

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

RESOLUTION R5-2014-XXXX

APPROVING A PROPOSAL BY THE ROSE FOUNDATION  
TO ASSIST IN THE DISBURSEMENT AND OVERSIGHT OF FUNDS  
DIRECTED TO SUPPLEMENTAL ENVIRONMENTAL PROJECTS  
TO BENEFIT DISADVANTAGED COMMUNITIES

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

1. The Rose Foundation for Communities and the Environment (Rose Foundation) is a grantmaking public charity based in Oakland, California with extensive experience in managing federal Clean Water Act supplemental environmental project funds and supporting community-based environmental projects in the Central Valley and throughout California.
2. The Central Valley Water Board is an agency of the State of California with the mission of preserving, protecting, enhancing, and restoring water quality within the Central Valley of California. In support of that mission, the Central Valley Water Board has the authority to enforce permit conditions and provisions of the Board's Water Quality Control Plans by issuing Administrative Civil Liability Orders (ACL Orders).
3. Dischargers who wish to settle alleged water quality violations may offer to complete Supplemental Environmental Projects (SEPs) that offset the financial liability that may otherwise be imposed by the Board; dischargers may fund SEPs in lieu of submitting payments to the State Water Resourced Control Board's (State Water Board) Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund. SEP settlements are memorialized in Stipulated ACL Orders.
4. The State Water Board has adopted a Water Quality Enforcement Policy (dated 17 November 2009) and a Statewide Policy on Supplemental Environmental Projects (SEP Policy) (dated 3 February 2009) that together regulate the use of SEPs statewide.
5. The SEP Policy defines SEPs as, "... projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger. ... SEPs are an adjunct to the Water Boards' enforcement program and are never the basis or reason for bringing an enforcement action."
6. As a general rule, the SEP Policy states that no settlements shall be approved by the Board that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the discharger, absent compelling justification. The total adjusted monetary assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs.

7. Many disadvantaged communities in the Central Valley would benefit from SEPs, yet it is difficult for dischargers that do not have day-to-day relationships with these communities to create SEPs that are responsive to their needs.
8. The Rose Foundation, by virtue of its grantmaking experience, is uniquely situated to implement a program that would allow SEP monies to penetrate deeply into disadvantaged communities while supporting the water-quality related SEP criteria contained in the Water Quality Enforcement Policy and the SEP Policy.

#### ROSE FOUNDATION PROPOSAL

9. The Central Valley Water Board recognizes that there are unmet water quality needs within many disadvantaged communities in the Central Valley. However, many dischargers lack the institutional capacity to develop effective SEPs that would help meet these needs.
10. The Central Valley Water Board has been approached by representatives of disadvantaged communities who have suggested that the Rose Foundation is ideally situated to work within these communities to develop SEPs for their benefit. While the Board would be receptive to similar proposals made by other organizations, the Rose Foundation is the only organization that the Board knows of that has the institutional capacity, proven track record, and connections within disadvantaged communities to effectuate a proposal of the type described in this Resolution.
11. The Rose Foundation has proposed to develop a list of SEPs to benefit disadvantaged communities (including those communities facing environmental justice issues) within the Central Valley Region (the "Disadvantaged Community SEP List"), and to provide oversight of these SEPs if dischargers facing administrative civil liability wish to fund these SEPs in lieu of making payments to the State Water Board's Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund. This would allow dischargers facing civil liability actions to harness the Rose Foundation's institutional capacities, thereby allowing these dischargers to fund SEPs to benefit disadvantaged communities as a component of the ultimate resolution of their potential liability.
12. Eligible projects may include, but shall not be limited to:
  - a. Water Quality Monitoring Programs: including water quality monitoring of surface and groundwater supplies in disadvantaged communities that do not have a publicly regulated community water system, as well as community-based water quality monitoring designed to aid overall watershed management and water resource decisions. This may include water quality testing of individual or community wells that are sources of domestic water.
  - b. Well Rehabilitation or Replacement: including repairing wells that are sources of drinking water and that may provide conduits for pollutants to enter groundwater, or capping and replacing wells that cannot be rehabilitated.

- c. Watershed Assessment Programs: including disadvantaged community participation in watershed planning programs such as IRWMPs, development of model watershed protection policies, and development of local water quality protection plans and policies for disadvantaged community water sources.
  - d. Wetland, Waterbody, or Riparian Habitat Conservation or Protection Programs: including land acquisition combined with community-based restoration, interpretive or educational programs, and community-based watershed stewardship and riparian restoration programs.
  - e. Pollution Prevention Projects: such as community-based outreach to businesses designed to encourage voluntary pollution reduction and water conservation, and public education about local water quality issues and what people can do to improve water quality in disadvantaged communities and other areas.
  - f. Public Awareness Projects: including community outreach, education, and assistance designed to encourage pollution reduction and/or water conservation to protect disadvantaged community water sources and other water bodies, and the development and delivery of watershed-oriented environmental education curriculum.
13. Eligible projects shall be limited to those projects that have been tailored to benefit disadvantaged communities within the Central Valley Region.
14. No project shall be included in the list of eligible projects if that project specifically proposes to advance a policy position adverse to one that the Board has previously considered. Board staff reviewing the Rose Foundation's annual updates, discussed below in Finding No. 15, shall have the responsibility to provide feedback to the Rose Foundation as to whether the individual proposals meet this requirement.
15. The Rose Foundation shall annually propose updates to the Disadvantaged Community SEP List. The periodic updates to the Disadvantaged Community SEP List may be approved by the Board's Executive Officer after providing the public with an opportunity to comment on the changes to the list, or the Executive Officer may propose to bring the updated Disadvantaged Community SEP List to the Central Valley Water Board for its consideration.

#### COMPLIANCE WITH THE ENFORCEMENT AND SEP POLICIES

16. In accordance with the Enforcement Policy, funding a SEP results in the permanent suspension of the portion of the liability in exchange for the performance of the project. To facilitate the Rose Foundation's proposal, the Board shall consider "performance of the project" to mean actual payment to the Rose Foundation of the amount agreed to by the discharger in the ACL Order. The Rose Foundation shall confirm that the funds were paid in an annual report to the Central Valley Water Board, due by 31 January each year, at which point that portion of the liability funded in the prior year will be permanently suspended.

17. The SEP Policy lays out the following general qualification criteria:
  - a. The SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger.
  - b. The SEP shall directly benefit or study groundwater or surface water quality.
  - c. A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, staff, or family of members or staff.
  - d. Unless express authorization is granted to a Regional Board by the State Water Board, a Regional Water Board may not manage settlement funds placed into an account for the purposes of completing a SEP.
18. Projects proposed by the Rose Foundation shall adhere to the above criteria and any other applicable criteria of the SEP Policy.
19. The SEP Policy states that, "there must be a nexus between the violation(s) and the SEP ... there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists 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." For the purposes of the Rose Foundation proposal, "nexus" is to receive a liberal interpretation that includes projects in the same watershed as where the violations occurred.
20. The SEPs funded under the Rose Foundation's proposal are considered third-party SEPs, which means that the third-party entities that are paid to perform a SEP must be independent of both the discharger and the Water Board.
21. As a general rule, the costs associated with the oversight of the SEP (borne either by the Board or by a third party) are not costs that should be considered part of the direct cost of the SEP for the purposes of determining the value of the SEP. Dischargers that wish to fund projects from the Disadvantaged Community SEP List shall work with the Rose Foundation to reimburse the Rose Foundation for its oversight costs. In extraordinary circumstances, consistent with the SEP Policy, the Central Valley Water Board may expressly find that such costs should be "considered part of the SEP" or may fund oversight by requesting a disbursement from the State Water Board's Water Pollution Cleanup and Abatement Account.
22. By agreeing to participate in this project, the Rose Foundation agrees to subject all of its accounting and project-tracking materials related to the Disadvantaged Community SEP List to any audit at any time that one is deemed necessary by the Central Valley Water Board or by any other state or federal agency that requires such auditing.
23. It is the policy of the State Water Board that all ACL Settlements be posted for 30-day comment period before they are issued. This Resolution was posed for 30 days to allow the public to provide input regarding the process delineated in this Resolution and in the

Rose Foundation's Proposal, as well as the individual merits of any of the project proposals contained in the 2014 Disadvantaged Community SEP List. As stated above, the Board is committed to providing the public the opportunity to comment on revisions to the Disadvantaged Community SEP List when it is updated each year.

24. The Central Valley Water Board's approval of this Resolution is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project." (Pub. Resources Code § 21065; Cal. Code Regs., tit 14, §§ 15060(c)(2),(3); 15378(a).) At the time Administrative Civil Liability Orders approving the funding of SEPs from the Disadvantaged Community SEP List are approved, the Board must consider whether CEQA applies to the issuance of the Board's Order, and whether additional CEQA work is required.

THEREFORE BE IT RESOLVED, the Central Valley Water Board, after considering the entire record, including written and oral testimony at the hearing:

1. Authorize the Rose Foundation to propose updates to the Disadvantaged Community SEP List on an annual basis that will fund projects to benefit disadvantaged communities in the Central Valley Region as described in Attachment A to this Resolution. The Rose Foundation shall update the Disadvantaged Community SEP List by 31 January of each year. Board staff shall make the updates to the Disadvantaged Community SEP List available for public input for a 30-day period before the list receives the approval of the Board's Executive Officer.
2. Approves the 2014 Disadvantaged Community SEP List, attached hereto as Attachment B to this Resolution.
3. Directs Board staff to work with the Rose Foundation to publicize the Rose Foundation's proposal on the Board's website, and to give serious consideration to all proposals that would include these SEPs as a part of the settlement of a discharger's potential civil liability.
4. Instructs the Rose Foundation to report back to the Board by 31 January of each year, providing the Board with information regarding the expenditure of SEP funds during the preceding calendar year. Copies of this report shall be submitted to all dischargers that have contributed to projects that have received funding from the Rose Foundation in the prior year. The Rose Foundation shall also submit this report to the Division of Financial Assistance at the State Water Board under penalty of perjury, declaring that the funds submitted to the Rose Foundation have been expended on eligible SEPs. These reports shall be considered a final post-project accounting of expenditures, as additional reporting on individual projects would be unduly onerous.
5. Dischargers shall be able to select which projects from the Disadvantaged Community SEP List are funded with their financial contributions.

6. Dischargers that direct funds to the Rose Foundation for use in a SEP on the Rose Foundation's Disadvantaged Community SEP List will have an equivalent amount of administrative civil liability permanently suspended at the time the Rose Foundation submits an Annual Disadvantaged Community SEP Update to the Board that shows that these funds have been expended.

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 Regional Water Quality Control Board, Central Valley Region on XX March 2014.

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PAMELA C. CREEDON, Executive Officer