

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN FRANCISCO BAY REGION
 RESPONSE TO COMMENTS ON SETTLEMENT AGREEMENT AND STIPULATED TENTATIVE ORDER**

**Administrative Civil Liability Complaint No. R2-2011-0005
 East Bay Municipal Utility District (EBMUD)**

Parties Submitting Comments	Summary of Comments	EBMUD and Water Board Prosecution Staff Response
<p>Individuals: Janet Broughton Timothy Chapman Stan Dodson Peter Grube Kathleen Russell Laura Schatzkin Karen Marie Schroeder Laurie Umeh</p>	<p>All comments request inclusion of a Supplemental Environmental Project (SEP) in the settlement agreement to support rainbow trout habitat restoration at Sausal Creek.</p>	<p>EBMUD prefers the proposed settlement terms to pursuing an SEP because of the uncertainty of costs associated with the implementation and oversight of an SEP, as well as, the additional potential for liability if the SEP is not completed to the Water Board’s satisfaction. Therefore, EBMUD did not submit any SEP proposals to the Water Board Prosecution Team for consideration.</p>
<p>City of Oakland: Libby Schaaf, Councilmember District 4</p> <p>Lesley Estes, Watershed and Stormwater Management Program</p>	<p>The City recommends that the Water Board urge EBMUD to reconsider including an SEP to help restore rainbow trout habitat impacted by the alleged discharge at Sausal Creek.</p>	<p>The Water Board cannot require EBMUD to perform an SEP if administrative civil liability is imposed, and cannot approve an SEP that does not comply with the State Water Board’s SEP Policy. The SEP Policy requires that a discharger fund oversight costs, and that a discharger retain liability until successful project completion. We note that developing an SEP similar to the Sausal Creek Dimond Park Restoration Project (attached) would require additional work for both parties to incorporate important elements, such as performance measures, to comply with the SEP Policy.</p>
<p>Friends of Sausal Creek (FOSC)</p>	<p>FOSC was dismayed that the proposed settlement agreement does not include an SEP, and proposed a SEP along the general lines of the Sausal Creek Dimond Park Restoration Project (attached)¹,</p>	

¹ FOSC previously submitted the Sausal Creek Dimond Park Restoration Project description (attached) to the Water Board via the San Francisco Estuary Partnership on March 31, 2011. The project description was then conveyed to EBMUD for consideration in May 2011.