

Item 7 – Late Addition

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF JUNE 10-11, 2015
BISHOP, CA**

**ITEM 7 - PUBLIC HEARING - CONSIDERATION OF A SETTLEMENT AGREEMENT
AND STIPULATION FOR ENTRY OF ORDER IN THE MATTER OF AN
ADMINISTRATIVE CIVIL LIABILITY AGAINST LOS ANGELES
DEPARTMENT OF WATER AND POWER (LADWP) FOR ALLEGED
VIOLATIONS AT LEE VINING CREEK DIVERSION STRUCTURE, MONO
COUNTY**

Please add Enclosure 2 (State SEP Policy) and Enclosure 3 (Lahontan SEP Policy and Resolution) to this item. Also please replace Bates page 7-3 with the attached page listing the two additional enclosures; the enclosed new page 7-3 includes a previous Late Revision that included the note, "No comments were received."

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2. LADWP will assume the role of “Lead Agency” under the California Environmental Quality Act (“CEQA”) for purposes of the above-referenced General Permit.
3. The total Settlement Amount of \$95,000 is a result of the Prosecution Staff’s negotiations with LADWP pursuant to Government Code section 11415.60 and Page 22 of the Enforcement Policy. Due to recent administrative considerations, staff costs are not being recovered as part of this settlement.

The Prosecution Team posted the Proposed Settlement Agreement and Stipulated Order on the Lahontan Water Board’s web page on April 24, 2015, and also mailed copies to interested parties. Interested parties were asked to submit comments by May 26, 2015. No comments were received.

The Lahontan Water Board has several options regarding the proposed Settlement Agreement:

- a. Adopt the Settlement Agreement without changes;
- b. Adopt the Settlement Agreement with amendments if LADWP and the Prosecution Team can agree upon the amendments and the amendments do not substantially alter the nature of the proposed Settlement Agreement and Stipulated Order;
- c. Ask LADWP and the Prosecution Team to return at a later meeting with a revised Settlement Agreement and Stipulated Order if the Water Board wants substantial changes to the proposed Settlement Agreement and Stipulated Order;
- d. Reject the proposed Settlement Agreement and Stipulated Order and require LADWP and the Prosecution Team to return at a later meeting for an adjudicative hearing regarding the facts and circumstances associated with the alleged violations.

RECOMMENDATION:

The Lahontan Water Board Advisory Team will make a recommendation on these proposed Settlement Agreement and Stipulated Order at the meeting.

Enclosure	Item	Bates Number
1	Proposed Settlement Agreement and Stipulated Order	7-6
2	State Policy for Supplemental Environmental Projects	7-33
3	Lahontan Water Board Resolution and Policy for Supplemental Environmental Projects	7-45

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ENCLOSURE 2

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STATE WATER RESOURCES CONTROL BOARD

**POLICY
ON
SUPPLEMENTAL
ENVIRONMENTAL PROJECTS**

February 3, 2009

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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INTRODUCTION

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.) SEPs are 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. California Water Code section 13385(i) allows limited use of SEPs associated with mandatory minimum penalties. California Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. In the absence of other statutory authority in the Water Code regarding the use of SEPs, 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 ACL.

The State Water Board supports the inclusion of SEPs in ACL actions, even when SEPs are not expressly authorized, so long as these projects meet the criteria specified below to ensure that the selected projects have environmental value, further the enforcement goals of the State Water Board and Regional Water Boards (Water Boards), and are subject to appropriate input and oversight by the Water Boards. These criteria should also be considered when the State Water Board or a Regional Water Board considers a SEP as part of the settlement of civil litigation.

SEPs are an adjunct to the Water Boards' enforcement program and are never the basis or reason for bringing an enforcement action. While SEPs can be useful in the facilitation of settlements, the funding of SEPs is not a primary goal of the Water Boards' enforcement program nor is it necessary that a SEP always be included in the settlement of an enforcement action that assesses a monetary liability or penalty.

A. Addressing the State Water Board's Interest in Supplemental Environmental Projects

While many other jurisdictions require that penalties and administrative liabilities be paid into a general fund, administrative civil liabilities and civil penalties assessed under the Water Code are paid into special funds for specific environmental purposes. The State Water Board has a strong interest in monitoring the use of funds for SEPs that would otherwise be paid into accounts for which it has statutory management and disbursement responsibilities. As a general rule, unless otherwise permitted by statute, no settlements shall be approved by the Water Boards 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.

If a Regional Water Board proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, that Regional Water Board shall affirmatively notify the Director of the Office of Enforcement of the State Water Board of that proposal. The notification shall describe in detail the proposed SEP, the settlement value of the SEP, the reasons why the Regional Water Board proposes to accept the SEP in lieu of a monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit. If the Director of the Office of Enforcement of the State Water Board determines that there is no compelling justification, he or she shall notify the Regional Water Board of that determination and the Regional Water Board will be limited to the 50 percent limit.

B. General Considerations

1. Types of SEPs

There are two general categories of SEPs: (1) SEPs performed by the discharger; and (2) SEPs performed by third-parties paid by the discharger. Third-party entities that are paid to perform a SEP must be independent of both the discharger and the Water Board. Any actual or apparent conflict of interest must be avoided. A third-party is not independent if it is legally or organizationally related to the discharger or the Water Board. A contract between the discharger and the third-party for the performance of a SEP that allows the discharger to ensure that the SEP is completed pursuant to the terms of the contract, does not affect whether that third-party is otherwise independent of the discharger for the purposes of this Policy.

2. Accounting Treatment

The monetary value of a SEP will be treated as a suspended liability. Unless otherwise required by law, any order imposing a SEP shall state that, if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended penalty, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone. Full payment of the penalty shall be in addition to any other applicable remedies for noncompliance with the terms of the order.

C. General SEP Qualification Criteria

Nothing in this policy restricts the Regional Water Boards from establishing additional, more stringent criteria for SEPs. All SEPs approved by a Water Board must, at a minimum, satisfy the following criteria:

1. A SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger. The SEP shall not be an action, process, or product that is otherwise required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s). (Note: "Compliance Projects" as authorized by Water Code section 13385(k)(1) are not SEPs.)
2. The SEP shall 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 to¹:
 - a. monitoring programs;
 - b. studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
 - c. water or soil treatment;
 - d. habitat restoration or enhancement;
 - e. pollution prevention or reduction;
 - f. wetland, stream, or other waterbody protection, restoration or creation;
 - g. conservation easements;
 - h. stream augmentation;
 - i. reclamation;
 - j. watershed assessment (e.g., citizen monitoring, coordination and facilitation);
 - k. watershed management facilitation services;
 - l. compliance training, compliance education, and the development of educational materials;
 - m. enforcement projects, such as training for environmental compliance and enforcement personnel; and
 - n. non-point source program implementation.

¹ Nothing in this section is intended to affect the authority of the State Water Board to make disbursements from the State Water Pollution Cleanup and Abatement Account, including but not limited to, authorized disbursements for education projects.

3. A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff. Any indirect benefits provided to members, staff, or family shall be only those that are enjoyed by the public generally. A SEP shall not benefit or involve friends of members, staff, or family where there could be an appearance of undue influence, suggesting an actual or apparent conflict of interest for the Water Boards.
4. As contemplated by this policy, a SEP is a project or group of projects, the scope of which is defined at the time the SEP is authorized by a Water Board. The placement of settlement funds into an account or fund managed by a Regional Water Board that is not an account or fund authorized by statute or otherwise allowed by the State Water Board is not permissible. If a Regional Water Board wishes to establish any fund that is designed to receive money that is paid by a discharger to resolve a claim of liability under the Water Code, the Regional Water Board should obtain the express authorization of the State Water Board. Such authorization will be subject to conditions that the State Water Board may place on such a fund.

D. Additional SEP Qualification Criteria

The following additional criteria shall be evaluated by the Water Boards during final approval of SEPs:

1. Does the SEP, when appropriate, include documented support by other public agencies, public groups, and affected persons?
2. Does the SEP directly benefit the area where the harm occurred or provide a region-wide or statewide use or benefit?
3. Does the SEP proposal, considering the nature or the stage of development of the project, include documentation that the project complies with the California Environmental Quality Act?
4. Does the SEP proposal address whether it can be the basis for additional funding from other sources?
5. Does the entity identified as responsible for completing the SEP have the institutional stability and capacity to complete the SEP? Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected.
6. Does the SEP proposal include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project?

E. Nexus Criteria

There must be a nexus between the violation(s) and the SEP. In other words, 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.

F. Project Selection

Each Regional Water Board will maintain a list of the SEPs that it has authorized pursuant to an order. The list of authorized SEPs shall be available on the Regional Water Board's web site. A Regional Water Board also may maintain and post on its web site a list of environmental projects that it has pre-approved for consideration as a potential SEP. Each Regional Water Board may determine when and how it wishes to consider an environmental project for placement on its list of potential SEPs.

G. Orders Allowing SEPs

When SEPs are appropriate, they are imposed as stipulated ACL orders, in settlement of an ACL complaint or some other order entered under the authority of a Water Board. There is no legal authority for an ACL complaint to contain a proposed SEP. Funding for SEPs is addressed as a suspended liability.

All orders that include a SEP must:

1. Include or reference a scope of work, including a budget.
2. Require periodic reporting (quarterly reporting at a minimum) on the performance of the SEP by the discharger to the Water Board to monitor the timely and successful completion of the SEP. Copies of the periodic reports must be provided to the Division of Financial Assistance of the State Water Board.
3. Include a time schedule for implementation with single or multiple milestones and that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP.
4. Contain or reference performance standards and identified measures or indicators of performance in the scope of work.

5. Specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators.
6. Require that whenever the discharger, or any third party with whom the discharger contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Water Board enforcement action.

Any portion of the liability that is not suspended shall be paid to the CAA or other fund or account as authorized by statute. The order shall state that failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and that the suspended amounts will become immediately due and payable.

It is the discharger's responsibility to pay the suspended amount(s) when due and payable, regardless of any agreements between the discharger and any third party contracted to implement or perform the project.

Upon completion of the SEP, the Water Board shall provide the discharger with a statement indicating that the SEP has been completed in satisfaction of the terms of the order and that any remaining suspended liability is waived.

H. Project Payment, Tracking, Reporting and Oversight Provisions

Except under unusual circumstances, ACL orders shall include the provisions for project payment, tracking, reporting, and oversight as follows:

1. For any SEP that requires oversight by the State Water Board or Regional Water Board, the full costs of such oversight must be covered by the discharger. Based on its resource constraints, the Water Board may require the discharger to select and hire an independent management company or other appropriate third party, which reports solely to the Water Board, to oversee implementation of the SEP in lieu of oversight by Water Board staff. If no arrangement for the payment for necessary oversight can be made, the SEP shall not be approved, except under extraordinary circumstances. As a general rule, such oversight costs are not costs that should be considered part of the direct cost of the SEP to the discharger for the purposes of determining the value of the SEP for settlement purposes unless the Regional Water Board or State Water Board expressly finds that such costs should be considered part of the SEP.

2. A written acknowledgment and other appropriate verification and enforceable representation to the Water Boards by each third-party performing the SEP that any SEP funds it receives from the discharger will be spent in accordance with the terms of the order. The third-party performing the SEP must agree to an audit of its SEP expenditures, if requested by the Water Board.
3. The discharger must provide the Water Board and the Division of Financial Assistance of the State Water Board with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. Where a third-party performed the SEP, that entity may provide the report and the certification.
4. The discharger must provide the Water Board a final, certified, post-project accounting of expenditures, unless the Water Board determines such an audit is unduly onerous and the Water Board has other means to verify expenditures for the work. Such accounting must be paid for by the discharger and must be performed by an independent third-party acceptable to the Water Board.
5. The Water Board will not manage or control funds that may be set aside or escrowed for performance of a SEP unless placed in an account authorized by statute or permitted by the State Water Board.
6. The Water Board does not have authority to directly manage or administer the SEP.
7. Where appropriate, it is permissible for a SEP funding agreement between a discharger and a third-party to require pre-approval of invoices or confirmation of completed work by a Water Board before escrowed or set-aside funds are disbursed to the party performing the work.

I. Public Reporting of SEP Status Information

The State Water Board shall post on the State Water Board website, by March 1 of each year, a list, by Regional Water Board, of the completed SEPs for the prior calendar year, and shall post information on the status of SEPs that are in progress during that period.

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ENCLOSURE 3

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

RESOLUTION NO. R6T-2014-0014

**LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM**

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

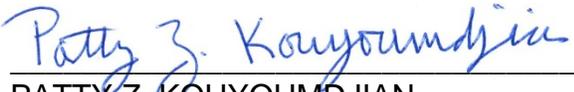
1. The Lahontan Water Board has for approximately one year been evaluating its Enforcement Program and has identified a number of actions that will improve the program's efficiency and effectiveness. One such action is the development of a region-specific program for identifying, approving, and implementing Supplemental Environmental Projects (SEPs).
2. 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 civil liabilities available for the kinds of projects identified as priorities by the Lahontan Water Board.
3. Currently, extensive Lahontan Water Board staff resources are spent negotiating, developing, and overseeing SEPs. This process has typically been conducted in confidential settlement negotiations, and by the very nature of confidentiality does not provide public transparency in how various SEPs are proposed to the Lahontan Water Board.
4. A region-specific SEP program will 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 Resources Control Board's SEP Policy.
5. As a part of the region-specific SEP program, the Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP accounts and to implement SEPs consistent with the Lahontan Water Board's expressed priorities.
6. Using SEP accounts with partner organizations is expected to reduce staff's SEP oversight costs over time. The partner organizations will be responsible for the development and administration of the SEPs.
7. Using SEP accounts will direct monies toward projects that are already vetted through local stakeholder processes and increase the transparency in how SEP monies are used.

- 8. The Lahontan Water Board considers a pilot program to be an appropriate mechanism to explore the feasibility of implementing SEP accounts before implementing this program on a region-wide basis. Such a pilot program is the subject of a separate Resolution.
- 9. The Lahontan Water Board has notified interested parties through the Lahontan Region of its intent to adopt this Resolution by posting to a list server and on the Water Board's web site.
- 10. The Lahontan Water Board, in a public meeting, heard and considered all comments regarding the Resolution.

THEREFORE, BE IT RESOLVED THAT:

- 1. The Lahontan Water Board approves the Lahontan Water Board SEP Program (Attachment A).
- 2. The Lahontan Water Board directs staff to post the Lahontan Water Board SEP Program in a prominent location on the Lahontan Water Board's web site.
- 3. The Lahontan Water Board directs staff to delay full implementation of the Lahontan Water Board SEP Program until a pilot program with the Truckee River Watershed Council is completed.
- 4. The Lahontan Water Board authorizes the Lahontan Water Board Executive Officer to modify the attached Lahontan Water Board SEP Program (and its respective attachments) for minor technical changes or for consistency with updated requirements and policies.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on February 12, 2014.



 PATTY Z. KOUYOUMDJIAN
 EXECUTIVE OFFICER

Attachment A: Lahontan Water Board SEP Program

LAHONTAN WATER BOARD SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) PROGRAM

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 program. The region-specific SEP program 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 Lahontan, not just within the watershed where the violation(s) occurred. The Lahontan Water Board prefers SEP projects be located close to where the violation(s) occurred, but recognizes this is not always possible.

SEP ACCOUNTS

The Lahontan Water Board supports the establishment of partnerships with independent third parties (partner organizations) to manage SEP 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 entered into a Memorandum of Understanding with partner organizations (see Attachment 1) that have agreed to create a SEP account, dischargers may choose to direct up to 50 percent of a liability to the appropriate SEP 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 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 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 accounts to leverage other sources of funding.

The use of SEP 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 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 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 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 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. Once a partnership agreement is developed and finalized through a Memorandum of Understanding (see Attachment 1), dischargers will be 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 Tribes¹, 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 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

¹ Federally-recognized tribes must waive their sovereign immunity in order to be eligible to manage SEP 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 (Memorandums of Understanding) 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 individual SEP 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 SEP 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

MEMORANDUM OF UNDERSTANDING

**LAHONTAN WATER BOARD
SUPPLEMENTAL ENVIRONMENTAL PROJECT
ACCOUNT PROGRAM WITH
[NAME OF PARTNER ORGANIZATION]**

This document shall serve as a Memorandum of Understanding by and between the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) and the PARTNER ORGANIZATION for the Supplemental Environmental Project (SEP) Account program authorized by the Lahontan Water Board's SEP Program, approved by Resolution No. R6T-2014-0014 (Lahontan Water Board SEP Program). The terms and conditions of this Memorandum of Understanding (MOU) govern PARTNER ORGANIZATION'S obligations to identify projects that may qualify as SEPs, to implement SEPs consistent with the Lahontan Water Board SEP Program, and to use the funds transferred to it by a discharger in accordance with the Lahontan Water Board's authorizing Administrative Civil Liability Order. This MOU is effective upon its execution by PARTNER ORGANIZATION and the Executive Officer of the Lahontan Water Board.

1. PARTNER ORGANIZATION shall incorporate the SEP Qualification Criteria identified in the Lahontan Water Board SEP Program to identify potential projects that may qualify as a SEP. This shall be incorporated within the PARTNER ORGANIZATION'S stakeholder process used for identifying potential projects.
2. PARTNER ORGANIZATION shall submit to the Lahontan Water Board Executive Officer on a biannual basis a list of potential projects that have been identified pursuant to Paragraph 1, above. The first such list shall be submitted by [DATE] and every two years thereafter.
3. When a discharger is under Order of the Water Board to pay a liability for violations, PARTNER ORGANIZATION shall enter into a direct contract with any Discharger who elects to direct a portion of its liability to fund implementation of a SEP identified on the PARTNER ORGANIZATION's list of potential projects noted in Paragraph 2, above. The contract between the PARTNER ORGANIZATION and the discharger shall include specific language noted within Attachment 2 to the Lahontan Water Board SEP Program.
4. PARTNER ORGANIZATION shall provide quarterly reports of progress on each SEP to the Designated Lahontan Water Board Representative commencing on the first day of the fiscal quarter after a contract with a discharger becomes effective and continuing through submittal of the final reports described below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

5. On or before the applicable SEP Completion Date, PARTNER ORGANIZATION shall submit a certified statement of completion of the SEPs (“Certification of Completion”). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Lahontan Water Board Representative by a responsible corporate official representing PARTNER ORGANIZATION. The Certification of Completion shall include following:
 - a. Certification that the SEP has been completed in accordance with the terms of this MOU, the Lahontan Water Board’s authorizing Order and the Lahontan Water Board’s SEP Program. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate the completion of the SEP and the costs incurred by PARTNER ORGANIZATION.
 - b. Certification documenting the expenditures by PARTNER ORGANIZATION during the completion period for the SEP. PARTNER ORGANIZATION’S expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Lahontan Water Board for oversight. PARTNER ORGANIZATION shall provide any additional information requested by the Lahontan Water Board Representative which is reasonably necessary to verify SEP expenditures.
 - c. Certification, under penalty of perjury, that PARTNER ORGANIZATION obtained all necessary permits and followed all applicable laws and regulations in the implementation of the SEP, including but not limited to the federal Clean Water Act, the Porter-Cologne Act, and the terms of any permits issued for the SEP.
6. To ensure compliance with the California Environmental Quality Act where necessary, PARTNER ORGANIZATION shall provide the Lahontan Water Board with the following documents from the lead agency prior to commencing SEP construction:
 - a. Categorical or statutory exemptions relied upon by the Lead Agency;
 - b. Negative Declaration if there are no potentially “significant” impacts;
 - c. Mitigated Negative Declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - d. Environmental Impact Report (EIR).

7. In addition to the certification, upon completion of the SEP and at the written request of the Lahontan Water Board Executive Officer, PARTNER ORGANIZATION AND DISCHARGER, at THEIR sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Lahontan Water Board Executive Officer providing such party's(ies)' professional opinion that PARTNER ORGANIZATION has expended money in the amounts claimed. The audit report shall be provided to the Designated Lahontan Water Board Representative within three (3) months of notice from the Lahontan Water Board Executive Officer to PARTNER ORGANIZATION AND DISCHARGER of the need for an independent third party financial audit. The audit need not address any costs incurred by the Lahontan Water Board for oversight.
8. Upon PARTNER ORGANIZATION'S satisfaction of its SEP obligations under this MOU and completion of each SEP(s) and any audit requested by the Lahontan Water Board, the Designated Lahontan Water Board Representative shall send PARTNER ORGANIZATION AND DISCHARGER a letter recognizing satisfactory completion of THEIR obligations under the terms of each applicable Order authorizing the completion of a SEP. This letter shall terminate any further MOU and other applicable Order obligations of PARTNER ORGANIZATION AND DISCHARGER.
9. In the event that PARTNER ORGANIZATION and each applicable discharger are not able to demonstrate to the reasonable satisfaction of the Lahontan Water Board Executive Officer that the entire amount of funds allocated under an Order authorizing a SEP has been spent to complete the components of the SEP for which a discharger is financially responsible, the discharger shall pay to the State Water Board Cleanup and Abatement Account or Waste Discharge Permit Fund, as appropriate, the difference between the funds allocated under the Order authorizing a SEP and the amount the PARTNER ORGANIZATION and the discharger can demonstrate was actually spent on the SEP. Alternatively, the Lahontan Water Board may approve the use of the surplus funds for a different SEP consistent with the Lahontan Water Board's SEP Program and with the State Water Resources Control Board's SEP Policy.

IT IS SO AGREED.

California Regional Water Quality Control Board – Lahontan Region

By: _____
Patty Z. Kouyoumdjian
Executive Officer

Date: _____

PARTNER ORGANIZATION

By: _____
[NAME OF PERSON]
[TITLE OF PERSON SIGNING]

Date: _____

ATTACHMENT 2

TEMPLATE LANGUAGE FOR PARTNER ORGANIZATION/DISCHARGER AGREEMENTS

This document shall serve as a Memorandum of Understanding by and between PARTNER ORGANIZATION (XXX) and DISCHARGER (XXX) for the Supplemental Environmental Project (SEP) authorized by California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) Order No. R6-xxxx-xxx (the Order) and described in detail therein (the Project).

1. Pursuant to the terms of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order entered into between the Lahontan Water Board Prosecution Team and DISCHARGER, DISCHARGER agrees to donate, and PARTNER ORGANIZATION commits to receive funding in the amount of \$xxx,xxx (Funding) to be utilized for implementation of the Project.
2. As a condition to the donation, PARTNER ORGANIZATION agrees as follows:
 - a. To serve as the Implementing Party for the Project, as detailed in the Order;
 - b. To cooperate with DISCHARGER to meet the SEP requirements set forth in the Order, the terms of which are attached hereto as Exhibit X;
 - c. To return to DISCHARGER any unexpended portion of the Funding to the extent not spent on the Project.
3. PARTNER ORGANIZATION agrees that should it publicize the Project it shall state in a prominent manner that the Project is being funded as part of a settlement of an enforcement action by the Lahontan Water Board against DISCHARGER.
4. This MOU and the parties' relations shall be construed and governed by the laws of the State of California without regard to conflict-of-laws rules or principles.
5. Nothing contained in this MOU shall at any time constitute, be deemed to constitute or be construed to create a relationship among DISCHARGER and PARTNER ORGANIZATION of partnership, joint venture, agency, or any other relationship creating fiduciary, quasi-fiduciary or similar duties and obligation, or that would otherwise subject DISCHARGER and PARTNER ORGANIZATION to joint and several or vicarious liability in favor of any third party.
6. PARTNER ORGANIZATION acknowledges that the Funding is the full extent of DISCHARGER's obligation hereunder and that PARTNER ORGANIZATION is responsible for securing sufficient other resources as may be needed to complete the Project in accordance with the Order in the event the Project cannot be completed with the amount of Funding being provided by DISCHARGER.

7. This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

(SIGNATURE BLOCKS FOR PARTNER ORGANIZATION AND DISCHARGER)