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## San Diego Regional Water Quality Control Board

### SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP) AND ENHANCED COMPLIANCE ACTION (ECA)

## Q & A

#### 1. What is a SEP?

SEPs, are defined in the [SEP Policy](#) as projects that enhance the beneficial uses of the waters of the San Diego Region, that provide a benefit to the public at large and that, at the time they are included in the settlement of an Administrative Civil Liability (ACL) action, are not otherwise required of the discharger. SEPs are intended to restore the environmental harm to affected water bodies.

#### 2. What is an ECA?

ECAs are defined in the [Enforcement Policy](#) as projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. ECAs are intended to prevent additional impacts to beneficial uses from occurring in the future. ECAs must also adhere to all the requirements in the SEP Policy.

#### 3. How are SEPs/ECAs funded?

Dischargers that have been assessed an ACL (monetary penalty) by the San Diego Water Board may satisfy up to 50 percent of the total liability by funding an eligible SEP or ECA as part of a settlement agreement. That portion of the liability is suspended, and dismissed when the discharger can demonstrate successful completion of the proposed project(s). A discharger can either conduct the SEP or ECA itself, or contract with a third party for completion of the project.

#### 4. What is a SEP/ECA List?

The San Diego Water Board's SEP/ECA List is a list of proposed projects that have been reviewed independent of any penalty action and are supported by the San Diego Water Board's Prosecution and Advisory Teams. The list of projects that are available for funding is made available to dischargers for consideration during a penalty proceeding. Other projects can still be proposed by a discharger during a penalty proceeding, but the discharger must consider the risk that the proposed project will not be approved by the Board, or its delegate, as part of the penalty action.

#### 5. What type of projects will the San Diego Water Board consider for inclusion in the SEP/ECA List?

Recent legislation (AB 1071) requires the San Diego Water Board to create a pre-approved list of SEPs that may be funded by dischargers with an emphasis on projects that focus on benefiting environmental justice/disadvantaged communities.

The San Diego Water Board adopted Resolution No. R9-2015-0020 identifying SEP priorities that further the San Diego Water Board's Practical Vision, benefit environmental justice/disadvantaged communities, and for the recovery of streams, wetlands and riparian systems. The San Diego Water Board will be seeking projects that fit these criteria for inclusion in the SEP/ECA List.

More specifically, SEP/ECA applications must meet the criteria specified in the SEP Polity and have at least one of the following [Eligibility Requirements](#) to be evaluated and considered for inclusion in the SEP/ECA List:

- Projects that address an environmental justice issue, benefit a disadvantaged community, or that address water related infrastructure needs within those communities;
- Projects that promote preservation or restoration of aquatic ecosystems in the San Diego Region;
- Projects that implement or further recovery of streams, wetlands, and riparian systems;
- Projects that implement or further the monitoring and assessment framework described in Chapter 2 of the San Diego Water Board's [Practical Vision](#); and
- Projects that implement or further a strategy for achieving a sustainable local water supply consistent with Chapter 5 of the San Diego Water Board's Practical Vision.

## **6. Who can apply?**

Any entity that has the ability to received and distribute funds, and conduct the proposed work (e.g. landowner agreements, etc.) can apply for SEP funding. The applicant, or project proponent, is the entity that is expected to conduct the work. If a project requires the cooperation or effort of other entities, letters of support from those other entities would be helpful in demonstrating likelihood of sustained longevity and success.

## **7. What is SEP/ECA solicitation?**

In order to create a SEP/ECA List that contains projects that address both the legislative requirements and San Diego Water Board priorities, the San Diego Water Board is soliciting qualified applicants to submit SEP/ECA project applications for consideration and possible inclusion in the SEP/ECA List.

## **8. When is the SEP/ECA solicitation period?**

Applications for projects to be included in the initial SEP/ECA List must be received by **October 20, 2016**. Applications submitted after that date will be reviewed and considered for inclusion on the SEP/ECA List as staff resources are available.

## **9. Where can I find examples of an approved SEP/ECA?**

Examples of SEPs and ECAs that have been funded through prior enforcement actions can be reviewed on the San Diego Water Board's [Environmental Projects webpage](#).

**10. What happens if my project is on the SEP/ECA List?**

After Board review and approval, the SEP/ECA List will be kept posted on the San Diego Water Board's [Environmental Projects webpage](#). If your project is included in the SEP/ECA List, a summary of your proposal and contact information will be provided to dischargers interested in proposing a project as part of a penalty proceeding. Project proponents are also encouraged to [subscribe to the San Diego Water Board's lyris list for "Penalty Assessment Notices"](#) to be notified of when an administrative civil liability complaint has been issued.

If you believe that the violation(s) alleged in a complaint have a nexus to your project (see #14 below for "nexus" definition), you can contact the discharger directly to educate or advocate for your eligible proposal. In addition, it is recommended that project applicants periodically check the [Enforcement webpage](#) for updates to a particular enforcement action.

**11. What happens if a discharger wants to fund my project?**

If a discharger would like to fund all or some of your proposed project, and the San Diego Water Board staff concur that the project is appropriate for the specific penalty, you will be asked to work with the discharger and the San Diego Water Board staff to develop a more specific project proposal. Project proponents will have to develop a proposal with a budget, schedule, and deliverables that are specific to the associated penalty. If the project proponent is not the discharger, the two parties will also need to come to agreement on issues such as funding and reporting requirements.

Once your project has been approved, as part of the penalty action, completing the project in the timeframe identified in the Order adopted by the San Diego Water Board is of the utmost importance. Failure to complete the SEP/ECA within the specified timeline will result in the discharger being required to pay the entire amount of the administrative penalty to the State Water Board, no matter how much of the funds have already been spent on the project. Generally, compliance deadlines that are contained in an Order of the Board cannot be changed.

Along with completing the activities outlined in a SEP/ECA, project proponents will be required to produce quarterly status reports and a final compliance report that documents that the project was completed as specified in the proposal and that the entire amount of liability that was suspended to fund the project was spent in accordance with the final SEP/ECA. If the final accounting is not complete or does not clearly indicate that the funds provided were spent completing the activities identified in the project application, a third party financial audit may be required, at the discharger's expense.

**12. Can the Water Board establish a local fund to hold all ACL penalty monies that can fund local SEPs/ECAs?**

According to Section H of the 2017 SEP Policy, only the State Water Resource Control Board may authorize the utilization of an account that is not associated with a specific project. Without such authorization, funds cannot be held by a Regional Water Board to fund SEPs or ECAs at a later date. All penalty monies that have not been suspended through the funding of SEP or ECA must be deposited in the State Water Resources Control Board's Cleanup and Abatement Account or Waste Discharge Permit Fund.

**13. What types of administrative penalties can fund SEPs/ECAs?**

SEPs/ECAs can be funded through the settlement of the following types of enforcement actions:

1. Mandatory Minimum Penalties (California Water Code sections 13385 (h) & (i)
2. Discretionary Penalties (e.g. California Water Code sections 13350 and 13385(e))
3. Mandatory Penalties of the Storm Water Enforcement Act (California Water Code section 13399.35)

**14. What is the nexus requirement?**

The SEP Policy requires that there be a nexus between the violation(s) alleged in the enforcement action and the proposed project. The relationship is between the nature or location of the violation and the nature or location of the proposed project. A nexus exists if the project remediates or reduces the probability of 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.

**15. What is considered “otherwise legally required”?**

Dischargers that are assessed administrative penalties may not suspend liability to fund a project that is otherwise legally required by any regulations. This requirement is interpreted to apply beyond just the regulations applicable to the discharger or the project proponent, and beyond just Water Board regulations. If any entity is required to conduct the work for any regulatory reason, it will not qualify.

**16. Will there be limits on the number of projects that will make the SEP/ECA List?**

No, there is no minimum or maximum number of projects that can be included in the SEP/ECA List. When determining which projects to include on the list, San Diego Water Board staff will consider the individual project merits along with other factors such as project distribution among the watersheds, sufficient projects addressing environmental justice issues, and variability in project types, timelines, and funding amounts.

**17. How do I find out if my project is in a disadvantaged community (DAC)?**

The Department of Water Resources has developed a web-based tool to assist in evaluating disadvantaged community status throughout the State. Applicants can reference [this tool](#) or [CalEnviroscreen](#) for determining whether their project is in a DAC. Project applications will need to state whether the project is in a DAC, and explain whether or how the project benefits a DAC or addresses an environmental justice water quality concern.

**18. Are there any groundwater basins that are considered high quality water bodies?**

High Quality Water Bodies currently include only the biological condition reference streams in the San Diego Region. However, a project that proposes to improve conditions of a key beneficial use category (such as drinking water supply) in an area of special importance (such as a groundwater basin used for drinking water supply) for the purposes of furthering a sustainable local water supply would also be considered favorably.

**19. What is a Water Quality Improvement Plan (WQIP)?**

A WQIP is a plan developed by municipalities, through a public process, that includes descriptions of the highest priority water quality pollutants or conditions in a specific watershed, goals and strategies to address those pollutants or conditions, and time schedules associated with those goals and strategies. The WQIPs are available on the San Diego Water Board's [WQIP website](#).

**20. Can a municipality fund a project as a SEP that is a project identified in their TMDL or WQIP?**

It depends. Ultimately, whether an action is “otherwise required” by a TMDL or a WQIP is fact specific and will depend on the language in the relevant TMDLs, implementing permits, and/or WQIPs. In these cases applications should strive to demonstrate how the proposed project goes above and beyond the existing obligations, and determinations will be made on a case by case basis at the time that funding is being considered.

**21. How can I update an approved project on the SEP/ECA List if it does not get funded before it needs to be updated?**

If a project proponent has determined that a SEP/ECA that has been approved and is contained on the SEP/ECA List has become outdated the project proponent may submit an updated SEP/ECA application to replace the preapproved project. If, however, the modifications to the application are significant enough that it no longer meets the eligibility requirements, the modified SEP/ECA may not be eligible to go on the List.

**22. How detailed should my SEP/ECA application be given the fact that it may never be funded?**

SEP/ECA applications will be evaluated based on the eligibility, project and applicant attributes that are listed on the [application checklists](#) posted on the website. It is recommended that the application contain enough information to ensure that all of the checklist items that pertain to the project are clearly identified to increase your chances that the project will make the list.

**23. Will the San Diego Water Board renew its SEP/ECA solicitation process periodically to revisit old projects for relevance?**

It is expected that the San Diego Water Board will periodically review the SEP/ECA List to determine if projects are outdated or have already been funded through another funding source. If new selection criteria are warranted the solicitation process will be noticed and revised.

**24. What do I do if I miss the October 20, 2016 application submittal deadline?**

While the deadline for initial submittal of SEPs/ECA Projects is October 20, 2016, project proponents can submit applications at any time. The San Diego Water Board will employ a continuous solicitation period. Project applications received after the October 20, 2016 deadline will be reviewed on an ongoing basis, and the list will be updated as needed.

**25. How does a project proponent get paid by a discharger that funds a SEP?**

Payment from a discharger that has been assessed administrative penalties to a project proponent that was selected by the discharger is made through an agreement between the discharger and the project proponent. The San Diego Water Board is not involved in the negotiations between dischargers and project proponents.

**26. What happens if a project proponent does not satisfactorily complete a funded SEP/ECA by the deadline specified in the ACL Order?**

Every Order issued by the San Diego Water Board that allows for the funding of a SEP or ECA contains a project completion deadline. If the project has not been completed by the deadline the discharger will owe the entire suspended liability amount to the State, even if a portion of the liability has already been spent on the SEP/ECA.

**27. Is there a monetary limit to the amount of funding that will be available to fund a SEP/ECA?**

The San Diego Water Board seldom issues penalties greater than \$1 million. Therefore, projects costing more than \$500,000 would rarely have the opportunity for consideration. Where applicable, larger projects could be broken down into smaller increments and deliverables. And, although there is no minimum project amount, the administrative burden of managing a project tends to discourage projects that are less than \$10,000.

**28. How long can a project last?**

According to the 2017 SEP Policy, all project funds must be expended within 36 months from when the settlement order was adopted, so project proposals should schedule milestones and deliverables, including demonstration of success criteria and final reporting, to fit within that time period.