

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF ENFORCEMENT
FEBRUARY 3, 2009**

ITEM 10

SUBJECT

CONSIDERATION OF A PROPOSED POLICY ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS

DISCUSSION

The State Water Board or Regional Water Board may allow a discharger to satisfy part of the monetary assessment imposed in an administrative civil liability (ACL) order by completing or funding one or more Supplemental Environmental Projects (SEPs). The State Water Board supports the inclusion of SEPs in ACL actions so long as the projects have environmental value, further the enforcement goals of the Water Boards, and are subject to appropriate input and oversight.

If adopted, the proposed Policy will limit the amount of a SEP to 50 percent of the overall monetary assessment in order to guarantee that a reasonable portion of monetary liability assessment from every civil enforcement action will be allocated for statutorily-authorized purposes under the control of the State Water Board. The proposed Policy will also increase accountability for those engaged in SEPs to ensure that the SEP results in an actual project with environmental benefit.

POLICY ISSUE

Should the State Water Board adopt the proposed Policy?

FISCAL IMPACT

Unknown.

REGIONAL WATER BOARD IMPACT

Yes, all Regional Water Quality Control Boards.

STAFF RECOMMENDATION

The State Water Board should adopt the proposed Policy.

State Water Board action on this item will assist the Water Boards in reaching Goal 6 of the Strategic Plan Update: 2008-2012 to enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling Objective 6.1 to target consistency improvements in process and policy for Water Board enforcement activities to promote compliance.

DRAFT

STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

ADOPT THE POLICY ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS

WHEREAS:

1. California Water Code (WC) Section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards shall conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC Section 13000) and shall coordinate their respective agencies so as to achieve a unified and effective water quality control program in the state;
2. WC Section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC Section 13142(c) provides that State Policy for Water Quality Control shall consist of principles and guidelines deemed essential by the State Water Board for water quality control;
4. WC Section 13240 provides that Water Quality Control Plans (Basin Plans) shall conform to any State Policy for Water Quality Control;
5. The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act;
6. WC Section 13385(i) allows use of Supplemental Environmental Projects (SEPs) associated with mandatory minimum penalties. California Water Code section 13399.35 also allows use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. Government Code section 11415.60 has been interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an administrative enforcement action;
7. The Water Quality Enforcement Policy requires that it “shall be reviewed and revised, as appropriate, not later than every five (5) years”;
8. The State Water Board, upon the recommendation of the Management Coordinating Committee, developed the Policy on Supplemental Environmental Projects; to replace existing policy on SEPs set forth in the Water Quality Enforcement Policy, Section IX, February 2002.
9. The State Water Board published a public notice of the proposed policy in October 2008. After consideration of the comments received, the proposed policy was revised;
10. Adoption of this policy is categorically exempt from the California Environmental Quality Act under 14 CCR, Section 15321.

DRAFT

THEREFORE BE IT RESOLVED THAT:

The State Water Resources Control Board (SWRCB):

1. Rescinds "Water Quality Enforcement Policy Section IX. Supplemental Environmental Projects";
2. Adopts the [Policy on Supplemental Environmental Projects](#).

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 Board held on February 3, 2009.

Jeanine Townsend
Clerk to the Board