

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
February 8, 2017

ITEM: 8

SUBJECT: Tentative Resolution: Tentative Resolution Supporting a List of Supplemental Environmental Projects (SEPs) and Enhanced Compliance Actions (ECAs) for Consideration in Enforcement Settlement Negotiations (Tentative Resolution No. R9-2017-0014). (*Chiara Clemente*)

PURPOSE: To consider adoption of Tentative Resolution No. R9-2017-0014 supporting staff's recommended January 2017 List of Pre-Approved SEP and ECA Concepts (SEP/ECA List). The Board will also provide guidance to staff on future project selection and SEP/ECA List updates (Tentative Resolution No. R9-2017-0014).

RECOMMENDATION: Adoption of Tentative Resolution No. R9-2017-0014 is recommended (Supporting Document 1).

KEY ISSUES: The Tentative Resolution (1) implements the San Diego Water Board's priorities by supporting a pre-approved list of SEP/ECA projects to aid in administrative civil liability (ACL) proceedings; and (2) streamlines future SEP/ECA project approval and updates by delegating to the Executive Officer the discretion to modify the selection criteria and add projects to the SEP/ECA List on an ongoing basis.

PRACTICAL VISION: This action advances the Practical Vision by pre-approving and prioritizing SEP and ECA projects, for use in the settlement of civil liabilities, that are fully consistent with the Water Board's funding priorities as previously established in its Practical Vision and supporting resolutions. In addition, because the tentative resolution includes language that streamlines the administrative processes for future SEP/ECA

project review and List updates, the resolution is also consistent with the Practical Vision's central tenet of seeking to make the most efficient use of Water Board resources.

DISCUSSION:

SEP/ECA List Development

As detailed in the Staff Report (Supporting Document 2), Tentative Resolution R9-2017-0014 supports staff's recommended January 2017 List of Pre-Approved SEP and ECA Concepts (SEP/ECA List) (Supporting Document 3). Created by typical members of both the Prosecution and Advisory teams, the SEP/ECA List would be available for funding by dischargers resolving administrative civil liability complaints pursuant to the State Water Board's Policy on Supplemental Environmental Projects ([2009 SEP Policy](#)); the State Water Board's Water Quality Enforcement Policy ([2010 Enforcement Policy](#)); and related statutes. Creation of the List was prompted, in part, by the passage of [Assembly Bill 1071](#), which requires agencies with enforcement authority to establish a list of SEPs that benefit disadvantaged communities. To further this effort, San Diego Water Board staff broadened the solicitation to include all SEP/ECA project proposals that focus on the funding priorities previously identified in the following documents:

- 1) San Diego Water Board's Practical Vision, titled [Healthy Waters, Healthy People \(Resolution No. R9-2013-0153\)](#);
- 2) [Resolution No. R9-2015-0020](#), In Support of Funding Projects that Further the Practical Vision Priorities with Consideration to Environmental Justice and Disadvantaged Communities and the Recovery of Streams, Wetlands, and Riparian Systems; and
- 3) [Resolution No. R9-2015-0041](#), Resolution to Support Restoration of Aquatic Ecosystems in the San Diego Region.
- 4) [Resolution R9-2016-0200](#) endorsing the [2016 Community Outreach Strategy: Proactive Public Outreach and Communication](#).

SEP/ECA Project Review and Selection

Project proposal solicitation started June 23, 2016, a public workshop was held on July 19, 2016, and project

applications were accepted through October 20, 2016. The Application Form, Application Checklists, and other useful reference materials were made available on the Board's [website](#) and are attached as Supporting Document 5.

A total of 42 applications were timely received from businesses, municipalities, and non-governmental organizations. The proposed project types include invasive plant removal and native replanting, trash removal, property acquisition, education and outreach, studies (sediment transport, monitoring tools, and BMP effectiveness), restoration planning, and monitoring (bioassessment). Proposals determined to be complete and eligible were then evaluated and tiered (Supporting Documents 3 and 4) based on how well they matched the desirable project attributes and applicant attributes listed on the Application Checklists (Supporting Document 5).

SEP/ECA List

Staff's recommended "January 2017 Pre-Approved SEP/ECA Concept List" is attached as Supporting Document 3. The SEP/ECA List, including hyperlinks to the individual applications, is posted on the Board's SEP/ECA List [website](#).

Next Steps and Future Actions

If the San Diego Water Board adopts the Tentative Resolution supporting the recommended pre-approved SEP/ECA List, the website will be updated, the List will be noticed publically via existing Lyris email groups, and Prosecution Team staff will provide it to parties engaged in administrative civil liability discussions.

To be most effective, the SEP/ECA List is likely to require continuous updates and maintenance as potential projects are created, altered, and/or completed. Staff's experience indicates that List updates and maintenance can be resource intensive, thus reducing staff's availability to pursue new or pending enforcement investigations. Another potential challenge is that the State Water Board's [2009 SEP Policy](#) is scheduled for administrative review, which ultimately may

affect the evaluation process and/or selection criteria. Accordingly and in order to streamline the SEP/ECA List update process, the Tentative Resolution has been drafted to provide the Executive Officer discretion to periodically update the List and also to modify selection criteria in accordance with future direction from the State and San Diego Water Board. The Tentative Resolution also includes language that recognizes the need to increase available resources through a Budget Change Proposal for the oversight of projects that have prolonged or extensive implementation schedules, and for List updates as needed.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Resolution No. R9-2017-0014
2. Staff Report for Tentative Resolution No. R9-2017-0014
3. "January 2017 Pre-Approved SEP/ECA Concept List"
4. List of projects deemed "Contingent" or "Not Eligible"
5. Application materials

PUBLIC NOTICE: This item was noticed to the public in the Meeting Notice and Agenda for the Board's February 8, 2017 meeting. All applicants were contacted, and the notice was circulated to the Board's "Penalty Assessment Notices" Lyris list.