

California Regional Water Quality Control Board
Santa Ana Region

December 4, 2020
Staff Report

ITEM: 9

SUBJECT: Resolution regarding Region 8 Supplemental Environmental Projects (SEPs) and Environmental Compliance Actions (ECAs) for consideration in enforcement settlement negotiations (Resolution R8-2020-0053, replacing Resolution R8-2019-0074

DISCUSSION:

On May 3, 2018, the State Water Resources Control Board (SWRCB) adopted Resolution 2017-0074 – Supplemental Environmental Project Policy (Policy), thereby replacing the former 2009 SEP Policy. The changes reflect some legislative requirements, particularly those that address Disadvantaged Communities, Environmental Justice Communities, and Financial Hardship Communities.

A supplemental environmental project (SEP) is a project that a Settling Party agrees to pay to offset a portion of its Administrative Civil Liability (ACL). The Settling Party can choose a SEP from the SWRCB's approved list, propose a local project, or decide to pay the full liability to the appropriate SWRCB Fund. The Water Boards cannot compel a discharger to fund a SEP; this is a voluntary program. A SEP cannot include an action that is otherwise required of the Settling Party or project proponent. Generally, the project needs to be within 50 miles of where the violations occurred.

SEPs are an opportunity for the Settling Party to fund up to 50% of their ACL on a local environmental project that meets the Policy's criteria. In general, the criteria should have an environmental value, further enforcement goals, take into consideration environmental justice, and support other important policies. These projects are subject to the Water Boards' oversight. Requirements in the Policy support the Water Boards' mission that includes the human right to water and environmental justice as well as climate change. The revised Policy encourages outreach to disadvantaged communities for submission of projects to assist these communities. With justification, 100% of a liability could fund a SEP that benefits a disadvantaged community.

Environmental Compliance Actions (ECAs) are projects that enable a discharger to make capital or operational improvements beyond those required by law. The Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary ACL for completion of an ECA. In general, any such settlement is subject to the rules that apply to SEPs, including the 50 percent limit. Settlement agreements may contain both SEPs and ECAs, so long as the aggregate sum of the costs for these alternatives does not exceed 50 percent of the total liability.

On October 25, 2019, Staff provided the Board with a SEP list based on solicitation of projects from the public and local agencies. In early 2020, Board staff met with staff from the SWRCB's Division of Drinking Water (DDW) to identify facilities within our Region that could become projects within the guidelines of the SEP Policy. Board staff has reviewed the new SEP applications based on input from DDW staff and added projects to the SEP List for Board approval. All projects on the revised SEP list were selected based on furthering the human right to water, providing a benefit for environmental justice, addressing climate change, or otherwise meeting the policy's acceptability criteria. Each year, staff will continue to update the list of projects, submit the list to the Executive Officer, present the list to the Board, and submit the list for inclusion on the SWRCB's approved list. Annually, the SWRCB collects approved SEPs and consolidates those SEPs on their website to allow Settling Parties to choose from a statewide list. Staff will also post the approved list of SEPs that would benefit this region on the Santa Ana Water Board's website.

All proposed SEPs must be approved by Santa Ana Water Board Executive Officer, who will ensure the project meets the Policy's criteria, such as evaluating the relationship between the location of the violation and the location of the proposed project, and other considerations in accordance with the SEP Policy, and as determined by the Executive Officer.

Ultimately the Settling Party is responsible for the completion of a SEP. Santa Ana Water Board staff oversight of these projects will include a review of the scope of work, budget, and time schedule. If a project extends beyond a year, an annual status report is required. If a third party is implementing the project, a financial audit may be required. Once a project is complete, the Settling Party must submit a notice of completion. Staff will review the project to ensure that the terms provided have been met. Once it is agreed that the project is complete, a statement will be provided to the Settling Party that the suspended liability is permanently suspended.

Proposed Resolution R8-2020-0053 would rescind and replace Resolution R8-2019-0074 to ensure that proposed SEP projects support the SWRCB's Policy, support the human right to water, and reflect the Santa Ana Water Board's priorities. The Executive Officer approved SEP List (Attachment to Resolution R8-2020-0053) will be immediately available to Dischargers (Settling Parties) for consideration during enforcement settlement negotiations. Resolution R8-2019-0074, as adopted by Board, allowed discretion of the Executive Officer to modify application materials for evaluation, methodology and selection of SEP projects and also allowed the Executive Officer discretion to add and remove projects from the pre-approved SEP/ECA list. Proposed Resolution R8-2020-0053 retains these delegated allowances at the discretion the Executive Officer and eliminates the need for a Board hearing to adopt a SEP list each year. Finally, proposed Resolution R8-2020-0053 acknowledges that additional staff resources required to solicit, evaluate and implement SEP/ECA projects can be extensive and that ultimately it is preferred that a third party administrator be found to collect, oversee and distribute SEP/ECA funds, manage ongoing projects and maintain and update the SEP/ECA List.

STAFF RECOMMENDATION:

Adopt Resolution R8-2020-0053, rescinding and replacing Resolution R8-2019-0074, as presented.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

RESOLUTION R8-2020-0053

**RESOLUTION SUPPORTING A LIST OF SUPPLEMENTAL ENVIRONMENTAL
PROJECTS (SEPS) AND ENHANCED COMPLIANCE ACTIONS (ECAS) FOR
CONSIDERATION IN ENFORCEMENT SETTLEMENT NEGOTIATIONS**

WHEREAS, The California Regional Water Quality Control Board, Santa Ana Region, (hereinafter, the Santa Ana Water Board) finds that:

1. Authority to Issue Monetary Penalties: 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.
2. Supplemental Environmental Projects (SEPs): Pursuant to the State Water Resources Control Board's (State Water Board's) Policy on Supplemental Environmental Projects (2017 SEP Policy), SEPs are defined as projects that further the Water Boards' mission to "preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use for the benefit of present and future generations." Part of this mission includes but is not limited to the following: furthering the human right to water; ensuring environmental justice; benefiting disadvantaged communities; and addressing climate change. At the time SEPs or ECAs are included in the resolution of an ACL action or negotiated settlement order the project is not otherwise required of the discharger in any other order or legal requirement. SEPs are intended to restore the environmental harm resulting from the violation(s) alleged.
3. Enhanced Compliance Actions (ECAs): Pursuant to the State Water Board's Water Quality Enforcement Policy (2017 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.
4. How SEPs and ECAs are Used: Pursuant to statewide SEP and Enforcement Policies, a discharger that has been assessed an ACL (monetary penalty) by a Water Board may choose to satisfy up to 50 percent of their 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.

5. Discharger: For ease of reference and because the SEP Policy applies broadly to classes of parties commonly referred to in a variety of ways, including, but not limited to, dischargers, diverters, regulated public, violators and responsible parties, the SEP policy uses the term settling parties universally and this resolution uses the term discharger.
6. Assembly Bill 1071 Directive: 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).
7. Eligibility Criteria Reflect Regional Priorities and State Directives: In developing the Water Board's SEP/ECA solicitation and application materials, Staff established eligibility requirements specifically designed to reflect the SEP Policy and Regional Board's priorities.
8. Solicitation of Proposals: SEP/ECA project proposals were solicited from the public from August 8, 2019 through October 10, 2019. In 2020 staff reached out to staff from the State Water Board's Division of Drinking Water (DDW) and asked for projects that would directly benefit environmental justice communities and disadvantaged communities with impaired water systems, in accordance with the State's Human Right to Water Policy (California Water Code Section 106.3) and the Santa Ana Water Board's Resolution R8-2019-0078. Application materials were distributed to the operators of water systems at risk of losing access to safe, clean and affordable drinking water. The attached 2021 Revised SEP List includes those project that were provided by the DDW staff.
9. Recommended List: Staff's recommended "Supplemental Environmental Projects for the Santa Ana Regional Water Quality Control Board" hereinafter "SEP/ECA List" is attached.
10. Continuous SEP/ECA Solicitation and List Update: Staff will provide the Board with an updated list each year (i.e., adding new projects and removing completed or expired projects). The Board delegates to the Executive Officer the authority to accept, review, and add new projects to the SEP/ECA List at any time, on a continuous basis. Project proposals will be logged in as received and reviewed as staff resources are available.
11. Third Party Administrator: A third-party administrator of the SEP/ECA List could reduce the substantial administrative workload of the Water Board associated with SEPs, ECAs, and maintenance of the SEP/ECA List. At this time Board staff do not have any external parties that could take on that task.

THEREFORE, BE IT RESOLVED THAT:

1. Adoption of the Resolution/Approval of the SEP/ECA List: The Santa Ana Water Board accepts the recommended current year's SEP/ECA List, hereinafter incorporated as part of this Resolution. Proposed projects on the List shall be immediately available to applicable and interested dischargers during enforcement settlement negotiations.
2. Support for SEP/ECA List Application Materials and Evaluation Methodology: The use of the application materials, evaluation methodology and selection priorities used for the SEP/ECA List should continue until updated.
3. Executive Officer Discretion to Modify Application Materials, Evaluation Methodology and Selection Process: For purposes of administrative streamlining, the Santa Ana Water Board grants the Executive Officer the discretion to modify the Eligibility Requirements or other details related to the SEP/ECA List application materials, evaluation and selection methodology, and Executive Officer approved SEP List to include the overall process as he/she deems appropriate, or necessary to meet Regional Board priorities or State Board Policy.
4. Executive Officer Discretion to Add Projects to Pre-Approved SEP/ECA List: To further increase the efficient use of its resources, the Santa Ana Water Board grants the Executive Officer the discretion to accept applications on a continuous basis, review applications as resources allow, add new projects to the existing SEP/ECA List at any future time as he/she deems appropriate, remove projects from the list if a project is no longer considered applicable or eligible.
5. Desirability of, and Need for, Third Party Administrator: The Santa Ana Water Board supports the use of a Third Party Administrator to collect, oversee, and distribute SEP/ECA funds, manage ongoing projects, and maintain and update the SEP/ECA List. The Santa Ana Water Board directs the Executive Officer to search for a suitable third party with which to contract for this purpose, and if one is found, authorizes the Executive Officer to develop appropriate contract language, in consultation with legal counsel and the third party
6. Need for Permanent Staff Resources to Manage Ongoing SEP/ECA Projects: In the absence of a Third Party Administrator, the Santa Ana Water Board recognizes that staff must expend significant time and resources in the oversight/management of ongoing SEP/ECA projects, especially those with long implementation schedules, as well as on the update and maintenance of the SEP/ECA List itself. For this reason and purpose, the Water Board encourages the Executive Officer to pursue the addition of staff resources through any appropriate means.
7. This Order rescinds and replaces Resolution R8-2019-0074.

I, Hope A. Smythe, 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, Santa Ana Region, on December 4, 2020.

Hope A. Smythe
Executive Officer

2021 Approved Supplemental Environmental Projects for the Santa Ana Regional Water Quality Control Board

Project Number	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
1	City of Hemet Well Heads 15&16 TCP Treatment Kristen Jensen (951) 765-3823	Project Management: \$350,000 Design: \$200,000 Sample: \$10,000 Total Cost \$4,890,000	Until Funded	The City of Hemet Water Department proposes to design and construct wellhead treatment facilities at Wells 15 & 16 to remove 1-2-3-trichloropropane (1-2-3 TCP); a contaminant regulated by the State of California in drinking water. These City groundwater production wells have been removed from service due to 1- 2-3-TCP contaminant levels that exceed the maximum allowed by the State. The production capacity of these wells is critical to support the current and future customer water demand of the district, which serves a severely disadvantaged community. In order to return these wells to service, remove of 1-2-3- TCP is required. This project proposes to design and construct wellhead treatment facilities to address 1-2-3-TCP at two separate groundwater well sites.	

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	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
2	<p>City of Rubidoux Community Services District Well 2 and Well 4 Wellhead Treatment for TCP David Lopez dave@rcsd.org</p>	To be Determined	Until Funded	<p>The City Rubidoux Community Services District proposes to design and construct wellhead treatment facilities at Wells 15 & 16 to remove 1-2-3-trichloropropane (1-2-3 TCP); a contaminant regulated by the State of California in drinking water. These City groundwater production wells have been removed from service due to 1-2-3-TCP contaminant levels that exceed the maximum allowed by the State. The production capacity of these wells is critical to support the current and future customer water demand of the district, which serves a severely disadvantaged community. In order to return these wells to service, remove of 1-2-3- TCP is required. This project proposes to design and construct wellhead treatment facilities to address 1-2-3-TCP at two separate groundwater well sites.</p>	

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	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
3	Quail Valley 2020 Septic to Sewer Water Quality Improvement Project. Eastern Municipal Water District, 2270 Trumble Road, Perris, CA 92570 Al Javier (951-928-3777)	Up to \$5 Million for engineering and design/up to \$65 Million total cost Project can be broken into smaller subprojects	2 years from the date of completion of sewer construction for Area 4 or 9.	Septic systems in Quail Valley area are failing at an alarming rate adversely impacting public health and water quality. Eastern and other agencies are proposing to provide sewer service to the area to eliminate septic systems. The area has a significant number of low-income and/or fixed income families and the SEP money will help low income residents with sewer connection expenses once the sewer is built.	Ongoing.
4	Orange County Clean-up at Huntington State Beach Coast Keeper Patrick Irizarry (714) 850-1965 ext 1008 Patrick@coastkeeper.org	\$23,000	Ongoing per event	Each event will focus on trash and debris removal (beach cleanups) at Huntington State Beach at the outlet of the Santa Ana River	
5	Upper Newport Bay Restoration. Marine Education Project, 45 Fremont St, Suite 2000, San Francisco, CA 94105 Chris Parry (415-904-5208) cparry@coastal.ca.gov	\$189K/\$250K The SEP money is to cover a portion of program expenses and personnel costs for 1 year.	Ongoing (annually)	Marine Education Project is proposing a Community-Based Restoration and Education Program for Upper Newport Bay. The project will foster community involvement and volunteer labor for restoration activities (removal of invasive species, planting of native species, restoration of buffer zones for breeding, foraging, etc.) and for monitoring of the restored areas	Partially funded; Funding required annually. R8-2006-0044 SEP funded \$12,000

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	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
6	<p>Artesia Sawdust Products 13434 Ontario Ave., Ontario CA 91761 DDW Contact Eric Zuniga District Engineer Phone (909) 383-4328 Eric.Zuniga@waterboards.ca.gov</p>	Approximately \$400,000	Upon Completion	Artesia Sawdust Products is regulated as a public water system within the County of San Bernardino. The water sources that provide potable water to a company and home were affected by TCE as a result of a plume located to the west. The City of Ontario estimates that in order to provide potable water through a piped main, the cost estimate would be approximately \$400,000. That would serve to consolidate small unsustainable water systems with other systems to provide safe drinking water for all Californians	Awaiting funding
7	<p>Maclin Markets Inc. 7407 E. Riverside Dr. Ontario, CA 91761 DDW Contact Eric Zuniga District Engineer Phone (909) 383-4328 Eric.Zuniga@waterboards.ca.gov</p>	Approximately \$35,000	Upon Completion	Maclin Markets is regulated as a public water system. There are residents on site. The source water contains high level of nitrates that exceed the state of California's acceptable levels. The project will replace 2,000ft of pipe underground to various locations and possibly connection to the City of Ontario's Public water system.	Awaiting funding

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	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
8	Old Pirate Lane City of Huntington Beach Andrew Ferrigno, Principal Civil Engineer, City of Huntington Beach CA (714) 536-5291 aferrigno@surfcity-hb.org	\$86,500	Upon Completion	Safe Drinking water initiative: The Old Pirate Lane State Small Water System is located in western Huntington near the intersection of Old Pirate Lane and Graham Street which consists of one well serving 13 homes. The well exceeds the maximum contaminant level for nitrate and is no longer capable of serving the 13 residences. The SEP would provide 25% of the total funds needed to provide permanent City Water. 75% of the funds will come from State Grant funding.	Ongoing

2021 Approved Supplemental Environmental Projects for the Santa Ana Regional Water Quality Control Board

	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
9	Water Energy Community Action Network (WECAN) (SAWPA 11615 Sterling Ave., Riverside CA Mark Norton (951) 354-4221	\$100,000 in SEP funding is requested. Total Project Costs are estimated at \$200,000	December 1, 2020	The project would continue with future phases of water and energy efficiency improvements on disadvantaged communities in the watershed including indoor retrofits that conserve water and energy. These projects will also include front yard turf replacement with drought tolerant landscaping and irrigation	
10	Assessing the Water Quality, Riparian and Aquatic Habitat impacts of Homelessness in the Upper Santa Ana River Watershed. (SAWPA) Mark Norton (951) 354-4221	\$30,000 for Assessment and Monitoring Program Development \$80,000 for sampling and analysis. Total Costs are estimated at \$220,000	December 1, 2019	The project would develop a monitoring plan and then implement the program to evaluate and quantify the potential negative impacts of homeless encampments on water quality, riparian and aquatic habitat within or alongside streams or in proximity to waterbodies assessing the magnitude of impacts determining appropriate needed actions, if any	
11	Watershed Planning, Modeling and Stakeholder Outreach. SAWPA: 11615 Sterling Avenue, Riverside, CA 92503 Mark Norton (951) 354-4221 mnorton@sawpa.org	\$6 Million	Ongoing (annually)	The project will provide the tools for data collection and planning for multipurpose projects within the Santa Ana Watershed.	

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	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
12	North Orange County Watershed: Comprehensive Monitoring Program Orange County Coastkeeper, 3151 Airway Ave. Suite F-110, Costa Mesa, CA 92626. Ray Hiemstra (714) 850-1965.Ray@coastkeeper.org	Estimated at \$25,000 but is flexible to expand or contract to accommodate funding	Ongoing (annually)	Orange County Coastkeeper proposes to initiate a comprehensive water quality monitoring program within Orange County watershed to aid the Regional Board with its Basin Planning process. The data produced will be used to inform the public on potential health risks from water contact and for 303d listing/delisting determinations.	
13	River Road Wetland Project Orange County Water District, 18700 Ward Street, Fountain Valley, CA 92708. Daniel Bott (714) 378-3256 DBott@ocwd.com	\$200,000 requested; \$6 Million Overall Costs	Ongoing (annually)	To develop an interpretive/education center in conjunction with the River Road Wetlands project	
14	Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project (SAWPA) , 11615 Sterling Avenue, Riverside, CA 92503 Mark Norton (951) 354-4221 <mnorton@sawpa.org	\$120,000 funding requested; Total Project Costs \$225,000	December 1, 2020	The project would provide funding for design and installation of habitat structures in the SAR Reach 3	

2021 Approved Supplemental Environmental Projects for the Santa Ana Regional Water Quality Control Board

	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
15	Baseline Water Quality Data for Temescal Wash Riverside-Corona Resource Conservation District, 4500 Glenwood Dr., #A, Riverside CA 92501 Shani Pynn (951) 683-7691 X223	\$10,000 requested; Total Project Costs \$12,500	When Funded	To establish baseline water quality data for 3 linear miles of Temescal Wash under the control of RCRCD. The data would be used to track changes in water quality from restoration activities	
16	Santa Ana River Trail and Parkway Completion SAWPA , 11615 Sterling Avenue, Riverside, CA 92503 Mark Norton (951) 354-4221 <mnorton@sawpa.org	Total Cost of Project \$40 Million	5 years from full funding	Multi-Stakeholder project to connect the San Bernardino Mountains and the Pacific Crest Trail to the already completed portions of the Orange County Trail.	
17	Deleo Conservation Easement Riverside-Corona Resource Conservation District, 4500 Glenwood Dr., #A, Riverside CA 92501 Kervin Russel (951) 683-7691 X203; Russell@rcrcd.com	Funds Requested \$150,000; Total Cost of Project \$162,913	Ongoing (annually)	To secure riparian habitat lands in a long-term conservation easement and to assist with the protection of the hydrologic and habitat values of the Temescal Wash	

2021 Approved Supplemental Environmental Projects for the Santa Ana Regional Water Quality Control Board

	Project Title, Proponent/Contact Information	Project Cost	Project Completion Date	Project Description	Current Status
18	Southern California Wetlands Recovery Project California State Coastal Conservancy, 1330 Broadway, Oakland, CA 94612. Greg Gauthier (760) 832-7365 ggauthier@scc.ca.gov	Unspecified costs	Ongoing (annually)	To acquire, restore, and enhance coastal wetlands in Southern California	
19	Santa Ana Watershed Awareness Program Inland Empire Waterkeeper, 6876 Indiana Ave, Riverside, CA 92506 Ray Heimstra (951) 530-8823. Ray@coastkeeper.org	Requested Funds \$75,000; Total Cost of Project \$150,000	Upon Funding	Installation of 15 signs along the freeways at the entrances into the Santa Ana Watershed with the message: "Santa Ana Watershed, Keep it Clean"	
20	Well 30 Wellhead Treatment Plant Monte Vista Water District, 10575 Central Avenue, Montclair, CA 91763 John Hughes (909) 267-2185 jhughes@mwwd.org	Requested Funds \$130,000; Total Cost of Project \$450,000	Upon Funding	Construction of treatment facilities to treat impaired groundwater using granular activated carbon and ion exchange to restore potable use. Three wells were taken out of service due to concentrations of 1,2,3-trichloropropane and nitrate above the maximum contaminant levels.	