

# Supplemental Environmental Projects

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# Definition of a Supplemental Environmental Project (SEP)

- **Environmentally beneficial**, meaning it improves, protects, or reduces risks to public health of the environment
- **Voluntarily undertaken**, meaning it is not an action or project that the respondent is required to undertake or that is proposed as mitigation to offset the impacts of the respondent's project(s)
- **In settlement of an enforcement action**, meaning that it is not commenced until after the violation is identified and it is included in an enforceable settlement document
- **To offset a portion of a civil penalty**, meaning that it allows the settling party to satisfy up to an established percentage of the monetary assessment imposed in a complaint

# SEPs generally must have a nexus to the violation

- Must advance at least one of the objectives of the statute that is the basis of the enforcement action
  - Reduces the likelihood that similar violations will occur
  - Reduces the adverse impact to the environment

# GENERAL TYPES OF ACCEPTABLE SEPs

- Environmental enhancement
  - Enhancing or expanding public access
  - Enhancing or expanding beneficial habitat
- Environmental restoration
  - Removal of fill
  - Restoration and protection of public areas or habitat

# Agencies generally establish monetary limitations for SEPs

**EPA:** Monetary penalty amount should recoup the economic benefit a violator gained from noncompliance with the law, as well as an appropriate gravity-based penalty reflecting the environmental and regulatory harm

**CalEPA:** Pub Res. Code § 71118 – Up to 50%

**SWRCB:** Pub Res. Code § 71118 – Up to 50% AND

Water Code § 13385(*l*) – 50% + \$15,000 for certain violations involving mandatory minimum penalties

# POTENTIAL ISSUES FOR SEPs

- Must ensure that the project is completed and any required monitoring and reporting is undertaken
- Must have a means of evaluating cost
- Project may be subject to regulatory process (CEQA, etc)

# PROPOSAL

Formalize policy that, on a case-specific basis, staff may, when pursuing an enforcement action, allow a respondent to voluntarily undertake or agree to fund a Supplemental Environmental Project (SEP) in lieu of paying a portion of the penalty that they would otherwise be required to pay for the violation(s)

# QUESTIONS

- Are the following appropriate for inclusion in a SEP policy?
  - Limitations on the monetary penalty amount to be mitigated through a SEP? No more than 50% absent some compelling justification?
  - Limitations on the categories of projects that are acceptable?
  - Inclusion of community input and promotion of SEPs in communities with environmental justice concerns?

# OTHER QUESTIONS?