

Regional Water Quality Control Board
North Coast Region

Executive Officer's Summary Report
Thursday, October 17, 2019
Regional Water Board Office
Santa Rosa, California

ITEM: 4

SUBJECT: Enforcement Update: (1) Discussion of Regional Enforcement Priorities; (2) Presentation of North Coast Regional Water Board's List of Potential Supplemental Environmental Projects and Resolution No. R1-2019-0046 (Diana Henriouille)

BOARD ACTION: This is a two-part item:

- 1) Regional Enforcement Priorities: Staff will provide an update and opportunity for the Regional Water Board (the Board) and members of the public to comment on Regional enforcement priorities. This part of the item is informational only and does not require that the Board take an action.
- 2) Regional List of Potential Supplemental Environmental Projects (SEPs): Staff will provide an update on development of a list of potential SEPs and present for the Board's consideration a resolution approving the initial SEP list and the subsequent process for maintaining the list. The Board will consider adoption of Resolution No. R1-2019-0046.

I. Regional Enforcement Priorities

BACKGROUND: On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted the 2017 Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy, which became effective October 5, 2017, recommends that on an annual basis, enforcement staff for each Regional Water Board "seek input at a regularly noticed public meeting of the Regional Water Board and consider identifying general enforcement priorities based on input from members of the public and Regional Water Board members within thirty (30) days thereafter."

In July 2018, North Coast Region enforcement staff presented to the Board proposed enforcement priorities for the year, and accepted comments from the Board and members of the public. Following the Board meeting, staff finalized the list of priorities, which included:

- Prioritize and pursue enforcement cases for discharge violations associated with site development and use for cannabis cultivation;
- Identify, prioritize, and pursue enforcement cases for discharge violations associated with agricultural activities other than cannabis cultivation;
- Pursue non-filers under all our applicable regulatory programs;

Take timely follow-up enforcement, including progressive enforcement and/or penalty assessment, where appropriate, on missed deadlines for all active enforcement orders; and

- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits.

Staff also incorporated screening criteria to assist in prioritizing cases, recommending that higher priority for formal enforcement be placed on violations where one or more of the following criteria are met:

- Violation has resulted in threats/impacts to critical habitat for a listed endangered or threatened species;
- Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring;
- Violation is contributing to a watershed impairment; and
- Violation has resulted in impacts to a public drinking water supply.

DISCUSSION: 2018-2019 was the first year that the North Coast Region had a formal list of Regional enforcement priorities, and part of our first year's efforts went towards building a process that ensures staff routinely apply those priorities when recommending to upper management new potential enforcement actions. Staff developed a case referral form requiring that staff referring cases for formal enforcement demonstrate whether and how a given case meets one or more of the regional priorities. Within this year the office hired several new staff in various programs, many of whom are now working in programs or projects identified as priorities for regional enforcement. With new hires came the need for training, as well as the opportunity to implement new processes and to build new internal cross-unit teams. Overall, our regional enforcement efforts have increased, and while there remain opportunities to improve efficiencies and further develop our enforcement capabilities, we can report important accomplishments within each of the enforcement priorities. Attachment 1 provides a brief summary of these accomplishments which will also be summarized in today's staff presentation.

Reviewing our enforcement accomplishments over the past year, our enforcement prioritization team considers our efforts to be a success. Further, in considering the current list of regional priorities, we agreed that the list continues to be germane for addressing the most significant types of activities and discharges impacting the quality and beneficial uses of waters in the region. The team considered whether it would be useful to have fewer listed priorities, but agreed that the present list allows for flexibility in the types of cases that we can address. Further, the present list and screening criteria allow us to effectively weigh different cases and to support our decision of whether or not to pursue a given case.

Ultimately, staff recommend we retain the current list, with the following changes, shown with strike-through and underline type:

- Prioritize and pursue enforcement cases for discharge violations associated with site development and use for cannabis cultivation.
- Identify, prioritize, and pursue enforcement cases for discharge violations associated with agricultural activities other than cannabis cultivation.
- ~~Pursue non-filers under all our applicable regulatory programs.~~
- Prioritize and pursue enforcement cases for individuals/entities conducting unauthorized dredge/fill activities in surface waters.
- Take timely follow-up enforcement, including progressive enforcement and/or penalty assessment, where appropriate, on missed deadlines for all active enforcement orders.
- Scale up regulatory oversight and enforcement for violations of NPDES stormwater permits

Staff also recommend we continue to incorporate screening criteria to assist in prioritizing cases, recommending that higher priority for formal enforcement be placed on violations where one or more of the following modified criteria are met:

- Violation was caused by or resulted from activities conducted without a required permit(s) or authorization(s) from the Regional Water Board.
- Violation has resulted in threats/impacts to critical habitat for a listed endangered or threatened species;
- Violation has affected a water of the state that resource protection agencies, including the Water Boards, have spent money restoring;
- Violation is contributing to a watershed impairment; and
- Violation has resulted in impacts to a public drinking water supply.

Recommendation: N/A

Supporting Documents:

Attachment 1 – Summary of 2018-19 accomplishments within each of the 2018 regional enforcement priority categories.

II. Regional List of Potential Supplemental Environmental Projects (SEPs)

BACKGROUND: On December 5, 2017, the State Water Board adopted a revised SEP Policy, rescinding the previous, 2009 SEP Policy. The 2017 SEP Policy included revisions intended, in part, to better align it with the State Water Board's 2017 revised Water Quality Enforcement Policy and to fulfill legislative requirements to include provisions intended to benefit disadvantaged communities, environmental justice communities, and communities with financial hardship.

The 2017 SEP Policy defines a SEP as "an environmentally beneficial project that a person subject to an enforcement action voluntarily agrees to undertake in settlement of the action and to offset a portion of a civil penalty." SEPs typically enhance the beneficial uses of waters of the state, provide a benefit to the public at large, and at the time they are included in the resolution of an Administrative Civil Liability (ACL) action, are not otherwise required of the discharger. SEPs are intended to address or mitigate environmental harm to affected waters.

Dischargers that have been assessed an ACL (monetary penalty) by the Regional Water Board may satisfy up to 50 percent of the total liability by funding an eligible SEP. For settlements of violations giving rise to mandatory minimum penalties (MMPs) pursuant to Water Code section 13385, subdivision (h) or (i), where the penalty amount equals fifteen thousand dollars (\$15,000) or less, the entire penalty amount may be directed to be expended on a SEP without prior approval from the Director of the Office of Enforcement (OE), provided the SEP meets the requirements of the 2017 SEP Policy. Where MMPs total more than \$15,000, \$15,000 plus 50% of the remaining civil liability may be directed towards a SEP without prior approval from the Director of OE.

The 2017 SEP Policy requires in part that Regional Water Boards solicit and evaluate SEP proposals in their jurisdictions and post on their websites a list of potential SEPs. Regional Water Boards may also compile an interested parties list that, while they may not have specific projects on the list, could be contacted at the time of settlement of an enforcement case to solicit a SEP proposal.

On May 28, 2019, Regional Water Board staff sent a letter (Attachment 5) to dozens of agencies and organizations throughout the North Coast Region, providing information about SEPs, and soliciting SEP proposals. Staff also posted updated information on the Regional Water Board's website describing the SEP Policy and the process for proposing projects.

Discussion: As of September 6, 2019, staff received the following SEP proposals and concepts/suggestions:

- 1) Eel River Recovery Project: Chamise and Woodman Creek Community Conservation and Restoration Pilot Project
- 2) Shasta Valley Resource Conservation District: Shasta River Water Quality Monitoring Program
- 3) Scott River Watershed Council: Scott River Watershed Stewardship Project
- 4) San Francisco Estuary Institute: Russian River Regional Monitoring Program
- 5) Shasta Valley Resource Conservation District: Shasta River Fish Passage Barrier Improvements
- 6) Mendocino County Resource Conservation District: List of 11 projects under development for planning and/or implementation, Spring 2019
- 7) Humboldt County Division of Environmental Health: Investigation of existing onsite wastewater treatment systems located adjacent to surface waters in Humboldt County that are impaired for nitrogen or pathogen indicators.
- 8) No sponsor (suggested by Matt St. John, Executive Officer): a project to place portable toilets at locations adjacent to the Russian River and its tributaries with significant recreational use and/or transient occupancy.
- 9) No sponsor (suggested by several staff): provide rural road construction and maintenance training for contractors, consultants, and landowners throughout the Region.

Staff reviewed the project proposals and ideas received to date to determine whether they appear to meet the criteria to qualify per the SEP Policy. Attachment 4 is an example screening sheet. Based on review, staff determined that all projects and concepts proposed appear to meet preliminary screening criteria, based on the information provided or known at this time. Three of the projects are sufficiently scoped to be “pre-approved,” at this time, while the remainder will require additional scoping before they can be considered ready for pre-approval. Attachment 3a is a list of pre-approved projects, and Attachment 3b is a list of potential projects requiring additional scoping and/or research to confirm their eligibility for use as SEPs. All project proposals are subject to further review to confirm their eligibility at the time of use in a future settlement agreement or when proposed in lieu of assessing administrative civil penalties.

Staff drafted Resolution No. R1-2019-0046 for Board consideration, approving the initial, October 2019 SEP List (Attachment 3a.), and laying out the process for future updates and use of the SEP list.

Specifically, Resolution No. R1-2019-0046 includes findings that:

- the SEP list will be open indefinitely for continuous submission of SEP proposals;
- the Board delegates authority to the EO to revise the SEP list;
- staff will periodically (at least quarterly) review SEP proposals and recommend to the EO additions to the list;

- staff will periodically (at least annually) contact parties with listed SEPs to determine whether the projects should remain on the list and/or require modifications; and
- staff will periodically (at least annually) provide the Board with an update regarding projects added, removed, modified, or used in settlement of an enforcement case.

Recommendation: Adopt Resolution No. R1-2019-0046

Supporting Documents:

Attachment 2 – Draft Resolution No. R1-2019-0046

Attachment 3a. – October 2019 SEP List (list of pre-approved projects, subject to final eligibility review at the time of a settlement)

Attachment 3b. – List of project concepts requiring additional scoping

Attachment 4 – Project/concept screening sheet

Attachment 5 – Solicitation letter