

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Athena Honore)
MEETING DATE: January 18, 2012

ITEM: 10

SUBJECT: **Supplemental Environmental Projects from Administrative Civil Liabilities - Overview of Current and Completed Projects, Applicable Policies and Criteria, and How to Get on a Candidate Projects List**

DISCUSSION: Supplemental Environmental Projects (SEPs) have evolved significantly since the Board first started using these as partial resolution of administrative civil liability (ACL) penalties in 1991. The State Board's Policy on SEPs (SEP Policy), adopted in 2009, has further shaped what an SEP project must look like. This report covers recent changes to the SEP program, current SEP projects, and how a project can be considered for upcoming SEP opportunities. Appendix A is a map of where SEPs have been located since 2000. Appendix B contains summary tables of current SEPs and SEPs completed since 2010.

What is an SEP? SEPs are projects that enhance the beneficial use of the waters of the State or that provide a benefit to the public. SEPs may be conducted either directly by a discharger subject to an ACL or through a third-party implementer, such as a nonprofit organization or resource conservation district, arranged by the discharger. When the SEP is completed successfully, the discharger is relieved of a portion (typically no more than 50%) of its ACL penalty. SEPs greater than 50% of the ACL penalty (minus Board staff costs) must be approved by the State Board's Office of Enforcement. The decisions to pursue and propose a project as an SEP are at the discretion of a discharger and cannot be imposed by the Board. However, the Board can approve or disapprove any project proposed as an SEP by a discharger.

At present, projects can be considered for SEPs when the potential funding amount is at least \$20,000, because smaller SEPs are an inefficient use of the Board staff time required to review and ensure compliance with the SEP Policy. Also, SEPs that are a single project are encouraged rather than a bundle of multiple projects. The consideration of SEPs has generally added as little as one and as much as ten months to the time it takes to settle ACL cases.

Changes in SEPs: Since 2000, the Board has approved over 90 SEPs with a value of over \$8.3 million. Between 2000 and 2009, almost 70 SEPs were completed, with a value of over \$3 million. The median project value during that period was less than \$50,000. Projects covered a wide range, including pollution prevention, restoration, environmental studies, low impact development (or LID), and restoration or acquisition of habitat parcels. SEPs supporting educational projects, such as environmental education modules for local schools or equipment for school laboratories, were common. Many of these were smaller projects, ranging from \$3,000 to \$20,000.

SEPs in ACLs settled after the 2009 adoption of the SEP Policy have had a median value of almost \$300,000. This increase is partially due to the corresponding increase in the ACL penalty levied against a discharger that has resulted from use of the Penalty Methodology established by the 2009 revision of the statewide Enforcement Policy.

The 10 currently active SEPs listed in Table B-1 of Appendix B will run for several years and wrap up between 2014 and 2016. These active projects total \$3,227,872. Almost all are either sewer lateral improvement programs or restoration projects, since many of our recent enforcement cases have involved sanitary sewer overflows. 13 recently completed SEPs, nearly all of which were settled prior to the adoption of the SEP Policy, are listed for comparison in Table B-2.

Further information about all the current and completed SEPs where the San Francisco Estuary Partnership provided oversight is on the Partnership's SEP web page, www.sfestuary.org/projects/detail.php?projectID=38.

SEP Policy: The SEP Policy, adopted in February 2009, is generally consistent with the Board's previous practices with a few notable changes. What remains the same is that SEPs must not involve a conflict of interest for either the discharger or the Board or directly benefit the Board, and SEPs must go above and beyond any Board-imposed requirements or other obligations of the discharger.

Two changes are that SEPs must have a "nexus" with the violation that is the subject of the ACL, i.e., they must have a relationship to the nature or location of the violation, and that educational projects are no longer supported. The SEP Policy also added the 50% cap mentioned above and established that SEPs must have performance standards and a set time schedule with one or more milestones tied to the amount of liability to be excused. Additionally, any publicity about the SEP project must prominently state that the project was funded as part of settlement of a Board enforcement action. Finally, oversight costs must be over and above the amount of the SEP itself, and the discharger must pay for an accounting audit of expenditures if the Board deems one necessary.

More information about the SEP Policy can be found at www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf.

Oversight, Reporting, and Assistance Selecting Projects: The San Francisco Estuary Partnership provides third-party oversight for nearly all SEPs for this Region. The Partnership is paid an oversight fee by the discharger for providing these services. Partnership staff ensures that the SEPs are completed per their scopes of work, on time, and on budget.

Because the Partnership is housed within the Board's office, Partnership staff can easily handle required reporting to the State, including entering and maintaining project data in the California Integrated Water Quality System and the Paperless Office (the Board's electronic file system). The Partnership completes annual requirements to report SEP status to the State Board through a web page with

information about active and recently completed SEPs (see www.sfestuary.org/projects/detail.php?projectID=38).

The Partnership also provides assistance to dischargers who are interested in pursuing an SEP. If a discharger does not have a project in mind, the discharger can select from a list of candidate projects. For dischargers who would like additional assistance, the Partnership can prepare a short list of projects that match the geographical area and type of the violation as well as the dollar amount available. However, the Partnership is not a party to any settlement negotiations between the Board and discharger.

How to Get on the Candidate Projects List: Partnership staff maintains a list of candidate projects, available at www.swrcb.ca.gov/rwqcb2/board_decisions/enforcement.shtml. Anyone may submit a project for addition to the list, provided that it meets SEP Policy criteria. Placement on the list does not guarantee funding, and chances of success are low for any given project since only three to five SEPs may be approved each year.

If a project is selected by a discharger, the next step is for the implementer to write up a full project description that addresses how it complies with the SEP Policy (e.g., performance measures and milestones). Board staff provides review, and then the SEP project plan is incorporated into an ACL order or settlement agreement between the discharger and Board. After adoption of the ACL order, the SEP begins and the implementer works with Partnership staff to start up the project and provide the required reports.

For Further Information: Contact Athena Honore, San Francisco Estuary Partnership, at 510-622-2325 or ahonore@waterboards.ca.gov.

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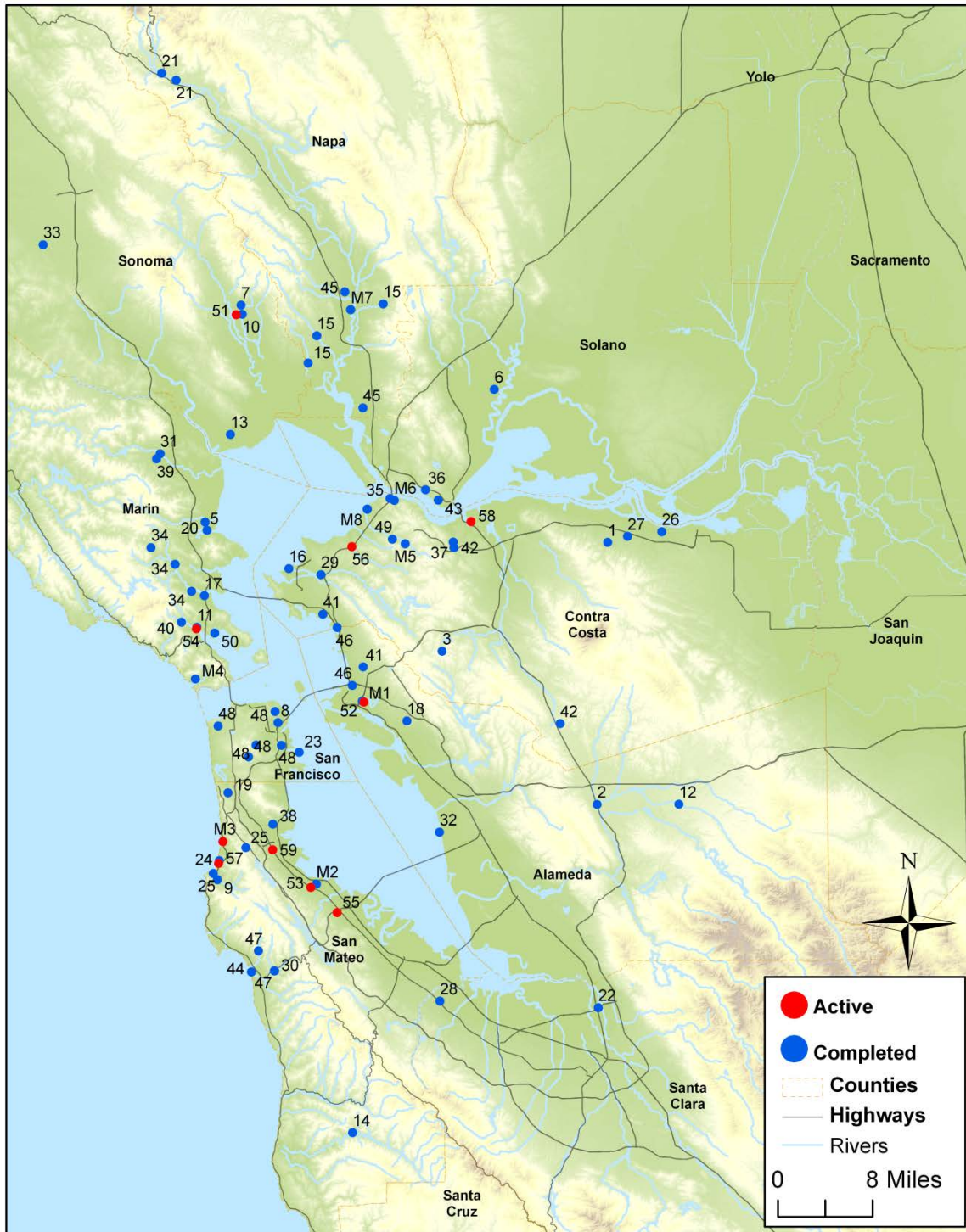
This is an information item; no action is necessary.

APPENDIX A: Map of Active and Completed SEPs, 2000-2012

APPENDIX B: Current and Recently Completed SEPs

Appendix A

Active and Completed Supplemental Environmental Projects 2000-2012 Region 2 - San Francisco Bay



San Francisco Estuary Partnership - January 2012

Active and Completed SEPs in Region 2 – Map Key

#	Discharger	Project	Complete
1	USS-POSCO	Kirker Creek acquisition	2000
2	CCCSD	San Ramon Creek restoration	2001
3	EBMUD	Upper San Pablo Ck rest. plan	2001
4	Santa Clara Co	Arastradero Ck bullfrog erad.	2002
5	4300 Redwood Rd LLC	Santa Venetia Marsh enhancement study	2002
6	Dow Chemical	Suisun Marsh wetland rest.	2002
7	Sonoma VCSD	Sonoma Valley historic ecology	2002
8	SFPUC	Environmental ed, SFCC	2003
9	Western Pacific Housing	San Pedro Creek steelhead assessment	2003
10	Sonoma CoWA	Nathanson Creek restoration	2004
11	SASM	Environmental education	2004
12	Gen. Electric	Granada Native Gardens	2004
13	Vallejo SFGD	San Pablo Bay NWR kiosks	2005
14	Alpine Road Winery	Pescadero Creek fish passage study	2005
15	Cosentino	Stream gauging	2005
16	W Co Agency	Richmond Bay Trail land acq	2005
17	Sonoma VCSD	North Bay recycled water study	2005
18	Kobe Precision	Envi education, East Oakland	2005
19	North San Mateo Co SD	Environmental education	2006
20	Las Gallinas Valley SD	Electronic reporting system; wetland restoration	2006
21	Calistoga	Upgrade reclamation; FOG ed	2006
22	Sunnyvale	Environmental education	2006
23	Hanson Aggregates	Wetland restoration Pier 94, SF	2006
24	Pacifica	Acquire Calera Creek dune	2006
25	SF	Acquire San Bruno Jail garden	2007
26	DeltaDiablo SD	Replace trees, recycled water	2007
27	Gen. Chemical	Lab equip Los Medanos Coll.	2007
28	Palo Alto	Stormwater demonstration proj	2007
29	Chevron	Wildcat Creek rest., monitoring	2007
30	San Mateo City WWTP	Apanolio Creek fish barrier removal	2007
31	Novato SD	Erosion/sediment control	2007
32	Cargill Salt	Eden Landing well closures	2007
33	Sonoma VCSD	Water education facility	2007
34	Ross Valley SD	Three Corte Madera Creek restoration projects	2008
35	ConocoPhillips	Invasive plant eradication	2008
36	Valero Refinery	Environmental ed, Benicia	2008
37	Martinez	Stormwater retrofit; env ed	2008
38	South SF	Sewer lateral improvement	2008
39	Novato SD	Vineyard Creek flood control and fish passage improvement	2008
40	SASM	Old Mill Creek restoration; education/outreach	2009
41	Richmond	Environmental education	2009
42	CCCSD	Alhambra Ck study; env ed	2009

#	Discharger	Project	Complete
43	Benicia	FOG outreach	2009
44	West Coast Aggregates	Pilarcitos Lagoon study of enhancement opportunities	2010
45	American Canyon City	Storm channel restoration; Environmental education	2010
46	EBMUD	Monitor Ettie St, Cerrito Ck	2010
47	SFPUC	Frenchman's and Apanolio Creeks fish passage work	2010
48	SFPUC	5 SF school rain gardens	2010
49	C&H Sugar	Franklin Canyon acquisition	2010
50	SASM	Aramburu Island bay beach restoration	2011
51	Sonoma VCSD	Fryer Creek habitat enhancement	2014
52	Oakland	Firehouse LID retrofit	2014
53	Hillsborough	Sewer lateral improvement	2014
54	SASM	Sewer lateral improvement	2014
55	San Mateo City	Sewer lateral improvement	2014
56	ConocoPhillips	Pinole Creek fish passage	2014
57	Pacifica	Rockaway Creek enhance	2015
58	Mountain View SD	Peyton Slough hydraulic relief project	2015
59	San Bruno	Sewer lateral improvement	2016
Multiple SEPs at one site			
M1	EBMUD, Shell, San Mateo, Tesoro, SSF, SF, LGVSD, ConocoPhillips	Water Board students; Electronic reporting system; State of the Estuary Conference	2003-08
M2	Burlingame, SSF	Environmental education, Burlingame High School	2004; 08
M3	Pacifica	Sewer lateral improvement	2010; 16
M4	SMCSD, San Bruno	Marine Mammal Center pens and shade structures	2010; 11
M5	Conoco, C&H	Rodeo Creek cleanup; invasive plant removal	2008
M6	C&H	Env ed, John Swett HS	06-07
M7	Rutherford Wine, Copia	Environmental education, Friends of the Napa River	2004; 09
M8	Rodeo Sanitary District	Reduce NaHSO3 in effluent, Sewer laterals, Recycled water system	2005, 2009, 2010
Not shown: not site-based or info missing			
	Toll Brothers	Wetland restoration	2002
	Misawa Homes (Hiddenbrooke)	Municipal stormwater outreach coordinator	2003
	PES Environmental	Environmental education	2004
	Petaluma	Brake Pad Partnership	2004
	SMCSD	Sewer lateral improvement	2011

Abbreviations acq = acquisition; ck = creek; Co = County; ed = education; enhance = enhancement; envi = environmental; equip = equipment; erad = eradication; rest = restoration; SD = Sanitation District; FCD = Flood Control District; St = Street

Appendix B

This Appendix provides an overview of current and recently completed SEPs. Further information about these projects, including descriptions and Final Reports (upon approval), is available at www.sfestuary.org/projects/detail.php?projectID=38.

Table B-1: Current Supplemental Environmental Projects (Total of \$3,227,872)

Discharger	ACL Order No.	SEP Amount	Description	Completion Date
Sonoma Valley County Sanitation District	R2-2011-0021	\$183,250	Fryer Creek Habitat Enhancement Project	1/31/2014
City of Oakland	R2-2011-0014	\$125,000	Firehouse biotreatment retrofit (LID)	5/31/2014
City of Hillsborough	R2-2008-0066	\$225,000	Private sewer lateral improvement program	7/1/2014
City of San Mateo	R2-2008-0067	\$760,000	Private sewer lateral improvement program	7/1/2014
Sewerage Agency of Southern Marin	R2-2008-0070	\$400,000	Private sewer lateral improvement program	7/1/2014
ConocoPhillips	R2-2010-0103	\$190,000	Pinole Creek fish passage project	12/1/2014
Mountain View Sanitary District	R2-2009-0066	\$125,000	Peyton Slough hydraulic relief project	5/1/2015
City of Pacifica	R2-2011-0022	\$650,000	Private sewer lateral improvement program	1/20/2015
City of Pacifica	R2-2011-0022	\$170,000	Rockaway Creek improvements	1/1/2016
City of San Bruno	R2-2011-0044	\$199,622	Private sewer lateral improvement program	6/1/2016

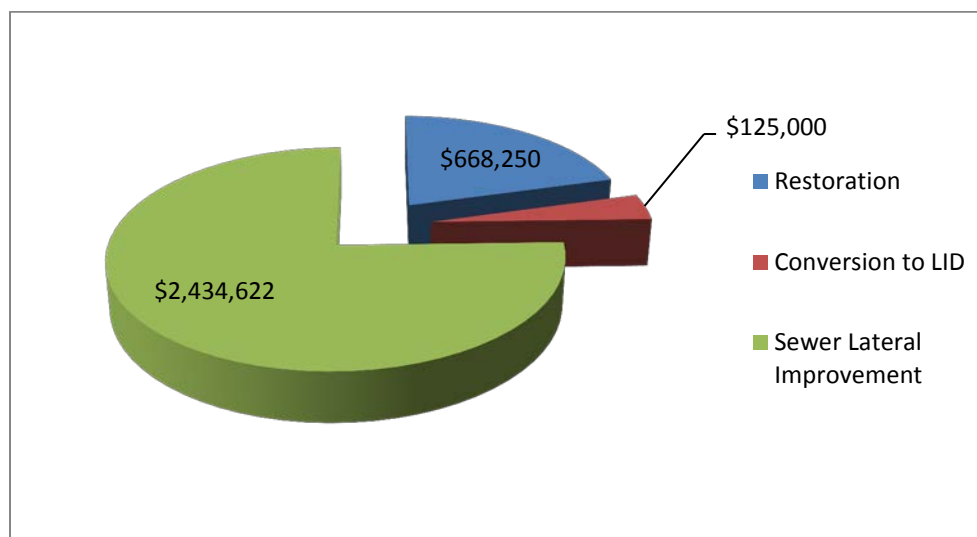


Figure B-1: Current projects by type (data labels start at center and continue clockwise)

**Table B-2: Supplemental Environmental Projects Completed in 2010-2011
(Total of \$2,015,203)**

Discharger	ACL Order No.	SEP Amount	Description	Completion Date
West Coast Aggregates	R2-2008-0024	\$160,000	Pilarcitos Lagoon Habitat enhancement study	5/10/2010
City of American Canyon	R2-2006-0080	\$15,500	Storm channel restoration	6/14/2010
American Canyon	R2-2006-0080	\$25,000	Wetland curriculum	6/14/2010
EBMUD	R2-2006-0028	\$286,000	Monitoring at Ettie Street, Cerrito Creek	7/30/2010
SFPUC	R2-2007-0001	\$400,000	Rain gardens and native/edible gardens at five San Francisco schools	8/31/2010
SFPUC	R2-2007-0001	\$182,000	Frenchman's and Apanolio creeks fish passage improvement	8/31/2010
Rodeo Sanitary District	R2-2008-0092	\$20,775	Recycled water pumping system at treatment plant	11/30/2010
Sausalito-Marín City Sanitary District	R2-2009-0043	\$119,000	Marine Mammal Center pens and pools upgrade	12/9/2010
City of Pacifica	R2-2007-0016	\$170,000	Private sewer lateral improvement program	12/31/2010
C&H Sugar	R2-2008-0100	\$231,500	Franklin Canyon wildlife habitat preservation	12/31/2010
Sausalito-Marín City Sanitary District	R2-2007-0018	\$109,500	Private sewer lateral improvement program	7/31/2011
Sewerage Agency of Southern Marin	R2-2008-0070	\$200,000	Aramburu Island restoration	10/26/2011
City of San Bruno	R2-2011-0044	\$95,928	Marine Mammal Center shade structure	10/28/2011

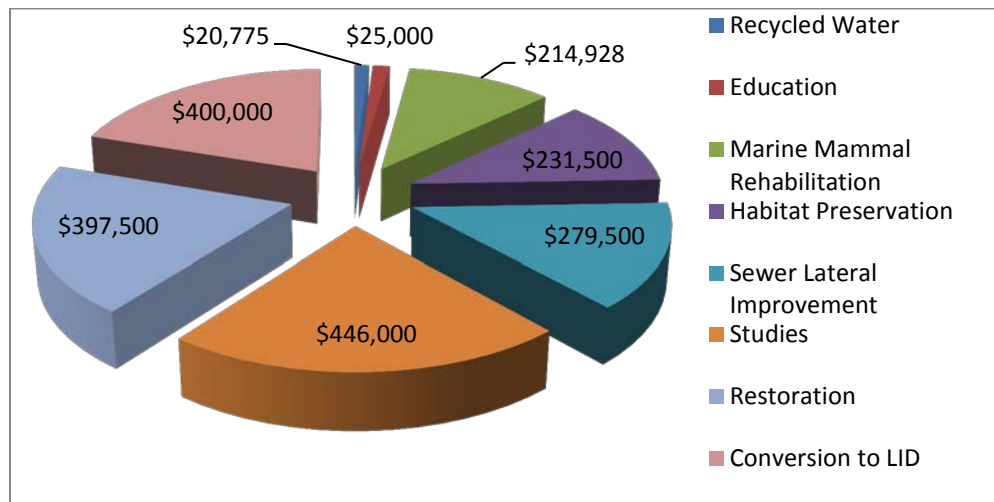


Figure B-2: 2010-2011 Completed projects by type (data labels start at center and continue clockwise)