

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

RESOLUTION R5-2015-9001

RENEWING THE SUPPLEMENTAL ENVIRONMENTAL PROJECTS PROGRAM TO
BENEFIT DISADVANTAGED COMMUNITIES
IMPLEMENTED IN PARTNERSHIP WITH THE
ROSE FOUNDATION FOR COMMUNITIES AND THE ENVIRONMENT
AND APPROVING THE 2015 DISADVANTAGED COMMUNITY
SUPPLEMENTAL ENVIRONMENTAL PROJECT LIST

The California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds:

1. The Rose Foundation for Communities and the Environment (Rose Foundation) is a grantmaking public charity based in Oakland, California with extensive experience in managing federal Clean Water Act supplemental environmental project funds and supporting community-based environmental projects in the Central Valley and throughout California.
2. The Central Valley Water Board is an agency of the State of California with the mission of preserving, protecting, enhancing, and restoring water quality within the Central Valley of California. In support of that mission, the Central Valley Water Board has the authority to enforce permit conditions and provisions of its Water Quality Control Plans by issuing Administrative Civil Liability Orders (ACL Orders).
3. Dischargers who wish to settle alleged water quality violations may offer to complete Supplemental Environmental Projects (SEPs) that offset the financial liability that may otherwise be imposed by the Central Valley Water Board; dischargers may fund SEPs in lieu of submitting payments to the State Water Resources Control Board's (State Water Board) Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund. SEP settlements are memorialized in Stipulated ACL Orders.
4. The State Water Board has adopted a Water Quality Enforcement Policy (dated 17 November 2009) and a Statewide Policy on Supplemental Environmental Projects (SEP Policy) (dated 3 February 2009) that together regulate the use of SEPs statewide.
5. The SEP Policy defines SEPs as, "... projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger. ... SEPs are an adjunct to the State and Regional Water Quality Control Boards' enforcement program and are never the basis or reason for bringing an enforcement action."
6. As a general rule, the SEP Policy states that no settlements shall be approved by the State and Regional Water Boards that fund a SEP in an amount greater than 50 percent of

the total adjusted monetary assessment against the discharger, absent compelling justification. The total adjusted monetary assessment is the total amount assessed, exclusive of a Regional Water Board's investigative and enforcement costs.

7. Many disadvantaged communities (DAC) in the Central Valley would benefit from SEPs, yet it is difficult for dischargers that do not have day-to-day relationships with these communities to create SEPs that are responsive to their needs.
8. In March 2014, the Central Valley Water Board approved Resolution No. R5-2014-0040, which launched a program to promote the allocation of SEP monies to disadvantaged communities in partnership with the Rose Foundation (the "DAC SEP Program"). Under the DAC SEP Program, the Rose Foundation helps disadvantaged communities to develop SEP proposals, proposes a list of these proposals to the Central Valley Water Board on an annual basis (the "Disadvantaged Community SEP List"), and assists disadvantaged communities and their advocates in the implementation of these SEPs by providing third-party oversight as the SEPs are funded, implemented, and completed.

ROSE FOUNDATION PROPOSAL

9. The Central Valley Water Board recognizes that there are unmet water quality needs within many disadvantaged communities in the Central Valley.
10. The Rose Foundation is ideally situated to work within these communities to develop SEPs for their benefit, as it has demonstrated that it has the institutional capacity, the proven track record, and the connections within disadvantaged communities to help promote the DAC SEP Program and to provide oversight of the SEPs themselves.
11. The Central Valley Water Board recognizes that there may be entities that could perform similar functions as the Rose Foundation, and that this Resolution is not intended to foreclose to similar partnerships with other organizations in the future.
12. The Rose Foundation has committed to proposing updates to the Disadvantaged Community SEP List each year. These lists are to contain a catalogue of SEPs that dischargers facing administrative civil liability may fund in lieu of making payments to the State Water Board's Water Pollution Cleanup and Abatement Account and/or Waste Discharge Permit Fund.
13. Annual updates to the Disadvantaged Community SEP List may be approved by the Central Valley Water Board's Executive Officer after providing the public with an opportunity to comment on the changes to the list, or the Executive Officer may propose to bring the updated Disadvantaged Community SEP List to the Central Valley Water Board for its consideration at one of its public meetings.
14. The Central Valley Water Board approved the 2014 Disadvantaged Community SEP List on 28 March 2014. On 30 January 2015, the Rose Foundation submitted a revised 2015 Disadvantaged Community SEP List. A summary of the Project List is included as Attachment A; the Project List is included as Attachment B.

15. Eligible projects for the Disadvantaged Community SEP List may include, but are not limited to:
 - a. Water Quality Monitoring Programs: including water quality monitoring of surface and groundwater supplies in disadvantaged communities that do not have a publicly regulated community water system, as well as community-based water quality monitoring designed to aid overall watershed management and water resource decisions. This may include water quality testing of individual or community wells that are sources of domestic water.
 - b. Well Rehabilitation or Replacement: including repairing wells that are sources of drinking water and that may provide conduits for pollutants to enter groundwater, or capping and replacing wells that cannot be rehabilitated.
 - c. Watershed Assessment Programs: including disadvantaged community participation in watershed planning programs such as IRWMPs, development of model watershed protection policies, and development of local water quality protection plans and policies for disadvantaged community water sources.
 - d. Wetland, Waterbody, or Riparian Habitat Conservation or Protection Programs: including land acquisition combined with community-based restoration, interpretive or educational programs, and community-based watershed stewardship and riparian restoration programs.
 - e. Pollution Prevention Projects: such as community-based outreach to businesses designed to encourage voluntary pollution reduction and water conservation, and public education about local water quality issues and what people can do to improve water quality in disadvantaged communities and other areas.
 - f. Public Awareness Projects: including community outreach, education, and assistance designed to encourage pollution reduction and/or water conservation to protect disadvantaged community water sources and other water bodies, and the development and delivery of watershed-oriented environmental education curriculum.
16. Eligible projects shall be limited to those projects that benefit disadvantaged communities within the Central Valley Region.
17. No project shall be included in the list of eligible projects if that project specifically proposes to advance a policy position adverse to one that the Central Valley Water Board has previously considered. Board staff reviewing the Rose Foundation's annual updates, discussed above in Finding No. 13, shall have the responsibility to provide feedback to the Rose Foundation as to whether individual proposals meet this requirement.

COMPLIANCE WITH THE ENFORCEMENT AND SEP POLICIES

18. In accordance with the Enforcement Policy, funding a SEP results in the permanent suspension of the portion of the liability in exchange for the performance of the project. To facilitate the DAC SEP Program, the Central Valley Water Board shall consider “performance of the project” to mean actual payment of the amount agreed to by the discharger in the ACL Order to the Rose Foundation and its partners, along with a written acknowledgement and any other appropriate verification and enforceable representation to the Central Valley Water Board that the Rose Foundation and the third party performing the SEP that any SEP funds it receives from the discharger will be spent in accordance with the terms of the ACL Order that approves the SEP.
19. The Rose Foundation shall confirm how the funds were expended in an annual report to the Central Valley Water Board, due by 31 January each year.
20. The SEP Policy lays out the following general qualification criteria:
 - a. The SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger.
 - b. The SEP shall directly benefit or study groundwater or surface water quality.
 - c. A SEP shall never directly benefit, in a fiscal manner, a Water Board’s functions, its members, staff, or family of members or staff.
 - d. Unless express authorization is granted to a Regional Water Board by the State Water Board, a Regional Water Board may not manage settlement funds placed into an account for the purposes of completing a SEP.
21. Projects proposed by the Rose Foundation shall adhere to the above criteria and any other applicable criteria of the SEP Policy.
22. The SEP Policy states that, “there must be a nexus between the violation(s) and the SEP ... there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remediates or reduces the probable 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.” For the purposes of the Rose Foundation proposal, “nexus” is to receive a liberal interpretation that includes projects in the same watershed as where the violation(s) occurred.
23. The SEPs funded under the DAC SEP Program are considered third-party SEPs, which means that the third-party entities that are paid to perform a SEP must be independent of both the discharger and the Central Valley Water Board.
24. As a general rule, the costs associated with the oversight of the SEP (borne either by the Central Valley Water Board or by a third party) are not costs that should be considered part of the direct cost of the SEP for the purposes of determining the value of the SEP. Dischargers that wish to fund projects from the Disadvantaged Community SEP List shall

work with the Rose Foundation to reimburse the Rose Foundation for its oversight costs. In extraordinary circumstances, consistent with the SEP Policy, the Central Valley Water Board may expressly find that such costs should be “considered part of the SEP” or may fund oversight by requesting a disbursement from the State Water Board’s Water Pollution Cleanup and Abatement Account.

25. By agreeing to participate in this project, the Rose Foundation agrees to subject all of its accounting and project-tracking materials related to the Disadvantaged Community SEP List to any audit at any time that one is deemed necessary by the Central Valley Water Board or by any other state or federal agency that requires such auditing.
26. It is the policy of the State Water Board that all ACL Settlements be posted for a 30-day public comment period before they are finalized. In addition, this Resolution and the 2015 Disadvantaged Community SEP List were posted for 30 days to allow the public to provide input as to the merits of the DAC SEP Program and the individual project proposals. As stated above, the Central Valley Water Board is committed to providing the public the opportunity to comment on revisions to the Disadvantaged Community SEP List when it is updated each year.
27. The Central Valley Water Board’s approval of this Resolution is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a “project.” (Pub. Resources Code § 21065; Cal. Code Regs., tit 14, §§ 15060(c)(2),(3); 15378(a).) At the time Administrative Civil Liability Orders approving the funding of SEPs from the Disadvantaged Community SEP List are approved, the Central Valley Water Board must consider whether CEQA applies to the issuance of the Board’s Order, and whether additional CEQA work is required.

THEREFORE BE IT RESOLVED, the Central Valley Water Board, after considering the entire record, including written and oral testimony at the hearing:

1. Approves the 2015 Disadvantaged Community SEP List, Attachment B to this Resolution. The Rose Foundation shall update the Disadvantaged Community SEP List by 31 January of each year. Board staff shall provide a 30-day public comment period on the updates to the Disadvantaged Community SEP List prior to the list being reviewed and approved by the Central Valley Water Board or the Board’s Executive Officer.
2. Directs Board staff to work with the Rose Foundation to publicize the DAC SEP Program on the Central Valley Water Board’s website, and to give serious consideration to all proposals that would include these SEPs as a part of the settlement of a discharger’s potential civil liability.
3. Instructs the Rose Foundation to report back to the Central Valley Water Board by 31 January of each year, providing information regarding the expenditure of SEP funds during the preceding calendar year. Copies of this report shall be submitted to all dischargers that have contributed to projects that have received funding from the Rose Foundation in the

prior year. The Rose Foundation shall also submit this report to the Division of Financial Assistance at the State Water Board under penalty of perjury, declaring that the funds submitted to the Rose Foundation have been expended on eligible SEPs. These reports shall be considered a final post-project accounting of expenditures, as additional reporting on individual projects would be unduly onerous.

4. Dischargers shall be able to select which projects from the Disadvantaged Community SEP List are funded with their financial contributions.
5. Dischargers that direct funds to the Rose Foundation for use in a SEP on the Disadvantaged Community SEP List will have an equivalent amount of administrative civil liability suspended at the time they make actual payment of the amount agreed to in the ACL Order to the Rose Foundation, provided that the ACL Order also states that the Central Valley Water Board is entitled to recover any funds that are not expended in accordance with the terms of the ACL Order,

I, PAMELA C. CREEDON, Executive Officer, do hereby approve this Resolution under the delegated authority granted to me by the California Regional Water Quality Control Board, Central Valley Region.

Original Signed By

PAMELA C. CREEDON, Executive Officer

6 April 2015

Date