

**State of California  
Office of Administrative Law**

**In re:**  
**State Water Resources Control Board**

**Regulatory Action:**

**Title 23, California Code of Regulations**

**Adopt sections: 2910.1**

**Amend sections:**

**Repeal sections: 2910.1**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11353**

**OAL Matter Number: 2018-0326-01**

**OAL Matter Type: Regular (S)**

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On December 5, 2017, the State Water Resources Control Board adopted Resolution No. 2017-0074, rescinding Resolution 2009-0013 and the existing Policy on Supplemental Environmental projects (SEP Policy), and approving the revised SEP Policy. The overarching goal of the SEP Policy is to establish a framework for Water Boards to use in exercising their enforcement discretion for the benefit of disadvantaged communities.

OAL approves this regulatory action pursuant to section 11353 of the Government Code.

**Date: May 3, 2018**



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**Mark Storm  
Senior Attorney**

**For: Debra M. Cornez  
Director**

**Original: Eileen Sobeck, Executive  
Director**

**Copy: Matthew Buffleben**

11353 REGULAR

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER 2018-0326-015	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

MAY 03 2018  
at 1:41 pm

2018 MAR 26 P 1:53  
OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY State Water Resources Control Board	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Policy on Supplemental Environmental Projects	TITLE(S) 23	FIRST SECTION AFFECTED 2910.1	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Matthew Buffleben	TELEPHONE NUMBER (916) 341-5891	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Policy on Supplemental Environmental Projects	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT Division 3, Chapter 22, Section 2910.1
AMEND
REPEAL Division 3, Chapter 22, Section 2910.1
TITLE(S) 23

3. TYPE OF FILING
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) Gov. Code 11353 <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
 Effective on filing with Secretary of State
 \$100 Changes Without Regulatory Effect
 Effective other (Specify) Upon approval (see Gov. Code 11353)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify)

7. CONTACT PERSON Matthew Buffleben	TELEPHONE NUMBER (916) 341-5891	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) matthew.buffleben@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 3/14/18
TYPED NAME AND TITLE OF SIGNATORY Eileen Sobek, Executive Director, State Water Resources Control Board	

For use by Office of Administrative Law (OAL) only  
ENDORSED APPROVED  
MAY 03 2018  
Office of Administrative Law

CALIFORNIA CODE OF REGULATIONS  
TITLE 23. WATERS  
DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND  
REGIONAL WATER QUALITY CONTROL BOARDS  
CHAPTER 22. STATE POLICY FOR WATER QUALITY CONTROL

§ 2910.1 Policy on Supplemental Environmental Projects (SEP Policy).

On December 5, 2017, the State Water Resources Control Board (State Water Board) adopted Resolution No 2017-0074, which revised the State Water Resources Control Board Policy on Supplemental Environmental Projects (SEP Policy). In adopting this SEP Policy, the State Water Board intended to fulfill the requirements Public Resources Code section 71118 (b), which requires each board, department, or office (BDO) within the California Environmental Protection Agency (CalEPA) to establish a policy on SEPs that benefit disadvantaged communities. In adopting the SEP Policy, the State Water Board also intended to extend the scope of the SEP Policy's application to enforcement actions prosecuted by the Division of Drinking Water and its Districts, and the Division of Water Rights; include human right to water considerations; align with the State Water Board's April 4, 2017, revision of the Water Quality Enforcement Policy; and clarify principles that are central to the SEP Policy and improve transparency in the SEP Policy's implementation.

~~On February 3, 2009, the State Water Resources Control Board (State Water Board) adopted Resolution No 2009-0013, which adopted the State Water Resources Control Board Policy on Supplemental Environmental Projects (SEP Policy). In adopting this SEP Policy, the State Water Board intended to establish criteria for selection of SEPs and increase transparency of the process to ensure that the selected projects have environmental value, further the enforcement goals of the State Water Board and Regional Water Boards (Water Board), and are subject to appropriate input and oversight.~~

The regulatory provisions of the SEP Policy generally:

- ~~• Limit SEPs to 50 percent of the total monetary assessment;~~
- ~~• Define the two general categories of allowable SEPs;~~
- ~~• Specify criteria for project qualification;~~
- ~~• Require a nexus between the violation and the SEP (and define what qualifies as a "nexus");~~
- ~~• Specify requirements for all orders allowing SEPs;~~
- ~~• Specify provisions for project payment tracking reporting and oversight; and,~~

**Require public reporting on status of SEP implementation.**

THE BOARD OF WATER QUALITY CONTROL HAS ADOPTED THE FOLLOWING RESOLUTION:

WHEREAS, the Board of Water Quality Control is committed to the implementation of the San Esteban Project (SEP) and to the protection of the environment and public health; and

WHEREAS, the Board of Water Quality Control is committed to the transparency and accountability in the implementation of the SEP; and

WHEREAS, the Board of Water Quality Control is committed to the public reporting on the status of the implementation of the SEP;