

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

RESOLUTION NO. R9-2017-0014

**TENTATIVE RESOLUTION SUPPORTING A LIST OF
SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEPs) AND
ENHANCED COMPLIANCE ACTIONS (ECAs) FOR CONSIDERATION IN
ENFORCEMENT SETTLEMENT NEGOTIATIONS**

WHEREAS, the California Regional Water Quality Control Board, San Diego Region, (hereinafter the San Diego Water Board) finds that:

1. Authority to Issue Monetary Penalties: The Porter-Cologne Water Quality Control Act (Porter-Cologne Act, California Water Code, Division 7) authorizes the Regional Water Boards to impose administrative civil liabilities (i.e. monetary penalties) for water quality violations alleged in an Administrative Civil Liability (ACL) Complaint.
2. Supplemental Environmental Projects (SEPs): Pursuant to the State Water Board's Policy on Supplemental Environmental Projects ([2009 SEP Policy](#)), SEPs are defined as projects that enhance the beneficial uses of the water of the San Diego Region, provide a benefit to the public at large, and (at the time they are included in the resolution of an ACL action), are not otherwise required of the discharger. SEPs are intended to *restore* the environmental harm resulting from the violation(s) alleged.
3. Enhanced Compliance Actions (ECAs): Pursuant to the State Water Board's Water Quality Enforcement Policy ([2010 Enforcement Policy](#)), ECAs are defined 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 or future impacts to beneficial uses and are typically proposed by municipalities.
4. How SEPs and ECAs are Used: Pursuant to the statewide SEP and Enforcement Policies, dischargers that have been assessed an ACL (monetary penalty) by a Water Board may choose to satisfy up to 50 percent of their total liability by funding an eligible SEP or ECA. That portion of the liability (i.e., SEP or ECA dollar amount) is suspended until the discharger can demonstrate successful completion of the proposed project, at which time it is dismissed. A discharger can either conduct the SEP or ECA itself, or contract with a third party for completion of the project.
5. Assembly Bill 1071 Directive: In October 2015, [Assembly Bill 1071](#) was signed into law requiring, in part, that all boards, departments, and offices within CalEPA that have enforcement authority, develop an annual SEP list designed to benefit environmental justice (EJ) communities and disadvantaged communities (DACs).

6. Overall Regional Priorities in Water Board's Practical Vision: In November 2013, the San Diego Water Board adopted [Resolution No. R9-2013-0153, A Resolution in Support of the San Diego Water Board Practical Vision, titled "Healthy Waters, Healthy People"](#). Through the adoption of this Practical Vision, the San Diego Water Board established five regional priorities to pursue through the year 2020. These five priorities include (1) making the best possible use of resources for the purpose of protecting the health of the Region's water; (2) implementing the "Framework for Monitoring and Assessment in the San Diego Region"; (3) advancing the Recovery of the Region's Stream, Wetland and Riparian Systems; (4) conducting Proactive Public Outreach and Communication with an emphasis on outreach to EJ and DACs; and (5) achieving a Sustainable Local Water Supply.
7. Eligibility Criteria Reflect Regional Priorities and State Directives: In developing the Water Board's SEP/ECA solicitation and application materials, Staff established six basic "[Eligibility Requirements](#)" (aka, eligibility criteria) specifically designed to reflect the Regional Water Board's established priorities and State Water Board policies.
8. Solicitation of Proposals: SEP/ECA project proposals were solicited from the public from June 23 through October 20, 2016. Application materials were distributed and posted on the Water Board [website](#). A public workshop was held on July 19, 2016.
9. Recommended List: Staff's recommended "January 2017 Pre-Approved Supplemental SEPs and ECAs Concept List", hereinafter "SEP/ECA List", is comprised of 25 "Strongly Supported" and "Supported" projects, 8 of which directly benefit EJ or DACs and 4 of which benefit the Tijuana River Valley. Twelve applications were categorized as "Contingent", of which 5 would likely benefit EJ or DACs, with 2 benefitting the Tijuana River Valley. Five applications were deemed "Not Eligible" at this time.
10. Continuous SEP/ECA Solicitation and List Update: Staff anticipates that maintaining and keeping the SEP/ECA List up-to-date, (i.e., adding new projects) will be resource intensive. One way to streamline this effort is to delegate to the Executive Officer the ability to accept, review, and add new projects to the SEP/ECA List at any time, on a continuous basis. Project proposals will be logged in as received and reviewed as resources allow.
11. Third-Party Administrator: A third-party administrator of the SEP/ECA List could reduce the substantial administrative workload of the Water Board associated with SEPs, ECAs, and maintenance of a SEP/ECA List. Although staff have explored the opportunity with some external parties, none is recommended at this time.

THEREFORE, BE IT RESOLVED THAT:

1. Adoption of Resolution/Approval of SEP/ECA List: The San Diego Water Board adopts this Resolution R9-2017-0014 and supports and approves the recommended January 2017 SEP/ECA List (Supporting Document 3 to agenda materials). Proposed projects on the List are immediately available to applicable and interested dischargers during enforcement settlement negotiations.
2. Support for SEP/ECA List Application Materials and Evaluation Methodology: The use of the application materials and selection priorities and evaluation methodology used for the January 2017 SEP/ECA List should continue until updated.
3. Executive Officer Discretion to Modify List, Materials, Process, and Methodology: For purposes of administrative streamlining, the San Diego Water Board grants the Executive Officer the discretion to modify the Eligibility Requirements or other details related to the January 2017 SEP/ECA List application materials, selection methodology, or overall process as he/she deems appropriate or necessary to meet Regional Board priorities or State Board policy.
4. Executive Officer Discretion to Add Projects to Pre-Approved SEP/ECA List: To further increase the efficient use of its resources, the San Diego Water Board grants the Executive Officer the discretion to accept applications on a continuous basis, review applications as resources allow, add new projects to the existing SEP/ECA List at any future time as he/she deems appropriate, and remove projects from the List if a project is no longer considered applicable or eligible (following notice to the project sponsor).
5. Desirability of, and Need for, Third Party Administrator: The San Diego Water Board supports the use of a Third Party Administrator to collect, oversee, and distribute SEP/ECA funds, manage ongoing projects, and maintain and update the SEP/ECA List. The San Diego Water Board directs its Executive Officer to search for a suitable third party with which to contract for this purpose, and if one is found, authorizes the Executive Officer to develop appropriate contract language, in consultation with legal counsel and the third party.
6. Need for Permanent Staff Resources to Manage Ongoing SEP/ECA Projects: In the absence of a Third Party Administrator, the San Diego Water Board recognizes that staff must expend significant time and resources in the oversight/management of ongoing SEP/ECA projects, especially those with long implementation schedules, as well as on the update and maintenance of the SEP/ECA List itself. For this reason and purpose, the Water Board encourages the Executive Officer to pursue the addition of staff resources through the budget change proposal (BCP) process.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, San Diego Region, on February 8, 2017.

A handwritten signature in blue ink, appearing to read "David W. Gibson", is written over a horizontal line.

DAVID W. GIBSON
Executive Officer