



Fact Sheet

Supplemental Environmental Project (SEP) Guidelines: Lahontan Water Board Program

The State Water Resources Control Board (State Water Board) adopted a policy addressing Supplemental Environmental Projects (SEPs) on Feb. 3, 2009 (State Water Board SEP Policy). The intent of the State Water Board SEP Policy is to make a portion of penalty monies available for projects intended to help mitigate environmental degradation caused by water quality violations near the area, or with a nexus to the area, where the degradation occurred. It 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.

On Feb. 12, 2014, the Lahontan Regional Water Quality Control Board (Lahontan Water Board) adopted a region-specific SEP program. The region-specific SEP program provides 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.

The discharger may propose, or agree to, an SEP as part of resolving an administrative liability action. Any SEP must conform to the criteria established by the State Water Board SEP Policy. While a SEP must go above and beyond what is otherwise legally required for a discharger to comply with applicable laws and regulations, an 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 requires 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 region, 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 (MOU) with partner organizations that have agreed to create an 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. Additionally, some dischargers may still elect to perform SEP projects themselves, particularly public entities.

The partner organizations will act as a treasurer of the SEP account funds, directing the funds toward projects according to an agreement established with the Lahontan Water Board. The partner organization will be responsible for administering and implementing the approved SEP. 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 also strengthens relationships between the Lahontan Water Board and local stakeholders.

Partner Organization Qualification Criteria And Implementation

The Lahontan Water Board will identify watershed-based groups throughout the Lahontan Region that use stakeholder processes to identify and prioritize projects. Separate partnership agreements will be developed with each group who elects to participate in this program and meets minimum established criteria. Once a partnership agreement is developed and finalized through an MOU, dischargers will be able to direct portions of liability amounts to the partner organization.

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. Partner organizations shall have demonstrated 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. Eligible organizations include local public agencies, regional public agencies, state agencies, nonprofit organizations (501[c][3]), federally-recognized Native American Tribes who waive sovereign immunity, public colleges and federal agencies. Ineligible organizations include for-profit organizations, private organizations, and 501(c)(4) organizations. Integrated Regional Water Management (IRWM) Groups are examples of potential eligible organizations.

The Lahontan Water Board will enter into formal agreements (e.g., MOUs) with organizations that satisfactorily demonstrate proficiency with established criteria. The selected partnership organization will be responsible for further refining their individual watershed project lists in order to develop an SEP-specific project list.

The MOU 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 in addition to any other terms negotiated between the partner organization and the discharger.

The MOU between the Lahontan Water Board and each partner organization will specify requirements 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 MOU will also include obligations on the partner organization to comply with certain provisions in Section H of the State Water Board SEP Policy.

Sep Qualification Criteria

To be considered for an 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 California Environmental Quality Act (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 Integrated Regional Water Management (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 the planning/assessment phase, or in an Implementation phase. Eligible planning/assessment projects may complete an assessment, study, or design identified as a high priority in a Total Maximum Daily Load (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. Eligible implementation projects may include project-level planning, design, construction, construction management, implementation and monitoring to implement full scale on-the-ground mitigation.

The following additional criteria will be used by partner organizations to select, vet among stakeholders, 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.

Reporting

The partner organization will produce and submit an annual report regarding the disposition of SEP account funds and the status of SEPs. Partner organizations will provide a list of potential projects and associated budget to be funded with SEP monies during the upcoming biennium. 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.

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 post each partner organization's current list of projects and those may be considered as SEPs. Approved MOUs will also be posted on the its website.

Lahontan Water Board's SEP Process With Dischargers and Partnerships With Independent Third Parties

