

# **LAHONTAN WATER BOARD SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) POLICY**

## **INTRODUCTION**

The State Water Resources Control Board (State Water Board) adopted a policy addressing Supplemental Environmental Projects (SEPs) on February 3, 2009 (State Water Board SEP Policy). The State Water Board SEP Policy identifies criteria to ensure that selected projects have environmental value, further the enforcement goals of the State Water Board and its regions, and are subject to appropriate input and oversight by the regional water boards.

At its June 2013 meeting, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) established a subcommittee to work with staff and the State Water Board's Office of Enforcement to develop a region-specific SEP policy. The region-specific SEP policy is intended to provide guidance to Lahontan Water Board staff and dischargers in developing SEPs that further the Lahontan Water Board's priorities consistent with the State Water Board SEP Policy.

## **GENERAL GUIDANCE**

The Lahontan Water Board supports including SEPs as a part of administrative civil liability settlements. SEPs provide a strategic mechanism to make a portion of penalty monies available for the kinds of projects identified as priorities by the Lahontan Water Board. Such projects can help mitigate environmental degradation caused by water quality violations near the area where degradation occurred.

It is recognized that the discharger must propose, or at least agree to, a SEP as part of resolving an administrative liability action. Any proposed SEP must conform to the criteria established by the State Water Board SEP Policy. While a proposed SEP must go above and beyond what is otherwise legally required for a discharger to comply with applicable laws and regulations, a SEP may be considered for a project that is identified on the Lahontan Water Board's Triennial Review List or on any other list of priority projects the Lahontan Water Board has established.

The State Water Board SEP Policy also states there must be a nexus between the violation and the SEP. Nexus means there must be a relationship between the violation and the SEP, either in the nature of the violation (i.e., type of waste discharge) or in the geography of the violation. When evaluating the geographic nexus, the Lahontan Water Board will consider projects within the entire watershed boundary (i.e., within a Basin Plan Hydrologic Unit), not just within the sub-watershed where the violation(s) occurred. However, when a violation is incurred by a local utility district, the Lahontan Water Board generally prefers to limit the geographic nexus to areas within the affected utility district service area boundaries.

## SEP ESCROW ACCOUNTS

The Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP escrow accounts (endowments or operating accounts) and to implement SEPs consistent with the Lahontan Water Board's expressed priorities. The partner organizations will maintain a list of potential projects that are eligible to be considered for SEPs within their respective watershed areas.

In watersheds where the Lahontan Water Board has established a SEP escrow account with a partner organization, dischargers may choose to direct up to 50 percent of a liability to the appropriate SEP escrow account to fund projects with a distinct environmental benefit. In areas where there are no appropriate groups with whom to partner, or where a potential group exists but does not have sufficient institutional capacity, Lahontan Water Board staff will conduct outreach and work with potential partners to bring them to a point where a partnership would be viable. Alternatively, when a penalty is assessed for violations in a geographic area with no developed partnership agreement, a programmatic nexus may be used to direct a portion of the penalty to an existing partner organization.

The partner organizations will act as a bursar of the SEP escrow account funds, directing the funds toward projects according to an agreement established with the Lahontan Water Board. Penalty portions that are negotiated to be directed into a SEP escrow account may be used to fund a complete project or series of projects, or they may be used to partially fund a larger project. The partner organization may also use SEP escrow accounts to leverage other sources of funding.

The use of SEP escrow accounts has many advantages. It directs monies toward projects that are already vetted through local stakeholder processes and thereby allows for broad-based local participation and input regarding the use of penalties to directly enhance water quality in the Lahontan Region. It increases transparency in how SEP monies are used. It helps link the Lahontan Water Board with planning by local stakeholder groups, helping to harmonize the development of plans and criteria between and among stakeholders. It strengthens relationships between the Lahontan Water Board and local stakeholders.

Further, engaging our local watershed partners to manage SEP escrow accounts provides a high level of certainty that a watershed project selected by a discharger for a SEP will be completed as required. Partner organizations will be identified and selected based upon many factors, including their longevity, their financial stability and accountability, and their successful track record of funding and implementing watershed projects. Furthermore, potential projects will be identified and vetted based upon specific minimum criteria to be eligible for consideration as a SEP. These factors reduce the risk to dischargers considering whether to direct liability amounts to fund a SEP implemented by a third party. Some dischargers may still elect to perform SEP projects themselves, particularly public entities. However, a pre-approved list of SEPs performed by pre-vetted third parties should help non-public entities select SEPs that will be approved by the Lahontan Water Board.

Using SEP escrow accounts is likely to reduce staff oversight costs since Lahontan Water Board staff will not need to help develop a SEP or oversee its implementation. The partner organization will be responsible for most of the administration of the SEP because it will produce and submit an annual report regarding the disposition of SEP escrow account funds and the status of the liability-funded projects. The list of potential projects will be maintained by the partner organization instead of Lahontan Water Board staff. The project list will be updated, modified and re-prioritized as the partner organization works with its stakeholders, and the Lahontan Water Board will have the opportunity to express its priorities to the partner organization during that annual update process.

## **PARTNER ORGANIZATION QUALIFICATION CRITERIA AND IMPLEMENTATION**

The Lahontan Water Board will develop partnerships with watershed-based groups that use stakeholder processes to identify and prioritize projects that may be eligible for funding from SEP escrow accounts. Examples of such groups are the Truckee River Watershed Council and the Inyo Mono Integrated Regional Water Management (IRWM) Group. The Lahontan Water Board will identify potential partners throughout the Lahontan Region and develop separate partnership agreements with each one. As each partnership is developed, the Lahontan Water Board will seek authorization from the State Water Board to establish a SEP escrow account with that specific partnership organization so that a discharger is able to direct portions of liability amounts to the partner organization.

Eligible organizations include local public agencies, regional public agencies, state agencies, nonprofit organizations (501[c][3]), federally-recognized Native American Tribes<sup>1</sup>, public colleges, and federal agencies. Eligible organizations shall demonstrate experience in project management, multi-agency collaboration, stakeholder involvement and collaboration, regional approaches to water management, water management involvement in land use decisions, and implementation of project monitoring to evaluate results of current practices. Ineligible organizations include for-profit organizations, private organizations, and 501(c)(4) organizations.

Organizations interested in developing SEP escrow account partnerships with the Lahontan Water Board shall submit the following information.

- A mission statement for the organization's goal to address watershed-based issues.
- A description of the organization's governance structure.
- A description of how the organization's governance structure addresses and ensures the following:
  - Public outreach and involvement processes
  - Effective decision making

---

<sup>1</sup> Federally-recognized tribes must waive their sovereign immunity in order to be eligible to manage SEP Escrow accounts.

- Balanced access and opportunity for participation in selecting potential SEP projects for consideration
  - Effective communication – both internal and external to the watershed(s) area(s)
  - Long-term successful implementation of watershed projects
  - Coordination with neighboring watershed efforts and state and federal agencies
  - The collaborative process(es) used to select and prioritize potential watershed projects
  - How interim changes and formal changes to watershed project lists will be performed
  - Updating or amending watershed project lists
- A description of the organization’s process to incorporate local stakeholder outreach and input in selecting and prioritizing potential watershed projects. Local stakeholders shall include the following, as applicable to the watershed(s):
    - Wholesale and retail water purveyors
    - Wastewater agencies
    - Flood control agencies
    - Municipal and county governments and special districts
    - Electrical corporations
    - Native American Tribes
    - Self-supplied water users
    - Environmental stewardship organizations
    - Community organizations
    - Industry organizations
    - State, federal, and regional agencies or universities
    - Any other interested group appropriate to the region, including private citizens.
- A description of the organization’s experience for completing water quality projects.
  - A description of the organization’s accounting practices, including a description of how its annual financial statements are prepared and audited.

The Lahontan Water Board will enter into formal agreements with organizations that satisfactorily demonstrate proficiency with the above-listed criteria. A template agreement (Attachment 1) has been developed, which can be tailored to meet specific regional watershed issues. The selected partnership organization will be responsible for further refining their individual watershed project lists in order to develop a SEP-specific project list.

The agreement between the Lahontan Water Board and each partner organization will specify requirements (see SEP Qualification Criteria section, below) for using the SEP monies deposited in their SEP escrow accounts. Generally, these requirements will be similar throughout the region, but some variation will be allowed to meet the specific needs of a partner organization’s geographical area. The requirements will include

annual reporting on projects in progress and completed with SEP monies deposited to the escrow accounts. The requirements will specify that partner organizations must provide a proposed project list to be funded with SEP monies during the upcoming biennium, along with a proposed budget for each project. The agreement will also include obligations on the partner organization to comply with certain provisions in Section H of the State Water Board SEP Policy.

The agreement between the Lahontan Water Board and each partner organization will require the partner organization to develop an individual contract with any discharger who elects to direct a portion of its liability to fund implementation of a SEP. The contract between the partner organization and the discharger shall include specific language (Attachment 2) in addition to any other terms negotiated between the partner organization and the discharger.

### **SEP QUALIFICATION CRITERIA**

To be considered for a SEP, a proposed project must satisfy all conditions outlined in the State Water Board SEP Policy, and must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the state. Specifically, the Lahontan Water Board generally prefers on-the-ground projects that have already completed CEQA review and that provide a direct benefit to water quality. Less weight may be given to technical studies, especially when a watershed plan already exists for a geographic area being considered for a SEP. However, if no watershed plan exists for a watershed, then studies that lead to the development of a watershed plan or IRWM Plan may have higher priority than on-the-ground projects in that watershed. For example, using funds to develop salt and nutrient management plans where none exists may have a higher priority than some on-the-ground projects.

The Lahontan Water Board encourages partner organizations to identify portions of potential SEP projects that can be funded in either Planning/Assessment phase or in an Implementation phase. Eligible implementation projects may include project-level planning, design, construction, construction management, implementation, and monitoring to implement full scale on-the-ground mitigation. Eligible planning/assessment projects may complete an assessment, study, or design identified as a high priority in a TMDL; may prepare studies, strategies, management plans, tools for management plan development, and similar items; fill recognized data gaps; consolidate previously-completed planning work in a watershed; or provide other planning efforts as identified through the partner organization's stakeholder process.

The following additional criteria will be used by partner organizations to select and prioritize potential projects for consideration as SEPs:

- Projects that address public health and safety issues or concerns.
- Projects that address environmental health and safety issues or concerns.
- Projects that offer multi-regional or statewide benefit.
- Projects in process that need additional funds to bring the effort to completion.
- Projects that address environmental justice concerns.

- Projects that improve efficiencies (databases, automation, system enhancements, etc.).
- Projects that support a Lahontan Water Board, CalEPA, Legislative, or Governor's Office priority (see State Water Board's Strategic Plan Update and the CalEPA Strategic Vision Goals).
- Leveraged projects where matching funds are being provided.
- Projects that support the Lahontan Water Board's triennial review process.

## **PUBLIC REPORTING**

The Lahontan Water Board will post on its website by March 1 of each year a list of all SEPs completed the prior year and information on the status of SEPs in process the prior year. The Lahontan Water Board will also post each partner organization's list of projects and subsequent updates that may be considered as SEPs. Approved agreements with each partner organization will also be posted on the Lahontan Water Board's website.

Attachments: 1. Template Partner Organization/Lahontan Water Board Agreement  
2. Template Language for Partner Organization/Discharger Agreements