



Enforcement-Driven Financing of Water Quality in California: The Case of Supplemental Environmental Projects

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This project evaluates California's experience with Supplemental Environmental Projects (SEPs), primarily as they are implemented by the nine regional water quality control boards, focusing on 1) the extent and variation of SEP activity throughout the state, 2) the proportion of enforcement fines being re-directed to SEPs, 3) the parties involved, and 4) the environmental outcomes of SEPs and whether they generally and reliably improve water quality. The 9 regional boards approved approximately 300 SEPs between 2004 and 2007 representing over \$47 million of water quality project funds that might not otherwise have been used for cleanup, restoration or improvement programs.

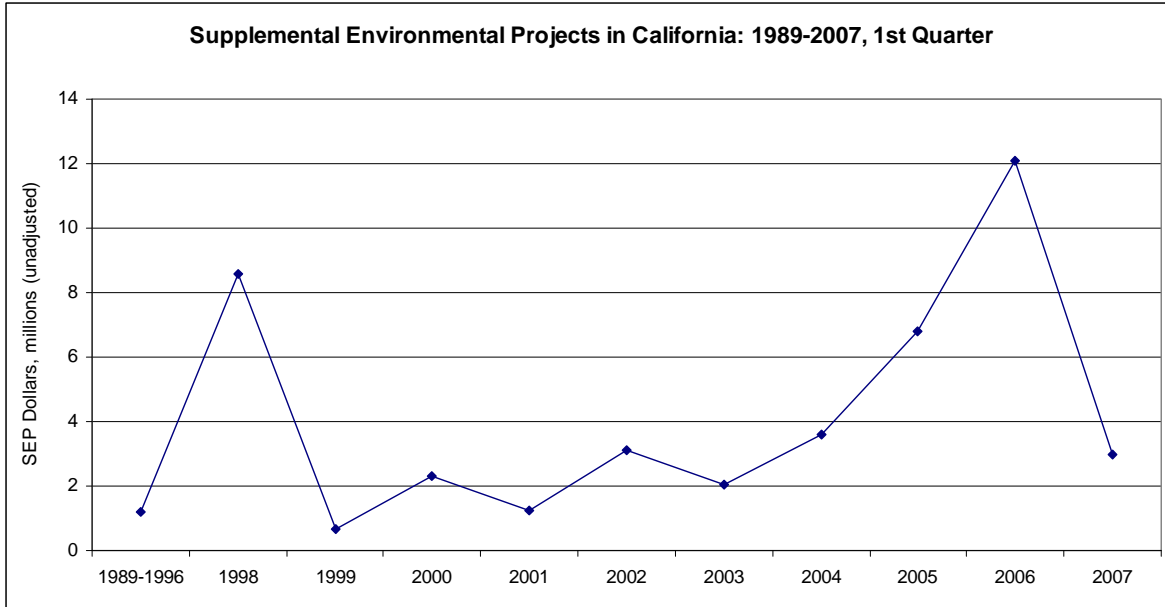
Since the early 1990s, US Environmental Protection Agency guidelines allow states to direct some enforcement fines to Supplemental Environmental Projects (SEPs) in lieu of paying these sums into state general funds or cleanup and abatement accounts. The US EPA established guidelines governing SEPs in 1998. These require that 1) there is a nexus between the discharge violation and environmental benefits arising from a SEP, 2) the SEP must improve protection or reduce risks to public health of the environment, and 3) the SEP must consist of a project that violators would otherwise not have performed.

This project evaluates California's experience with SEPs, primarily as they are implemented by the nine regional water quality control boards. The central inquiries include 1) the extent and variation of SEP activity throughout the state (i.e., do the regional boards vary in their elective use of SEPs; has SEP use increased or decreased in recent years), 2) the proportion of enforcement fines being re-directed to SEPs, 3) the parties involved (e.g., are violators primarily implementing their own SEPs or are third parties doing so? If third parties are taking the lead, how are they getting involved?), and 4) what are the environmental out-

comes of SEPs; do they generally and reliably improve water quality?

To date, the research team has collected SEP data from all regional boards; however, considerable work remains to verify the information gathered as the quality of records varies tremendously. According to these data, California's nine regional boards approved approximately 300 SEPs between 2004 and 2007 representing over \$47 million of water quality project funds that might not otherwise have been used for cleanup, restoration or improvement programs. As expected, the regional boards vary widely in their use of SEPs, from a low of 5 SEPs with a total cost of \$228,000 in region 7 (Colorado River Basin) to a high of 70 SEPs with a total cost of \$12.5 million in region 3 (Central Coast). Some regions see only 10-15% of their Administrative Civil Liabilities (ACLs) going to SEPs; for others, SEPs can represent over 80% of the fines paid for an enforcement action.

In addition to these SEP enforcement program statistics, the team completed in-depth interviews with 10 staff members in regions 1, 2, 3, 4, 6, and 8. On the project implementation side, interviews were completed with 11 SEP implementing parties, including



staff from water districts, wastewater treatment plants, habitat restoration groups, land trusts and wetlands managers. In some regions, staff actively maintain lists of SEPs that they would like to see funded; thereby, having ready-made programs to which settlement funds can be directed. Third parties, including non-governmental organizations, municipalities and businesses throughout the state all participate, to varying degrees, in proposing viable projects.

At the statewide level, the future of SEP programs is very much in question. Citing concerns about accountability and oversight, the State Water Resources Board has

been considering reducing the amount of an ACL that can be spent on a SEP down to as low as 25%. In year two of this project, the research team will be investigating the efficacy and oversight dimensions of SEPs, which will allow the PI and colleagues to help inform these new enforcement policy proposals as well as SEP “best practices.”

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