

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2024-0022**

**TO AUTHORIZE USE OF SUPPLEMENTAL ENVIRONMENTAL PROJECT
FUNDS FOR THE BAY FOUNDATION OF MORRO BAY'S CENTRAL COAST
DRINKING WATER WELL TESTING PROGRAM**

WHEREAS:

1. The State Water Resources Control Board (State Water Board) adopted a revised Policy on Supplemental Environmental Projects ([Policy](#))¹ on December 5, 2017, and it became effective on May 3, 2018. The Policy authorizes the State Water Board and nine Regional Water Quality Control Boards (Regional Water Boards) (collectively, Water Boards) to allow settling respondents to satisfy part of any monetary assessment imposed through administrative civil liability orders arising out of settlements by completing or funding one or more supplemental environmental projects (SEPs).
2. This resolution authorizes the use of SEP funds for the Bay Foundation of Morro Bay (Bay Foundation)'s Central Coast Drinking Water Well Testing Program (Drinking Water Well Testing Program) as a California Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board) third party-administered SEP program.
3. In 1989, the Bay Foundation, a 501(c)(3) nonprofit organization, was formed. The Bay Foundation's mission is to lead in restoring, enhancing, and protecting the marine resources and watersheds of Morro Bay and the Central Coast of California. The Bay Foundation has administered water quality-related projects using settlement funds and manages several water quality monitoring and conservation programs, including the Morro Bay National Estuary Program, Central Coast Low Impact Development Fund, Central Coast Ambient Monitoring Program – Groundwater Assessment and Protection (CCAMP-GAP), and CCAMP. The Bay Foundation has a Board of Directors that oversee the finances and policies of the organization and is financially stable and capable of successfully implementing and completing environmental projects. It also regularly receives enough federal grant funding to require federal financial audits to ensure it is in compliance with federal procurement and contracting requirements.

¹https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/seps/20180503_sep_policy_amd.pdf

4. The purpose of the Central Coast Water Board's CCAMP-GAP is to provide comprehensive monitoring and assessment of groundwater for the Central Coast region. In addition to groundwater monitoring and assessment, CCAMP-GAP supports the implementation of a variety of priority projects with an emphasis on addressing water quality related public health and environmental justice issues. This is accomplished through implementing regional groundwater monitoring programs and groundwater related projects that evaluate, restore, and protect beneficial uses of groundwater.
5. The Bay Foundation's Drinking Water Well Testing Program provides free or low-cost testing of local and state small water systems and of domestic drinking water wells (small water systems and domestic wells). The Drinking Water Well Testing Program informs well users of their drinking water quality; provides data and support to local agencies to assist them in developing and implementing drinking water well programs; and provides drinking water quality data to inform Safe and Affordable Drinking Water Act implementation. Larger municipal drinking water wells are regulated by the State Water Board Division of Drinking Water and these larger systems are required to routinely test and properly treat pollutants to ensure that the water is safe to drink. Owners and operators of small water systems and domestic wells have limited to no requirements for testing drinking water quality and many do not have the necessary treatment to remove pollutants to ensure the drinking water from those small water systems and domestic wells is safe to drink.
6. The Drinking Water Well Testing Program is funded through SEP and non-SEP funds. The Bay Foundation oversees and manages the Drinking Water Well Testing Program funds through CCAMP-GAP. The Bay Foundation's accounting system separates SEP funds from non-SEP funds.
7. Central Coast Water Board settlements that include the Drinking Water Well Testing Program will require the settling respondents to send SEP funds directly to the Bay Foundation. At no point are SEP funds in the Central Coast Water Board's control or possession.
8. The State Water Board supports the inclusion of SEPs in the settlement of an enforcement action as stated in the Policy, provided that the selected projects meet the criteria specified in the Policy to ensure they provide environmental and/or public health benefits and further the Water Boards' goals, policies, and mission "to preserve, enhance, and restore the quality of California's water resources and drinking water for the protection of the environment, public health, and all beneficial uses, and to ensure proper water resource allocation and efficient use, for the benefit of present and future generations." (Policy, sections I-II.) Part of this mission as stated

within the Policy includes, but is not limited to, furthering the human right to water, ensuring environmental justice, and addressing climate change. (Policy, section II.)

9. The human right to water is a top priority and core value of the State Water Board and Central Coast Water Board.^{2, 3} Pursuant to California Water Code (Water Code) section 106.3, “every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.” The Policy states that it is “designed to encourage settling parties to consider SEPs related to drinking water that would benefit public health and further the human right to water.” (Policy, section II.A.)
10. Government Code section 65040.12, subdivision (e) defines environmental justice as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” The Policy states that it is “designed to encourage settling parties to consider funding SEPs in communities where there are EJ [environmental justice] concerns (EJ Communities).” (Policy, section II.B.)
11. The Drinking Water Well Testing Program is consistent with the Policy’s encouragement of SEPs related to the human right to water and environmental justice because it implements free and voluntary drinking water quality sampling for small water systems and domestic wells with an emphasis on identifying drinking water related problems in rural areas and in disadvantaged communities. Income level is not assessed on an individual basis to qualify for participation in the Drinking Water Well Testing Program; however, outreach efforts about the free well testing program is focused in areas with Underrepresented Communities.⁴
12. Consistent with [California Global Warming Solutions Act of 2006 \(Assembly Bill 32\)](#)⁵ and [Executive Order B-30-15](#),⁶ which emphasize protecting the state’s most vulnerable populations from climate change impacts and

² See State Water Board Resolution 2016-0010, https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2016/rs2016_0010.pdf.

³ See Central Coast Water Board Resolutions R3-2017-0004

(https://www.waterboards.ca.gov/centralcoast/board_decisions/adopted_orders/2017/2017-0004_hrtw_fnl.pdf) and R3-2023-0002

(https://www.waterboards.ca.gov/centralcoast/press_room/press_releases/docs/2023/r3-2023-0002.pdf).

⁴ Underrepresented Communities include, but are not limited to, Disadvantaged Communities, Severely Disadvantaged Communities, Economically Distressed Areas, Tribes, Environmentally Disadvantaged Communities, and members of Fringe Communities.

⁵ http://www.leginfo.ca.gov/pub/05-06/bill/asm/ab_0001-0050/ab_32_bill_20060927_chaptered.pdf

⁶ <https://archive.gov.ca.gov/archive/gov39/2015/04/29/news18938/index.html>

investing in solutions for those communities, on March 7, 2017, the State Water Board adopted [Resolution 2017-0012](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0012.pdf)⁷ requiring a proactive approach to climate change in all Water Board actions and programs. The Policy states that “[p]rojects that address reducing greenhouse gas emissions and building resilience to climate change impacts on ecosystems or infrastructure may qualify as SEPs if they benefit groundwater, surface water, or drinking water quality or quantity and the beneficial uses of waters of the State, or if they meet the requirements for multi-media SEPs set forth in Section V of this Policy.” (Policy, section II.C.)

13. The Drinking Water Well Testing Program is consistent with the Policy’s encouragement of SEPs related to climate change because it will implement projects that inform and facilitate climate change mitigation and adaptation strategies. Climatic changes are impacting groundwater quantity and quality conditions (e.g., wells going dry, pollution from flooding, migration of plumes, increased pollutant concentrations as groundwater elevations increase and decrease, sea water intrusion), necessitating more routine monitoring of groundwater to ensure water supplies continue to be safe to drink. Californians exclusively reliant on groundwater as their only source of drinking water from small water systems and domestic wells tend to be more susceptible to adverse effects of climate change due to factors such as: flooding, drought, full dependency on the presence of groundwater, sea water intrusion, and increased pollutant concentrations in groundwater supplies. The Central Coast region is the most dependent on groundwater resources for drinking water purposes out of all the regions in California and identified as one of the regions with thousands of domestic wells in areas that are severely impacted with pollution.
14. The Drinking Water Well Testing Program informs well users of their drinking water quality and provides data to the well user and the Central Coast Water Board to better assess impacts to beneficial uses (e.g., municipal and domestic supply (MUN)) in the Central Coast region. After a well is tested through the Drinking Water Well Testing Program, well users are provided 1) test results and information on how to interpret the results, 2) information on how to protect the well user if the drinking water is unsafe to drink, 3) information on how to protect or minimize the risk to the well from contamination, 4) resources on free replacement drinking water programs, and 5) an opportunity for the well user to be included in future well sampling events for subsequent sampling to evaluate trends and effectiveness of the Central Coast Water Board programs to reduce the source of the pollution.

⁷ https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/rs2017_0012.pdf

15. The Groundwater Quality Monitoring Act of 2001 (Assembly Bill 599) was established because of the importance of maintaining and monitoring a safe groundwater supply and to improve comprehensive groundwater monitoring and increase the availability of information about groundwater quality to regulators and the public to protect and restore the state's groundwater basins.
16. The Drinking Water Well Testing Program is consistent with Assembly Bill 599 because it implements groundwater monitoring to evaluate basin health and beneficial uses and informs whether there is a safe supply of drinking water. Data collected through the Drinking Water Well Testing Program is imported into the State Water Board's GeoTracker database which increases the public's availability to groundwater quality data and provides opportunities to integrate and build on existing monitoring programs, databases, and knowledge of current groundwater quality conditions.
17. The Central Coast is a groundwater dependent hydrogeologic region for its drinking water resource, with diverse land uses and demographics, and has significant groundwater pollution. The Drinking Water Well Testing Program provides critical groundwater quality data to assess the severity and scale of the groundwater pollution, status of drinking water beneficial uses, and if there are impacts to public health from drinking polluted water.
18. Policy section I.A states:

In some cases, strict application of every requirement of this Policy may not be appropriate. In such cases, the Director of the State Water Board's Office of Enforcement (OE) may approve an alternative or modified approach, so long as it substantially complies with the Policy.

19. Policy section V.E states:

Assessment and audit projects may include ... environmental quality assessments, ... or studies and monitoring programs.
...

Environmental quality assessments and studies are investigations of: the condition of the environment at a site or sites not owned or operated by the settling party; the environment impacted by a site or facility regardless if owned or operated by the settling party; or threats to human health or the environment relating to a site or facility regardless if owned or operated by the settling party. ...

The Water Boards may not approve an assessment, study, monitoring program or audit SEP performed by a settling party relating to that party's facility or facilities and not primarily having a broader, Water Board program-based benefit without also requiring the settling party to address the problems identified in the assessment, study, monitoring program or audit. An assessment or monitoring project without a commitment to address the findings of the assessment is permissible where the Director of OE [Office of Enforcement] determines that the SEP delivers other benefits worthy of SEP credit. ...

20. Policy section VI states:

The following are examples of the types of projects that are not allowable as Water Boards' SEPs. This list is not exhaustive. ...

- (3) General cash donations to community groups, environmental organizations, state/local/federal entities, or any other third party that are not directed towards a specific, approved project defined in the stipulated order and that otherwise complies with this Policy.
- (4) Projects for which the settling party does not retain full responsibility to ensure satisfactory completion.
- (12) Projects for which completion depends on the actions or contributions of individuals or entities that are neither party to the settlement nor hired by the settling party as an implementer or administrator. ...

21. Policy section VIII.B states:

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment after making evidence and/or policy-based findings that: ...

- (2) In cases where the SEP is located in or benefits a DAC [disadvantaged community], an EJ Community [environmental justice community] or a community that has a financial hardship, or where the SEP substantially furthers the human right to water.

22. Policy section VIII.E states:

... any order imposing a SEP shall state that if the SEP is not fully implemented in accordance with the terms of the order ..., the Water Board is entitled to recover the full amount of the suspended monetary assessment, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone. ...

Upon completion of the SEP, the settling party (or the third-party administrator) shall notify the appropriate Water Board and provide proof of project completion and use of funds ... The appropriate Water Board shall review the SEP documentation and shall provide the settling party with a statement indicating that the SEP has been completed in accordance with the terms of the stipulated order and that any remaining suspended liability is waived ...

23. Policy section VIII.F states:

... there must be a relationship between the nature **or** the location of the violation and the nature **or** the location of the proposed SEP. A relationship between the nature of the violation and the proposed SEP exists if the project demonstrates that it is designed to reduce: 1) The likelihood that similar violations will occur in the future; 2) The adverse impact(s) to public health and/or the environment to which the violation at issue contributes; or 3) The overall risk to public health and/or the environment potentially affected by the violation at issue. ... A relationship between the location of the violation and the proposed SEP may exist if the primary benefits to be attained from the project are located at the same site where the alleged violation occurred, at a different site in the same ecosystem, or within the immediate geographic area (e.g., in the same community, the same watershed, or within a 50-mile radius), subject to approval by the appropriate Regional Board or Division during settlement.

24. Policy section VIII.H states:

... The State Water Board may authorize an account and SEP program that does not strictly comply with the "specific project" requirements of Sections V.E, VI(2), VI(3) or IX.A of this

Policy, including, but not limited to, those that fund regional monitoring programs.

25. Policy section IX.A states:

Unless otherwise authorized by the State Water Board pursuant to Section VIII.H, the stipulated order must indicate a specific project, which includes or references a detailed scope of work and a budget. The order must also include a time schedule for implementation and may include multiple milestones that identify the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone. Milestones that allow for a portion of the liability to be permanently suspended must have an identifiable, or “stand alone,” environmental benefit. Where a SEP will only have an identifiable environmental benefit after full completion, milestones that allow for permanent suspension of a portion of the liability are not allowed. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP. A final SEP completion date must be indicated in the order. The order must also contain or reference performance standards and identified measures or indicators of performance in the scope of work.

The settling party is ultimately responsible for meeting these milestones, standards, and indicators, regardless of whether the project is a first party, third party, or a third party administered SEP. ...

26. In accordance with Policy section VIII.H, use of SEP funds for the Drinking Water Well Testing Program requires authorization from the State Water Board because portions of the Drinking Water Well Testing Program do not strictly comply with the requirements of Policy sections V.E, VI(3) or IX.A; however, consistent with Policy section I.A, strict application of these Policy requirements is not appropriate because the Drinking Water Well Testing Program substantively complies with and achieves the intent of the Policy.
27. Authorizing the use of SEP funds for the Drinking Water Well Testing Program under Policy section V.E without commitments to address study findings is warranted, because the drinking water well testing identifies public health issues and furthers the human right to water. By design, the Drinking Water Well Testing Program answers specific locally- and

regionally-scaled water quality and public health related questions that inform subsequent environmental justice and human right to water organizational decisions and implementation actions.

28. Authorizing the use of SEP funds for the Drinking Water Well Testing Program to not strictly comply with the “specific project” requirements of Policy sections VI(3), VI(4), VI(12), and IX.A is appropriate and funds can be aggregated in the Drinking Water Well Testing Program when the settlement is for the imposition of 1) mandatory minimum penalties (MMPs) under Water Code sections 13385(h) and 13385(i) for effluent limit violations associated with discharges to inland waters of the United States that recharge groundwater, 2) minimum administrative civil liability under Water Code section 13399.33, 3) discretionary administrative civil liability monetary penalties not to exceed \$50,000 for violations that cause or threaten to cause groundwater impacts, or 4) discretionary administrative civil liability monetary penalties not to exceed \$50,000 associated with violations of permits, directives, or orders that require groundwater monitoring and reporting to determine groundwater quality or that require reporting of activities or discharges with potential impacts to groundwater quality. The Central Coast Water Board will limit an aggregate of settling monies up to \$400,000 annually to fund the Drinking Water Well Testing Program and the Bay Foundation will expend settlement funds received within 36 months of receipt.
29. Authorizing the Central Coast Water Board to approve amounts greater than 50 percent of the total adjusted monetary assessment to fund the Drinking Water Well Testing Program, under Policy section VIII.B, is warranted because the SEP substantially furthers the human right to water and many components of the Drinking Water Well Testing Program serve households located within and communities that are disadvantaged communities, environmental justice communities, Underrepresented Communities, and communities that have a financial hardship.
30. By releasing a settling party’s obligation to complete a project funded through the Drinking Water Well Testing Program upon proof of payment to the Bay Foundation pursuant to Policy section VIII.E, will simplify SEP administration and remove a barrier to timely settlement. Retaining the ability to recover suspended liabilities from the settling party if the testing is not completed is unnecessary because the Bay Foundation has a well-established record of reliably completing all funded projects in a timely manner. In the event the Bay Foundation does not expend the settlement funds within 36 months of receiving the funds, the Bay Foundation will return any SEP funds not expended within 36 months of the applicable settlement

agreement's effective date to the appropriate State Water Board account or fund (e.g., State Water Pollution Cleanup and Abatement Account, Waste Discharge Permit Fund).

31. Authorizing a broad application of the nexus requirement under Policy section VIII.F is warranted because it will yield a more effective and efficient Drinking Water Well Testing Program. Monetary penalties associated with violations that could reasonably impact or threaten to impact groundwater will contribute to the Drinking Water Well Testing Program. Additionally, the Central Coast region will be separated into a northern and southern geographical area such that there is a relationship between the location of the violation and where the testing provides benefits to that same geographical area. The Drinking Water Well Testing Program implements well sampling on a rotational geographic basis to ensure the benefits of the well sampling program are available to all areas of the Central Coast region on a routine basis. Allowing the Bay Foundation to systematically plan and schedule local well sampling, by applying SEP funds associated with violations in the northern Central Coast region (Santa Clara, San Mateo, Santa Cruz, San Benito, and Monterey counties) and southern Central Coast region (includes San Luis Obispo, Santa Barbara, Ventura, and Kern counties) to those respective areas, and not be constrained by making a more specific location nexus, will result in a more efficient sampling program (i.e., less miles traveled, more timely implementation, more resources on sampling, more timely follow up to verify trends in areas with wells that exceed safe drinking water standards) to sample more wells during a given mobilization to reduce the carbon footprint during each rotation.
32. The adoption of this resolution is categorically exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15308.

THEREFORE, BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the use of SEP funds for the Drinking Water Well Testing Program as a Central Cost Water Board third-party administered SEP program, subject to the following conditions:
 - a. Unless explicitly addressed by this Resolution, all Policy requirements continue to apply to settlement agreements containing SEPs.
 - b. The Central Coast Water Board shall require SEP funds directed to the Bay Foundation's Drinking Water Well Testing Program to be used only

for activities associated with the Drinking Water Well Testing Program that settling respondents are not otherwise legally required to perform.

- c. The testing conducted under the Drinking Water Well Testing Program will have a general location nexus with the alleged violation(s) resolved through settlement as described in item 6 below.
- d. The testing conducted under the Drinking Water Well Testing Program will have a nature nexus with the alleged violation(s) resolved through settlement, except for SEP funds associated with the imposition of minimum administrative civil liability under Water Code section 13399.33, as described in item 7 below.
- e. The Central Coast Water Board may allow SEP funds to aggregate to fund the Drinking Water Well Testing Program as funds become available as described in Finding 28.
- f. For settlements relying on this Resolution, the Central Coast Water Board will limit an aggregate of settling monies up to \$400,000 annually to fund the Drinking Water Well Testing Program.
- g. The Bay Foundation will return any SEP funds not expended within 36 months of the applicable settlement agreement's effective date to the appropriate State Water Board account or fund (e.g., State Water Pollution Cleanup and Abatement Account, Waste Discharge Permit Fund).
- h. The Central Coast Water Board must ensure that the Bay Foundation tracks SEP fund contributions and expenditures separately from other funds and itemizes SEP funds and expenditures by each settling party that funded the Drinking Water Well Testing Program, ACL Order number, location of alleged violations and SEP expenditures (i.e., northern or southern Central Coast region), and include this information in its financial reports. The Bay Foundation need not maintain SEP funds in segregated accounts.
- i. For all Drinking Water Well Testing Program components funded by SEP funds, the Central Coast Water Board must ensure that the Bay Foundation provides the Central Coast Water Board with copies of all relevant well testing results and reports annually, makes all study results available to the public including inputting results into the appropriate electronic database(s), and indicates in its reports when the Drinking Water Well Testing Program received funding as part of a settlement of a Central Coast Water Board enforcement action. Annual reports must

contain a summary of the previous year's activities and an accounting of SEP fund accruals and expenditures.

2. Approves the use of SEP funds for the Drinking Water Well Testing Program under Policy section V.E without commitments to address study findings.
3. Authorizes the use of SEP funds for the Drinking Water Well Testing Program not to strictly comply with the "specific project" requirements of Policy sections VI(3), VI(4), VI(12), and IX.A when the payments are associated with the imposition of 1) MMPs under Water Code sections 13385(h) and 13385(i) for effluent limit violations associated with discharges to inland waters of the United States that recharge groundwater, 2) minimum administrative civil liability under Water Code section 13399.33, 3) discretionary administrative civil liability monetary penalties not to exceed \$50,000 for violations that cause or threaten to cause groundwater impacts, or 4) discretionary administrative civil liability monetary penalties not to exceed \$50,000 associated with violations of permits, directives, or orders that require groundwater monitoring and reporting to determine groundwater quality or that require reporting of activities or discharges with potential impacts to groundwater quality.
4. Authorizes the Central Coast Water Board to approve amounts greater than 50 percent of the total adjusted monetary assessment to fund the Drinking Water Well Testing Program, because the SEP substantially furthers the human right to water, pursuant to Policy section VIII.B.
5. Authorizes the Central Coast Water Board to release a settling party's obligation to complete a project funded through the Drinking Water Well Testing Program upon proof of payment to the Bay Foundation pursuant to Policy section VIII.E.
6. Authorizes the Drinking Water Well Testing Program to satisfy the geographic nexus requirements of Policy section VIII.F, by the Central Coast Water Board ensuring that the Bay Foundation directs SEP funds associated with alleged violations in the northern Central Coast region to testing in the northern Central Coast region and SEP funds associated with alleged violations in the southern Central Coast Region to testing in the southern Central Coast region.
7. Authorizes the Drinking Water Well Testing Program to satisfy the nature nexus requirements of Policy section VIII.F for SEP funds associated with MMPs under Water Code sections 13385(h) and 13385(i) when the effluent limit violations are associated with discharges to inland waters of the United States that recharge groundwater. Authorizes the Drinking Water Well

Testing Program to satisfy the nature nexus requirements of Policy section VIII.F for SEP funds associated with discretionary administrative civil liability, when the alleged violations cause or threaten to cause groundwater impacts or are associated with violations of permits, directives, or orders that require groundwater monitoring and reporting to determine groundwater quality or that require reporting of activities or discharges with potential impacts to groundwater quality.

8. Authorizes the Drinking Water Well Testing Program to not strictly comply with the nature nexus requirements of Policy section VIII.F for SEP funds associated with the imposition of minimum administrative civil liability under Water Code section 13399.33, so long as the geographic nexus is met.
9. Directs the Central Coast Water Board to continue considering a range of SEPs in addition to the Drinking Water Well Testing Program, particularly SEPs that further the human right to water, benefit Underrepresented Communities, and/or address climate change.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 16, 2024.

AYE: Chair E. Joaquin Esquivel
Vice Chair Dorene D'Adamo
Board Member Sean Maguire
Board Member Laurel Firestone
Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None


Courtney Tyler
Clerk to the Board