXECUTE GRANT AGREEMENTS, CONTRACTS, AND AMENDMENTS, REFER ACTIONS TO THE ATTORNEY GENERAL, AND PERFORM OTHER NECESSARY ACTIONS

WHEREAS:

1. In 2014, the Legislature established the SCAP, funded through an annual transfer of funds from the Underground Storage Tank Cleanup Fund, and authorized the State Water Resources Control Board (State Water Board) to expend funds from the SCAP for certain purposes, as set forth in section 25299.50.6 of the Health and Safety Code (hereafter, the SCAP Statute).
2. The SCAP Statute authorizes the State Water Board to expend SCAP funds by executing contracts and by issuing grants to eligible grant applicants for the following purposes:
 - a. For projects that remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination where both of the following eligibility requirements have been met:
 - i. The State Water Board, the Department of Toxic Substances Control (DTSC), a Regional Water Quality Control Board (Regional Water Board), a certified local oversight program agency, a unified program agency, or a local officer requires the responsible parties to undertake or contract for investigation or cleanup pursuant to an oral or written order, directive, notification, or approval issued pursuant to section 25187, 25187.1, 25296.10, 25355.5, 25358.3, or 101480 of the Health and Safety Code, or any section of the Water Code (SCAP-Qualifying Order/Directive). The State Water Board may waive this requirement if the State Water Board finds that it is infeasible for an order to be issued before initiation of remediation.
 - ii. No responsible party has sufficient financial resources to pay for the required response actions.

- b. To pay for reasonable and necessary expenditures by the State Water Board, the DTSC, a Regional Water Board, or a certified local oversight program agency to investigate the source of surface or groundwater contamination.
 - c. To pay for reasonable and necessary expenditures to remediate the harm or threat of harm to human health, safety, and the environment caused by existing or threatened surface or groundwater contamination incurred by any of the following:
 - i. The State Water Board;
 - ii. The DTSC;
 - iii. A Regional Water Board;
 - iv. A certified local oversight program agency; or
 - v. A water replenishment district, under the direction of the State Water Board, a Regional Water Board, a certified local oversight program agency, or another appropriate regulatory agency with authority over surface or groundwater cleanup oversight.
3. The SCAP Statute requires the State Water Board to consider the following factors when evaluating projects for expenditures of SCAP remediation funds:
- a. The degree to which human health, safety, and the environment are threatened by surface water or groundwater contamination at the location. The State Water Board has determined this factor includes the following:
 - i. The impact to, or threatened impact to, a potential source of drinking water; and
 - ii. Soil or soil vapor contamination at the project location.
 - b. Whether the location is in a small or financially disadvantaged community. The State Water Board has defined these terms as follows:
 - i. A “small community” is defined as a community providing drinking water service to less than 10,000 people.
 - ii. A “financially disadvantaged community” or “disadvantaged community” is defined as a community with a median annual household income of less than 80 percent of the statewide median annual household income.

- c. The cost and potential environmental benefit of the investigation or cleanup based on site conditions. The State Water Board has determined this factor includes the following:
 - i. The scope, schedule, and budget of the proposed work; and
 - ii. The technical feasibility of the proposed project.
 - d. Whether there are other potential sources of funding for the investigation or cleanup.
 - e. Other information the State Water Board identifies as necessary for consideration. Consistent with State Water Board [Resolution No. 2021-0050](#) and the [Racial Equity Action Plan](#), the State Water Board considers environmental justice by evaluating the most recent CalEnviroScreen score for the project location.
- 4. The SCAP Statute requires the State Water Board to review SCAP grant applications and adopt a list of applicants to be awarded grants at least annually.
- 5. Applications for SCAP grant funding received on or before February 24, 2023, have been scored consistent with the SCAP Statute and this resolution using the SCAP Ranking Methodology in Attachment A, as set forth on the SCAP Comprehensive Grant Project List in Attachment B. Scores are provisional and may be modified by the Deputy Director, or designee, consistent with this resolution.
- 6. The SCAP Fundable Grant Project List (shaded portion of Attachment B) is a subset of the SCAP Comprehensive Grant Project List and reflects the grant projects that are anticipated to complete grant eligibility review and potentially be funded during Fiscal Years 2022-2023 and 2023-2024, including grant projects with existing grant funding that are anticipated to require additional grant funding. The Deputy Director or designee will ensure sufficient funds are available for eligible projects with the highest scores prior to approving funding for lower scoring eligible projects that have not previously received SCAP grant or contract funding. Placement on the SCAP Fundable Grant Project List is not a commitment to provide grant funding. Funding is at the discretion of the Deputy Director or designee, consistent with this resolution.
- 7. Requests for SCAP contract funding received on or before February 24, 2023, have been scored consistent with the SCAP Statute and this resolution using the SCAP Ranking Methodology in Attachment A, as set forth on the SCAP Comprehensive Contract Project List in Attachment C.
- 8. Contract projects on the SCAP Comprehensive Contract Project List potentially are eligible for funding during Fiscal Years 2022-2023 and 2023-2024.

9. To promote efficiency, it is desirable to delegate certain actions and authorities to the Deputy Director of the Division, or designee, consistent with this resolution.
10. The State Water Board is authorized to request the California Attorney General to recover the actual, reasonable costs of investigation or cleanup undertaken with SCAP funds from a responsible party in appropriate cases. The State Water Board also is authorized to recover SCAP grant moneys paid, but to which the grantee is not entitled, by various means, including, but not limited to, referring such matters to the California Attorney General. It is desirable to delegate to the Deputy Director, or designee, with the concurrence of the Chief Counsel, the authority to refer appropriate cost recovery matters to the California Attorney General.
11. This resolution supersedes State Water Board [Resolution No. 2016-0032](#) in full.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Adopts a SCAP Comprehensive Grant Project List and a SCAP Fundable Grant Project List in Attachment B. A project must be on the SCAP Fundable Grant Project List to receive grant funding during the 2022-2023 and 2023-2024 Fiscal Years. Placement on the SCAP Fundable Grant Project List does not guarantee funding.
2. Adopts a SCAP Comprehensive Contract Project List in Attachment C. A project must be on the SCAP Comprehensive Contract Project List to receive contract funding during the 2022-2023 and 2023-2024 Fiscal Years. Placement on the SCAP Comprehensive Contract Project List does not guarantee funding.
3. Authorizes the Deputy Director of the Division of Financial Assistance, or designee, to approve grant funding and execute grant agreements and amendments for projects consistent with this resolution, the SCAP Statute, and the fiscal year SCAP appropriation.
4. Directs the Deputy Director, or designee, to consider the following factors in evaluating whether to fund projects on the SCAP Fundable Grant Project List: funding availability, whether a project previously has received SCAP funding, a funding applicant's timely and responsive provision of documentation required by the Division, and the Division's analysis of the factors set forth in this resolution.

5. Authorizes the Deputy Director of the Division, or designee, to amend the SCAP Comprehensive Grant Project List and SCAP Fundable Grant Project List as follows:
 - a. By removing any project from the SCAP Comprehensive Grant Project List and SCAP Fundable Grant Project List upon determining that the project is not eligible for funding under the SCAP Statute;
 - b. By amending the ranking score consistent with the SCAP Statute and this resolution using the SCAP Ranking Methodology;
 - c. By removing any project whose ranking score has been amended from the SCAP Fundable Grant Project List upon determining that the project is not ranked high enough for inclusion on the SCAP Fundable Grant Project List;
 - d. By adding new projects to the SCAP Comprehensive Grant Project List consistent with the consideration factors set forth in the SCAP Statute and this resolution periodically throughout the year and posting the updated list on the State Water Board's website;
 - e. By adding new grant projects to the SCAP Fundable Grant Project List if the project is in a location that is a disadvantaged community or where the score for the location from the newest version of CalEnviroScreen indicates that the project is in an area where environmental justice is a concern;
 - f. By adding projects to the SCAP Fundable Grant Project List that previously have received SCAP grant funding consistent with the SCAP Statute and consistent with this resolution except that they are not ranked high enough for inclusion on the SCAP Fundable Grant Project List. These projects are marked with an asterisk on the SCAP Fundable Grant Project List; and
 - g. By adding projects that are on the SCAP Comprehensive Contract Project List to the SCAP Fundable Grant Project List upon determining that the project is eligible for grant funding under the SCAP Statute.
6. Directs the Deputy Director of the Division, or designee, within 90 days to review the list of grant projects with existing grant funding that Attachment B reflects as not fundable and give the applicant an opportunity to submit information to reassess and add to the fundable list those non-funded projects where (i) the project is at a critical juncture and continued funding would allow continued interim remedial measures or cost-effective near-term corrective action, to protect human health and the environment, or (ii) additional equity information may support re-scoring for the project. This clause does not limit the authority of the Deputy Director to fund other grant projects on a case-by-

case basis or to reassess, within 60 days of entering a new phase, those grant projects with existing grant funding that are identified as not fundable.

7. Authorizes the Deputy Director of the Division, or designee, to approve contract funding and execute contracts and amendments for projects consistent with this resolution, the SCAP Statute, and the fiscal year SCAP appropriation.
8. Directs the Deputy Director, or designee, to consider the following factors in evaluating whether to fund projects on the SCAP Comprehensive Contract Project List: funding availability, whether the project previously has received SCAP funding, and the Division's analysis of the factors set forth in this resolution.
9. Authorizes the Deputy Director of the Division, or designee, to amend the SCAP Comprehensive Contract Project List as follows:
 - a. By removing any project from the SCAP Comprehensive Contract Project List upon determining that the project is not eligible for funding under the SCAP Statute;
 - b. By amending the ranking score consistent with the SCAP Statute and this resolution using the SCAP Ranking Methodology; and
 - c. By adding new projects to the SCAP Comprehensive Contract Project List consistent with the SCAP Statute and this resolution periodically throughout the year and posting the updated list on the State Water Board's website.
10. Authorizes the Deputy Director of the Division, or designee, to evaluate whether it was feasible for a SCAP-Qualifying Order/Directive to have been issued prior to remediation and to waive that requirement if the Deputy Director, or designee, finds it infeasible for the order or directive to have been issued before the initiation of remediation.
11. Authorizes the Deputy Director of the Division, or designee, to execute contracts and amendments, and other authorized expenditures of SCAP funds consistent with the SCAP Statute.
12. Authorizes the Deputy Director of the Division, or designee, to request the California Department of General Services to enter into contracts on behalf of the State Water Board and to act as the agent of the State Water Board or a Regional Water Board for the expenditure of SCAP funds.
13. Authorizes the Deputy Director of the Division, or designee, with the concurrence of the Chief Counsel, to initiate processes to recover SCAP expenditures in appropriate cases, including, but not limited to, referring cost

recovery requests to the State Water Board's Office of Enforcement or the Attorney General.

14. Authorizes the Deputy Director of the Division, or designee, to perform other actions necessary to administer the SCAP.

15. Directs the Deputy Director of the Division, or designee, to meet with stakeholders and to provide a status update to the State Water Board by November 30, 2023, on the SCAP and recommendations on revisions to the SCAP, including, but not limited to, the SCAP Ranking Methodology and the formation of a standing stakeholder group.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 18, 2023.

AYE: Chair E. Joaquin Esquivel
 Vice Chair Dorene D'Adamo
 Board Member Sean Maguire
 Board Member Nichole Morgan

NAY: None

ABSENT: Board Member Laurel Firestone

ABSTAIN: None



Courtney Tyler
Acting Clerk to the Board