

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF APRIL 21 – 22, 2022

Prepared on March 25, 2022

ITEM NUMBER: 12

SUBJECT: Pacific Gas and Electric Company Settlement - Proposed Funding Allocation Plan

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ACTION: Consider Resolution No. R3-2022-0015 to Allocate \$5.9 Million from Pacific Gas and Electric Company Settlement Funds

SUMMARY

In June 2021, the Central Coast Regional Water Quality Control Board (Central Coast Water Board) received approximately \$5.9 million from the Pacific Gas and Electric Company (PG&E) as part of a settlement to resolve alleged thermal (temperature) violations of the National Pollutant Discharge Elimination System (NPDES) permit issued to PG&E for discharges of once-through cooling water into the Pacific Ocean from its Diablo Canyon Nuclear Power Plant. The PG&E settlement funds are currently deposited in the Central Coast Ambient Monitoring Program - Groundwater Assessment and Protection (CCAMP-GAP) Fund Operational Account, a non-investment cash account, managed by the Bay Foundation of Morro Bay (Bay Foundation) pending the Central Coast Water Board's approval of a funding allocation plan.

This staff report outlines Central Coast Water Board staff's recommended funding allocation plan for the \$5.9 million in settlement funds to achieve multiple high-priority objectives for the Central Coast Region. The recommended allocations substantially align with the mission of the State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Water Boards), collectively known as the Water Boards, as well as the State Water Board's Policy on Supplemental Environmental Projects ([SEP Policy](#)).¹

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https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/seps/20180503_sep_policy_a md.pdf

Central Coast Water Board staff recommends distributing the settlement funds over three allocation categories to support CCAMP-GAP priorities and to conduct a public solicitation for grant projects. These categories enable the Central Coast Water Board to balance immediate and long-term benefits. Table 1 summarizes the proposed allocations by category and funding amount.

Table 1. Summary of Proposed Allocations for PG&E Settlement Funds

FUNDING CATEGORY	Recommended Allocation	
	Amount (\$)	Percent (%)
CCAMP- GAP: Sustain Long-Term Funding		
Build CCAMP-GAP Endowment	\$4.1 Million	70%
CCAMP-GAP: Provide Short-Term Funding to Address Highest Priority		
Central Coast Drinking Water Well Testing Program	\$600K	10%
Short-Term Funding for Individual Projects		
Public Solicitation for Grant Project Proposals	\$1.2 Million	20%
Total	\$5.9 million	100%

DISCUSSION

Background

Consent Judgment

On May 25, 2021, the San Luis Obispo County Superior Court issued a Consent Judgment, ordering PG&E to pay \$5.9 million to the CCAMP-GAP Fund Operational Account.² According to Section 7.5 of the Consent Judgment, “PG&E’s one-time payment of over \$5.9 million will benefit water quality and the environment on the Central Coast. The Bay Foundation will distribute funds from the one-time payment as directed by the Central Coast Water Board.” The Consent Judgment places no other constraints on the distribution of the settlement funds.

Separately, Section 7.6 of the Consent Judgment highlights that PG&E will continue to make mitigation payments in compliance with the State Water Board’s Once-through Cooling Water Policy requirements, for operating years 2015 through 2025, that are estimated to total approximately \$38 million. These funds are earmarked specifically to support Marine Protected Areas (MPAs) on the Central Coast, as directed by the Ocean Protection Council’s [Once-Through Cooling Interim Mitigation Program](https://www.opc.ca.gov/once-through-cooling-interim-mitigation-program).³ MPAs provide

² Please contact Tamara Anderson at tamara.anderson@waterboards.ca.gov to request a copy of the Consent Judgment.

³ <https://www.opc.ca.gov/once-through-cooling-interim-mitigation-program>

direct biological benefits relative to the impacts caused by the once-through cooling water system, and the benefits will continue in perpetuity.

Settlement History and Alignment with the State Water Resources Control Board's Policy on Supplemental Environmental Projects

In the early 2000s, Central Coast Water Board enforcement staff and PG&E worked to resolve two main issues associated with the intake and discharge from the Diablo Canyon Power Plant: 1) the discharge of heated water that affects the marine life in the area of the discharge (referred to as thermal effects or the alleged thermal discharge violations) and 2) the intake and mortality of marine plankton, fish eggs, and larvae as cooling water is drawn into the power plant (referred to as entrainment). Central Coast Water Board enforcement staff and PG&E proposed a settlement for the alleged thermal discharge violations and for entrainment impacts in 2003. The Central Coast Water Board did not accept the final settlement proposal. In 2005, the State Water Board announced its intent to develop a Once-Through Cooling Water Policy (OTC Policy) and take over jurisdiction of power plant permitting, which put regional efforts to resolve the alleged entrainment impacts on hold. The State Water Board adopted its OTC Policy in 2010.

In 2018, Central Coast Water Board enforcement staff offered PG&E the opportunity to re-engage in settlement discussions to resolve the alleged thermal discharge violations originally alleged in 2003. The May 25, 2021 Consent Judgment is the outcome from those settlement discussions and resolves the alleged thermal discharge violations.

The PG&E settlement funds discussed in this staff report are not subject to the State Water Board's SEP Policy because the settlement negotiations arose prior to the Enforcement Policy and SEP Policy were in effect. Therefore, the Central Coast Water Board has some discretion and flexibility to allocate the settlement funds and implement projects as described in the Consent Judgment. Nonetheless, the recommended funding allocation plan substantially aligns with the State Water Board's SEP Policy by ensuring that funded projects have environmental value, furthering the enforcement goals, policies, and mission of the Water Boards, and applying appropriate oversight to ensure the projects are effectively implemented.

Settlement funds are not directed to the Central Coast Water Board or utilized to underwrite staff time. Furthermore, this action to allocate the settlement funds is not related to the regulation or the closure of the Diablo Canyon Power Plant.

Established Priority Funding Areas

As California's surface water supplies continue to decrease and the population increase, groundwater protection and management remains an essential priority. According to the California Department of Water Resources, [California's Groundwater Update 2020](#)⁴ groundwater use has steadily increased and the Central Coast Region is the most groundwater dependent region in the state. Statewide, the average percent

⁴ https://data.cnra.ca.gov/dataset/calgw_update2020/resource/bd2afb6f-cade-447e-9e04-f48574c9cc38

groundwater use of total water use was 58% in 2015, up from 31% in 2011. It is important to note that the Central Coast Region is particularly vulnerable to groundwater level declines and pollution. From 2011 – 2016, groundwater provided 46% of all water used in California; however, during that same period, groundwater provided 90% of all water used in the Central Coast Region. This is much higher than any other region in California. The Central Coast Region's dependency on groundwater underscores the importance of supporting CCAMP-GAP's goal to prioritize and fund programs that provide scientific data and information to protect, restore, and enhance groundwater quality in the Central Coast Region. More specifically, CCAMP-GAP prioritizes projects that:

- Implement the human right to water and Central Coast Water Board [Resolution R3-2017-0004](#),⁵ including drinking water well testing to ensure safe drinking water.
- Build local environmental justice capacity and benefit underrepresented communities.
- Support long-term, regional/basin-scale groundwater quality trend monitoring and assessment, including monitoring for emerging contaminants and issues of regional significance that may impact drinking water resources, especially domestic wells, and small water systems.
- Implement groundwater monitoring in areas where impacts to drinking water occur from unidentified pollutant sources or where there is no responsible party (RP) or the RP does not have funds to conduct the monitoring,
- Implement innovative remediation and source control projects to address pollutants impacting drinking water wells, where there is no RP or the RP does not have funds to conduct remediation,
- Identify communities and drinking water well users in need of replacement water or treatment solutions to help prioritize technical assistance and funding,
- Promote groundwater data/information sharing and public availability among stakeholders using the State Water Board's Groundwater Ambient Monitoring and Assessment Geographic Information System ([GAMA GIS](#))⁶ and/or [GeoTracker](#)⁷ online databases, including water quality and well location data.

Furthermore, in addition to the above, the Central Coast Water Board's [SEP priorities](#)⁸ also include projects that implement climate change mitigation or climate change adaptation strategies, and projects that develop or implement activities to achieve sustainable water supplies.

⁵ https://www.waterboards.ca.gov/water_issues/programs/hr2w/docs/r3_hr2w_res.pdf

⁶ <https://gamagroundwater.waterboards.ca.gov/gama/gamamap/public/>

⁷ <https://geotracker.waterboards.ca.gov/>

⁸ https://www.waterboards.ca.gov/centralcoast/water_issues/programs/enforcement/

The Central Coast Water Board discussed these priorities in detail over the last 10 years, as documented in staff reports and resolutions at multiple public meetings.⁹ During these discussions, the Central Coast Water Board also directed staff to focus on multi-benefit regional projects that leverage diverse funding sources.

Funds Management

Management of the CCAMP-GAP Fund is supported by a robust and effective financial management structure administered by the [Bay Foundation of Morro Bay](#)¹⁰ (Bay Foundation), a third-party, nonprofit foundation. The Bay Foundation has acted as the Central Coast Water Board's third-party administrator of settlement funds received from various negotiated settlements for CCAMP-GAP since 2012. A description of the CCAMP-GAP Fund status and history is provided in a separate agenda item, CCAMP-GAP Fund Status and History.

The Bay Foundation is a 501(c)(3) nonprofit organization formed in 1989. The mission of the Bay Foundation is to lead in restoring, enhancing, and protecting the marine resources and watersheds of Morro Bay and the Central Coast of California. In addition, the Bay Foundation supports the implementation of the Morro Bay National Estuary Program, which is federally funded by the U.S. Environmental Protection Agency. The Bay Foundation has a Board of Directors that oversees the finances and policies of the organization. As a recipient of federal funds, the Bay Foundation must comply with federal procurement and contracting requirements and participate in federal financial audits. The Bay Foundation manages several regional water quality monitoring and conservation programs in addition to those that support the CCAMP-GAP program.

Recommended Funding Allocation Categories

Central Coast Water Board staff recommends distributing the settlement funds received from PG&E over three allocation categories (see Table 1 above). Distributing the settlement funds to the 1) CCAMP-GAP Endowment, 2) Central Coast Drinking Water Well Testing Program, and 3) a public solicitation for a "Central Coast Community-Based Water Quality Grants Program" achieves a balance between ensuring that funds are available for CCAMP-GAP implementation in the long-term, as well as direct near-term funding toward the highest priority project (i.e., Central Coast Drinking Water Well Testing Program) and other high priority projects supporting small communities via a public solicitation process. Implementation of projects within these categories will provide the Central Coast Water Board and stakeholders with valuable groundwater

⁹ https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2012/may/Item_12/12_stfrpt.pdf
https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2013/march/Item_8/item8_stfrpt.pdf
https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2014/july/item12/item12_stfrpt.pdf
https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2015/may/item17/item17_stfrpt_b.pdf
https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2018/february/item12/item12_stfrpt.pdf
https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2018/june/item18/item18_stfrpt.pdf
https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2019/december/item_05/item05_stfrpt.pdf

¹⁰ <https://bayfoundationmb.org/>

information needed to make well informed, defensible, data-driven decisions and to measure Central Coast Water Board program effectiveness to protect water quality and beneficial uses. The three funding allocation categories are described in detail below.

Category 1 - Endowment Fund for the Central Coast Ambient Monitoring Program; Groundwater Assessment and Protection

CCAMP-GAP was established in May 2012 to provide comprehensive monitoring and assessment of groundwater for the Central Coast Region. The initial CCAMP-GAP Endowment funding goal was set at \$5 million principal and is currently at \$2.4 million.¹¹ While CCAMP-GAP has funded several high-priority, collaborative, multi-benefit projects, staff has determined that additional principal is needed to sustain priority projects in the long term.

Staff recommends allocating \$4.1 million (70%) of the settlement funds to reach an endowment principal of approximately \$6.5 million. This increase in the endowment will generate approximately \$325,000 in annual revenue¹² to administer and implement CCAMP-GAP priority projects, including:

- Hire a full-time Bay Foundation employee to serve as a third-party administrator for project oversight and implementation, coordination, and to pursue and leverage additional funds/grants. Cost is approximately \$60,000 - \$70,000/year.
- Provide ongoing financial support for the Central Coast Drinking Water Well Testing Program (after 3 years to build endowment revenue). Cost is approximately \$175,000 - \$200,000/year.
- Provide funding for future projects that address CCAMP-GAP priorities as described in the “Established Priority Funding Areas” section above.

Category 2 - Central Coast Drinking Water Well Testing Program

The [Central Coast Drinking Water Well Testing Program](#)¹³ provides free testing for domestic drinking water wells and small water systems to inform residents of drinking water quality. This high priority program provides data and support to local agencies to develop and implement drinking water well programs that conduct community outreach and education related to drinking water quality, public health, and supporting resources. In addition, the program is implemented in coordination with the State Water Board’s Safe and Affordable Funding for Equity and Resilience (SAFER) program to advance effective long-term drinking water solutions. To date, CCAMP-GAP has collaborated with local partners to successfully test more than 500 wells regionwide since August

¹¹ Numbers reflect the Bay Foundation’s financial report for November 2021. Funds in the endowment account fluctuate with the market.

¹² After an initial three-year investment period and based on an anticipated average annual 5% ROI. Investment earnings are estimated and dependent on market fluctuations.

¹³ <http://www.centralcoastwelltesting.org>

2017.¹⁴ The original allocation of funds for this project are nearly exhausted and additional funding is necessary to ensure that this critical service continues for those in the Central Coast Region who rely on drinking water wells, especially in underrepresented communities.

Staff recommends allocating \$600K (10%) of the settlement funds to provide immediate funding to continue free well testing services in the Central Coast Region for approximately three years,¹⁵ until funding becomes available through CCAMP-GAP endowment revenue as noted above.

Category 3 - Public Solicitation for Grant Project Proposals

Staff recommends allocating \$1.2 million (20%) of the settlement funds to establish and administer a “Central Coast Community-Based Water Quality Grants Program”. Central Coast Water Board staff has tentatively identified and is coordinating with the Rose Foundation for Communities and the Environment ([Rose Foundation](#)¹⁶) to administer this program. The Rose Foundation is a grant making public charity with extensive experience and demonstrated success in implementing grant programs that support community-based projects and organizations that support environmental and social justice, including water quality projects aligned with the Central Coast Water Board’s priorities. The Rose Foundation will develop grant program applications for large and small grant projects based on the project ranking and selection criteria found in Attachment 2 Central Coast Community-Based Water Quality Grants Program - Draft Project Ranking and Section Criteria. The grant program will also offer capacity assessments and technical assistance mini grants targeted towards smaller grantees to help organizations build capacity in specific areas. The Rose Foundation will implement the grant program solicitation and convene a Funding Advisory Board to assist with grant proposal evaluation and selection in coordination with the Rose Foundation Board of Directors and staff. The third-party Funding Advisory Board will be made up of individuals with knowledge of the Central Coast Region’s watersheds, groundwater basins, and priority water quality issues. In coordination with the Funding Advisory Board, the Rose Foundation will evaluate grant proposals and grants will be awarded on a competitive basis. Eligible projects not recommended for funding, may be placed on the funding list, and funded in a subsequent solicitation cycle or referred to alternative Water Boards grant funding programs.

Human Right to Water

California Water Code section 106.3, subdivision (a) states: It is a policy of the State of California “that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitation purposes.”

¹⁴ Based on combined efforts through the San Luis Obispo County Pilot Project (August 2017 – June 2018) and Central Coast Drinking Water Well Testing Program (October 2018 – present).

¹⁵ After three years, the CCAMP-GAP endowment will provide limited ongoing support as part of the annual budget.

¹⁶ <https://rosefdn.org/>

On January 26, 2017, the Central Coast Water Board adopted Resolution No. R3-2017-0004, which affirms the realization of the human right to water and the protection of human health as one of the Central Coast Water Board's top priorities. The proposed Resolution R3-2022-0015 (Proposed Resolution) is consistent with the human right to water and Resolution No. R3-2017-0004 by specifically prioritizing the Central Coast Drinking Water Well Testing Program and funding for additional projects that ensure safe drinking water and promote sustainable drinking water solutions, especially for underrepresented communities.

Environmental Justice

Environmental Justice principles call for the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income, in the development, adoption, implementation, and enforcement of all environmental laws, regulations, and policies that affect every community's natural resources, and the places people live, work, play, and learn. The Central Coast Water Board implements regulatory activities and water quality projects in a manner that ensures the fair treatment of all people, including underrepresented communities. Underrepresented communities include but are not limited to Disadvantaged Communities (DACs), Severely Disadvantaged Communities (SDACs), Economically Distressed Areas (EDAs), Tribes, Environmentally Disadvantaged Communities (EnvDACs), and members of Fringe Communities¹⁷. Furthermore, the Central Coast Water Board is committed to providing all stakeholders the opportunity to participate in the public process and provide meaningful input to decisions that affect their communities. The Proposed Resolution supports environmental justice by prioritizing projects that advance environmental justice issues and funding for community-based organizations and projects that benefit underrepresented communities. Additionally, Central Coast Water Board staff provided outreach and documents for this agenda item in both English and Spanish and will provide oral interpretation in Spanish at the board meeting.

¹⁷ Disadvantaged Community: a community with an annual median household income that is less than 80% of the Statewide annual median household income (Public Resources Code section 80002(e)); Severely Disadvantaged Community: a community with a median household income of less than 60% of the Statewide average. (Public Resources Code section 80002(n)); Economically Distressed Area: a municipality with a population of 20,000 persons or less, a rural county, or a reasonably isolated and divisible segment of a larger municipality where the segment of the population is 20,000 persons or less, with an annual median household income that is less than 85% of the Statewide median household income, and with one or more of the following conditions as determined by the department: (1) financial hardship, (2) Unemployment rate at least 2% higher than the Statewide average, or (3) low population density. (Water Code section 79702(k)); Tribes: federally recognized Indian Tribes and California State Indian Tribes listed on the Native American Heritage Commission's California Tribal Consultation List; EnvDACs: CalEPA designates the top 25 percent scoring census tracts as DACs. Census tracts that score the highest 5 percent of Pollution Burden scores, but do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data, are also designated as DACs (refer to the CalEnviroScreen 3.0 Mapping Tool or Results Excel Sheet); Fringe Community: communities that do not meet the established DAC, SDAC, and EDA definitions, but can show that they score in the top 25 percent of either the Pollution Burden or Population Characteristics score using the CalEnviroScreen 3.0

Climate Change

The Central Coast Region faces the threat and the effects of climate change for the foreseeable and distant future. To proactively prepare and respond, the Central Coast Water Board has launched the Central Coast Water Board's Climate Action Initiative, which identifies how the Central Coast Water Board's work relates to climate change and prioritizes actions such as water conservation, reuse and recycling to improve water supply resiliency, sea level rise and flood mitigation and adaptation, and that improve energy efficiency and reduce greenhouse gas production. The Climate Action Initiative is consistent with the Governor's Executive Order B-30-15 and the State Water Board's Climate Change [Resolution No. 2017-0012](#).¹⁸ The Proposed Resolution implements the Climate Action Initiative by prioritizing funding for projects that implement climate change mitigation and adaptation strategies, such as drought resiliency projects and support for facilities to address climate change hazards and vulnerabilities.

PUBLIC OUTREACH AND COMMENTS

On January 31, 2022, the Central Coast Water Board publicly noticed this staff report, including the Proposed Resolution to allocate the \$5.9 million PG&E settlement funds, information regarding a proposed public solicitation for grant project proposals and associated project ranking and selection criteria. The Central Coast Water Board provided a 30-day public comment period from January 31, 2022, to March 2, 2022. Based on the written comments received, staff does not recommend any changes to the Proposed Resolution, staff report, or project ranking and selection criteria. Staff compiled the public comments received and prepared a summary response to comments which is included as Attachment 3. Additionally, Central Coast Water Board staff will provide annual updates to the Central Coast Water Board at public meetings on the status of CCAMP-GAP Program implementation and to reaffirm regional priorities.

CONCLUSION

The Proposed Resolution includes a funding allocation plan for the \$5.9 million in PG&E settlement funds that directs funding toward the Central Coast Water Board's highest priorities through three funding categories: 1) CCAMP-GAP Endowment, 2) Central Coast Drinking Water Well Testing Program, and 3) a public solicitation for a "Central Coast Community-Based Water Quality Grants Program". These categories enable the Central Coast Water Board to balance immediate needs and long-term benefits. Additionally, the projects prioritized for funding associated with these three allocation categories substantially align with the mission of the Water Boards, as well as the State Water Board's SEP Policy.

¹⁸ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0012.pdf

RECOMMENDATION

Adopt Resolution No. R3-2022-0015 to allocate the \$5.9 Million PG&E settlement funds as described in this staff report and to authorize the Central Coast Water Board Executive Officer to develop and enter into agreements with the Bay Foundation and Rose Foundation, or other similarly qualified foundation, to manage these funds, as appropriate.

ATTACHMENTS

1. [Proposed Resolution No. R3-2022-0015](#) - Pacific Gas and Electric Company Settlement Funds Allocation Plan
2. [Central Coast Community-Based Water Quality Grants Program](#) - Draft Project Ranking and Section Criteria
3. [Public Comments and Staff Responses](#)