

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2008-xxxx

APPROVING SUPPLEMENTAL ENVIRONMENTAL PROJECT LIST CRITERIA
AND AUTHORIZING
THE EXECUTIVE OFFICER TO ADMINISTER THE SUPPLEMENTAL
ENVIRONMENTAL PROJECT AND REGIONAL WATER QUALITY
IMPROVEMENT PROJECTS PROGRAM

WHEREAS, the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds:

1. Pursuant to California Water Code (CWC) section 13323, an Executive Officer of a Regional Water Quality Control Board (Regional Water Board) may issue administrative civil liability complaints (ACLs) to any person violating the provisions of the Porter- Cologne Water Quality Control Act (CWC § 13000 et seq.), including dischargers violating waste discharge requirements, discharge prohibitions, enforcement orders, or other orders issued by the Regional Water Boards.
2. The State Water Board's Water Quality Enforcement Policy allows for a portion of certain penalties assessed by the Central Valley Water Board to be directed towards water quality improvement projects within the region. These projects are referred to as Supplemental Environmental Projects (SEPs).
3. Selection and management of the SEP process can be a cumbersome process for individual violators. The development and maintenance of a list of pre-approved SEPs by the Central Valley Water Board will make the process more efficient.
4. Large-scale, more comprehensive SEPs are often successful in reversing the negative impacts on the environment caused by illicit discharges, legacy pollutants or other factors. Dischargers cited for smaller violations do not have an incentive to develop these larger-scale SEPs on their own, but these dischargers may be willing to contribute to such projects if the Central Valley Water Board develops and maintains a pre-approved list that includes these larger-scale SEPs.
5. There are regional water quality improvement projects within each of the nine regions that are unfunded or under-funded. These regional projects address significant water pollution problems that may not be

undertaken in the absence of financial assistance (e.g., wastewater treatment facility projects in disadvantaged communities). These projects are referred to as “regional water quality improvement projects.” (RWQIPs)

With certain statutorily-defined exceptions, funds obtained from ACL assessments and other enforcement actions are deposited in the State Water Pollution Cleanup and Abatement Account (CAA). This resolution creates a way for the Central Valley Water Board to address regional water quality protection needs, other than through the use of a SEP, by allocating funds from the CAA for Regional Water Quality Improvement Projects (RWQIP).

6. The Central Valley Water Board will facilitate the SEP/RWQIP process by maintaining a list of projects that can be funded to offset portions of assessed penalties or that can improve water quality in the region. The SEP/RWQIP List will be available on the Central Valley Water Board’s or State Water Board’s website.
7. After the approval of this resolution, Central Valley Water Board staff will conduct a workshop designed to familiarize interested parties with the SEP/RWQIP Listing process, SEP/RWQIP qualification criteria, information required by the Central Valley Water Board for a SEP or RWQIP, and the SEP and Regional Water Quality Improvement Projects management process.
8. Notice of the proposed adoption of the SEP/RWQIP List Criteria was published in the XX on DD MM, 2008. Interested Parties received notice by mail and comments were accepted until MM DD, 2008.

THEREFORE BE IT RESOLVED BY THE CENTRAL VALLEY WATER BOARD THAT:

The Central Valley Water Board hereby adopts the SEP/RWQIP List Criteria (**Attachment A**) and directs the Executive Officer to administer the SEP/RWQIP List and its associated maintenance activities, subject to the following provisions:

1. The Executive Officer will present annually to the Central Valley Water Board an update of the prequalified SEP/RWQIP List status and any modifications to the SEP/RWQIP List Criteria.
2. Dischargers may request to pay a portion of the ACL assessed against them by funding to SEPs, as outlined in the State Board’s Enforcement Policy. Individual dischargers may request to fund an SEP or portion of a SEP from the SEP/RWQIP List, or may submit their own SEP

proposal.

3. Should a Discharger request to fund a SEP(s) on the SEP/RWQIP List, the Discharger will be required to submit a letter identifying the SEP. A Discharger may not fund a SEP consisting of any project that the Discharger is required to perform under any permit, regulation or law or that the Discharger has already committed to undertake independent of the enforcement action. The Central Valley Water Board, the Executive Officer, or her delegate must approve the SEP prior to allowing the discharger to offset the assessed civil liability by funding the SEP.
4. This Resolution, including attachments, provide guidance that supplements, but does not supercede, the any existing or future enforcement policies approved by the State Water Board. In the event that elements of this Resolution are less restrictive than any policies adopted by the State Water Board, or if elements of this Resolution conflict with any policies adopted by the State Water Board, the policies adopted by the State Water Board take precedence.
5. SEPs that have been successfully completed or SEPs that have been abandoned will be removed from the SEP/RWQIP List. Similarly, Regional Water Quality Improvement Projects that have been successfully completed or that have been abandoned will be removed from the SEP/RWQIP List.
6. ACL Orders allowing SEPs shall, at a minimum, require the Discharger to submit a Final Report to the Central Valley Water Board within 30 days following the date in which the SEP is completed. The Final Report shall contain an accounting of all funds received, monies spent, receipts to substantiate each expense, and a detailed description of the SEP as actually completed. ACL Orders shall either require the Discharger to remit all unused funds to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of the completion of the project or include findings regarding other disposition of unused funds.

Failure to document that resources were actually spent on the SEP will result in the assessment of the suspended portion of the liability initially assessed.

7. Central Valley Water Board staff shall continue the SEP/RWQIP List administration process. SEPs or RWQIPs meeting the qualifications and guidelines set forth in the Central Valley Water Board's SEP/RWQIP List Criteria (Attachment A) shall be considered for inclusion in the prequalified SEP/RWQIP List. The public will have a

30-day period to comment on any SEP/RWQIP proposed to be added to the SEP/RWQIP List. A listing of projects can be accessed by the following link:

http://www.waterboards.ca.gov/centralvalley/water_issues/enforcement/index.shtml Central Valley Water Board staff will periodically consult with SEP/RWQIP proponents to update the status of their applications.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Water Quality Control Board, Central Valley Region, on 4 December 2008.

PAMELA C. CREEDON, Executive Officer

Date

ATTACHMENT A

Criteria for Accepting Supplemental Environmental Projects Proposals and Regional Water Quality Improvement Projects for Inclusion in the Qualified SEP/RWQIP List

Purpose

In order to streamline the process of selecting Supplemental Environmental Projects (SEPs) in enforcement cases, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will solicit proposals for projects to be placed on a list of pre-approved SEPs (the SEP/RWQIP List). If a proposed SEP is accepted, the Central Valley Water Board will add the proposed SEP to the SEP/RWQIP List. Dischargers with outstanding liability resulting from enforcement actions will then have the option of selecting an SEP project from the SEP List, and then may propose to settle the enforcement action by applying a portion of the assessed liability towards the SEP in accordance with the State Water Board's Enforcement Policy. An SEP List will streamline the process of settling enforcement matters when the Central Valley Water Board finds that funding an SEP is appropriate.

This effort responds to requests from the public and the regulated community to provide a more efficient process for selecting and approving SEPs in the context of enforcement actions. This same criteria is applicable to the acceptance of Regional Water Quality Improvement Projects (RWQIPs); references to SEPs should be interpreted as also referring to RWQIPs.

Selection Criteria

Under the authority of the California Water Code (CWC), the State Water Resources Control Water Board (State Water Board) and Regional Water Quality Control Water Boards (Regional Water Boards) may issue administrative civil liability complaints (ACLs) to dischargers for numerous types of violations, including violations of waste discharge requirements, violations of discharge prohibitions, violations of enforcement orders, and discharging without a permit. Assessments collected through the ACLC process are required by the CWC to be paid to the State Water Board Cleanup and Abatement Account (CAA) or other accounts as specified in law. The State Water Board administers the CAA, and funds are used to address important water quality cleanup and abatement activities throughout the state.

The State Water Board's Water Quality Enforcement Policy allows violators to fund important and valuable water quality improvement projects within the Region in which the violation was cited as an alternative to paying civil liability. These projects are known as SEPs, and they have been used in every region in

the state. SEPs are projects that (1) enhance the beneficial uses of the waters of the state, (2) provide a benefit to the public at large, and (3) are not otherwise required or would be greatly accelerated by the funding provided by the ACLC assessment. Examples of SEPs include pollution prevention projects, environmental restoration programs, environmental auditing, public awareness and education activities, watershed assessments, watershed management facilitation services, and non-point source program implementation.

The current State Water Board Enforcement Policy states: “Any public or private entity may submit a proposal to the State Water Board (or to the Regional Water Board for transmittal to the State Water Board) for a SEP that they propose to fund through this process. Staff at the State Water Board shall evaluate each proposal and maintain a list of candidate SEPs that satisfy the general criteria in subsection C of this section. The list of candidate SEPs shall be made available on the Internet along with information on completed SEPs and SEPs that are in-progress. When a Regional Water Board is considering allowing a discharger to perform a SEP in lieu of some or all of a monetary assessment, the Regional Water Board should direct the discharger to the list of candidate SEPs.

The discharger may select a SEP from the SEP/RWQIP List or may propose a different SEP that satisfies the general criteria for SEPs.” Currently the State Water Board is not actively maintaining a statewide list of SEPs. Based on the criteria outlined in this document, the Central Valley Water Board will assemble and post on the Central Valley Water Board’s website the list of qualified SEPs to be used in this region. In addition, the Central Valley Water Board will use Internet listing services to keep the interested parties and the public up to date about any changes to the list or criteria.

The Central Valley Water Board is accepting project proposals for SEPs. Proposals should include:

1. A project title.
2. The organization proposing the project (project manager’s name, email address and phone number; type of organization {public, private, non-profit, etc.}).
3. A brief description of the project, including an explanation of how the project satisfies the criteria listed in **Attachment 1**. Attachment 1 consists of the criteria set forth in the Section IX of the Enforcement Policy. Any revisions to the Enforcement Policy shall supercede conflicting provisions of Attachment 1. Central Valley Water Board staff will update Attachment 1 to incorporate such revisions, when the revisions become effective.

4. A detailed description of the scope of work, work products (as applicable), and project milestones.
5. The names and statement of qualifications and experience for key project team members.
6. Total project cost. In addition, the amount of SEP funding sought and other existing funding sources. Matching funds, in kind services and leveraged projects are encouraged.

The total cost must be at least \$50,000 and must include the cost to cover independent third party oversight costs.

7. Detailed cost breakdown by task, including estimated hours and hourly rates for professional services, analytical costs, equipment and reproduction costs, construction of improvements, etc.
8. Project schedule, including proposed start and completion dates, individual task durations or an estimated timeline. The schedule shall include proposed deadlines for completing work products and project milestones (e.g. completion of task 1 three months after obtaining funding, etc.). Inclusion of a Gantt chart that illustrates the project schedule is encouraged (please see an example of a Gantt chart included in **Attachment 2**). The schedule should include deadlines for submitting progress reports, at least quarterly for projects with duration of six months or longer.
9. As appropriate, proposals should also identify:
 - the particular water body that will benefit from the SEP,
 - beneficial use and/or pollutant(s) to be addressed by the project.
10. End product. This may include project reports, educational materials, brochures, water quality data, etc. If educational materials or other outreach materials are included in the project, a complete description of how the materials will be distributed or otherwise made available, who will distribute the materials, and how the materials will benefit water quality. If data will be generated for use by public and private entities, define who will receive the data, in what form the data will be provided, the intended use of the data, and a description of the quality assurance/quality control procedures that will be used to validate the data (this may include third party peer review of the study and resulting data).
11. Project Evaluation Assessment. Any SEP proposal shall include a section that will designate an independent third party that will oversee

the progress of the project and will assess the successful implementation of the project based on the criteria outlined in the proposal. A third party assessment report must be included in the Final Report submitted to the Central Valley Board after the completion of the project.

We recommend limiting the proposals to five pages. A suggested format is included as **Attachment 2** to this document. Proposals will be accepted on an on-going basis. Proposals should be submitted by mail, email or fax to:

Central Valley Water Quality Control Water Board,
ATTN: SEP/RWQIP Proposal
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

Fax: 916-464-4775

For questions regarding the Central Valley Water Board list of SEPs, contact Central Valley Water Board staff at 916.464.4736

Attachment 1

General SEP/RWQIP Qualification Criteria

All SEPs/RWQIPs approved by the State Water Board or Central Valley Water Board must satisfy the following general criteria:

- (a) In general, an SEP shall only consist of measures that go above and beyond the obligation of the discharger. For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP. This may not be relevant if the proposal is made by someone other than the person cited for the violation(s).

- (b) The SEP should directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to:
 - (i) monitoring programs;
 - (ii) studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
 - (iii) water or soil treatment;
 - (iv) habitat restoration or enhancement;
 - (v) pollution prevention or reduction;
 - (vi) wetland, stream, or other waterbody protection, restoration or creation;
 - (vii) conservation easements;
 - (viii) stream augmentation;
 - (ix) reclamation;
 - (x) public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.);
 - (xi) watershed assessment (e.g., citizen monitoring, coordination and facilitation);
 - (xii) watershed management facilitation services; and
 - (xiii) non-point source program implementation.

- (c) The SEP/RWQIP shall not directly benefit the State Water Board or Central Valley Water Board functions or staff. For example, SEPs/RWQIPs shall not be gifts of computers, equipment, etc. to the State Water Board or Central Valley Water Board.

- (d) The SEP/RWQIP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity

(e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger's project(s).

Additional SEP/RWQIP Qualification Criteria

The following additional criteria should be evaluated by the State Water Board and Central Valley Water Board during final approval of SEPs/RWQIPs proposed by the discharger:

- (a) The SEP/RWQIP should, when appropriate, include documented support by other resource agencies, public groups and affected persons.
- (b) The SEP/RWQIP should, when appropriate, document that the project complies with the California Environmental Quality Act.
- (c) Regionwide use/benefit - Some projects may benefit the specific watershed yet still provide added value regionwide or even statewide. For example, development of a spill prevention course could benefit not just the local watershed but the whole region or state if properly packaged and utilized. Likewise, a monitoring program for a particular water body could also provide information that staff could use in assessing other discharges, spills, 401 certifications or flood control activities in a river. Projects, which provide the State Water Board or Central Valley Water Board with added value, are encouraged.
- (d) Combined funding - Some projects use seed money to create a much greater or leveraged impact. Often other agencies will contribute staff time, laboratory services, boat use, or other services as part of a monitoring project. While the applicant may propose to spend hard money on equipment or materials, they may be donating expertise and labor to accomplish a much larger project. Matching funds, in kind services and leveraged projects are encouraged.
- (e) Institutional stability and capacity - The Central Valley Water Board shall consider the ability of the discharger or third party contractor to accomplish the work and provide the products and reports expected. This criterion is especially important when a Board receives money as the result of a settlement and must then select and fund projects proposed from many sources.

- (f) Projects that involve environmental protection, restoration, enhancement or creation of waterbodies should include requirements for monitoring to track the long-term success of the project.

Nexus Criteria

An SEP must have a nexus (connection or link) between the violation(s) and the SEP. Nexus is the relationship between the violation and the proposed project. This relationship exists only if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future. An SEP must meet one or more of the following criteria. SEP approval is more likely for projects meeting more criteria. This criteria may not be specifically applicable for a SEP submitted in advance to be accepted to the SEP/RWQIP List, however it is outlined for general information purposes. In addition, the nexus criteria may be inapplicable to a proposal for a RWQIP, however it should address a water quality issue within the Central Valley Water Board's jurisdiction.

Geographic Nexus - The proposed project should have a geographic link or nexus with the area where the water quality problem or violation occurred. For example, a spill to a river might require a plan to improve habitat or fish populations in the river in the general area of the spill. Work in a tributary watershed might be appropriate depending on the circumstances, however, work in a far different part of the region or state would likely not meet the geographic nexus criteria.

Spill Type or Violation - The proposed project should be related to the specific spill type or violation. For example, an SEP for a sewage spill ACL could include holding spill prevention workshops for other dischargers in the general area (both a geographic and violation type nexus). The workshops should go beyond what is necessary just to address mandatory work, equipment, and improvements required to correct the nature of the violation.

Beneficial use protection - Where specific beneficial uses were affected by the violation, it is appropriate to design SEPs that address protection and improvement of those uses. Where fish populations and habitats are affected, efforts to improve habitats and populations would be ideal, especially in the same watershed. Water quality monitoring, including flows, channel morphology, and habitat characteristics would be appropriate projects. In this case, the nexus is between the type of violation and the specific beneficial uses impacted. It is also important to keep endangered species issues in focus and to consult with the Department of Fish and Game, the National Marine Fisheries Service, and US Fish and Wildlife Service about impacts of violations on these species and possible SEPs.

Attachment 2

Project Title _____

Geographic area of interest: _____

Name of responsible entity: _____

Estimated cost for project completion: _____

Contact information: Name _____

Address _____

Phone _____ email _____

Brief description of the project

Water Body, beneficial use and/or pollutant addressed by this project

- (a) Include a statement that the proposed project is not independently required of any discharger or proposed as mitigation to offset the impacts of a discharger's project(s).
- (b) Explain how the SEP/RWQIP will directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State.
- (c) Include a statement that the SEP/RWQIP shall not directly benefit the State Water Board or Central Valley Water Board functions or staff.
- (d) Include a brief description of the schedule of activities, deliverables and associated bar chart.

(e) Include an estimate of the cost of third party oversight for the project (typically between 6% to 10% of the total cost) and which third party organization will provide independent oversight of the progress and completion of the project.

(f) All SEP/RWQIP proponents accepted on the SEP/RWQIP List shall notify Central Valley Water Board staff of the receipt of any other funding from any voter approved Propositions, section 319 of the Clean Water Act, Grant Programs, or other source. The proponent/auditor of each SEP/RWQIP shall provide documentation to the Central Valley Water Board illustrating that the monies received through other sources will not fund projects that are already funded or plan to be funded with SEP/RWQIP monies. This notification and clarification shall accompany the SEP/RWQIP developer's workplan, and shall be updated in the event of any funding source changes.

SEP/RWQIP Proposal (SAMPLE)

Overview:

The Fishery & Wildlife Coalition of California (FWCC) is proposing to develop a monitoring plan and to provide a full year of Great Fish monitoring on the Mighty River. The monitoring will consist of two phases: 1. Upstream adult passage and spawning distribution (Fall, 2007). 2. Spawning production and juvenile out migration (Spring, 2008). Monitoring will focus on the historic spawning reach from High Road to Key Falls. The proposed monitoring is an essential component for future watershed planning and targeted restoration. Additionally, the project will provide essential, basic life history data that is crucial for the management of Great Fish on the Mighty River.

Project:

The FWCC will develop a monitoring plan for the Great Fish of the Mighty River. Monitoring goals will include documenting run timing and abundance, mapping spawning distribution, and estimating juvenile production via out migration surveys. The monitoring will consist of three tasks:

Task 1 - Project Management

Project management encompasses all QA/QC activities, database management, quarterly and final reporting, and all necessary costs directly associated with specific project oversight. It also allows for in the field for inspection of work in progress and training purposes.

Task 2 - Escapement

Total escapement and will be estimated using the standard Peterson Index (Lincoln Index) as employed by Snider and Reavis (2000).

Task 3 – Outmigration

The FWCC will operate a screw trap at river mile 6.7 to estimate outmigration timing and production relative to total escapement.

[As proposed, the above work is consistent with and supports the objectives of the Comprehensive Assessment and Monitoring Program (CAMP) established by Section 3406(b)(16) of the CVPIA (CAMP, 2004). The proposed work is fully supported by the USFWS and CDFG for the Mighty River.]

Cost:

The estimated total cost of the project is \$110,000. \$100,000 will be dedicated to the development and implementation of the proposed monitoring program. \$10,000 is dedicated for the oversight of the project's implementation.

Implementation:

Upon approval and funding, the FWCC will begin development of the monitoring plan. Upstream migration surveys will begin in October 2007 through January 2008. Outmigration surveys will begin in March 2008 and continue through late May or early June of 2008. A final report will be delivered to Discharger no later than August 31, 2008.

Deliverable:

Within 30 days of issuance of the funding, provide a copy of the partnership agreement.

September 30, 2007. Provide a copy of the monitoring plan.

August 31, 2008. Provide a final report on the findings in scientific format.

Each calendar quarter beginning August 1, 2007 and ending August 31, 2008 provide a report on the status of the project including all invoices paid to the consultant working on the project.

Third Party Oversight

The Oversight Group was selected to provide oversight for the implementation of the project. The Oversight Group will provide a final assessment report to the project proponent within 21 days after the completion of the project outlining how the project met the goals of the proposal.

Sample Gantt Chart

