

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

**ENFORCEMENT SUMMARY REPORT
OCTOBER 14, 2020**

ITEM 8

SUBJECT

Tentative Order: Settlement Agreement and Stipulation for Entry of Administrative Civil Liability in the Matter of the City of San Diego, January 2016 Sanitary Sewer Overflow to Tecolote Creek and Mission Bay, CA (Tentative Order No. R9-2020- 0150) (*Christopher Means*)

STAFF RECOMMENDATION

The San Diego Water Board's Prosecution Team (Prosecution Team) recommends adoption of Tentative Order No. R9-2020-0150 (**Supporting Document 1**) and asserts that the proposed resolution of the alleged violations is fair, reasonable, fulfills the San Diego Water Board's enforcement objectives, is in the best interest of the public, and that no further action is warranted concerning the alleged violations.

KEY ISSUES

Adoption of Tentative Order No. R9-2020-0150 (Tentative Order) would approve the terms of the settlement agreement between the Prosecution Team and the City of San Diego (the City) to resolve the alleged violations described in the Tentative Order. The Tentative Order establishes a total liability of \$2,541,874, which includes \$41,874 in staff costs associated with the investigation and preparation of the enforcement action (**Supporting Document 2**). As a condition of the Tentative Order, the City would direct \$1,250,000 in suspended liability to implement the proposed *Northeast Mission Bay Wetland Restoration* Supplemental Environmental Project (SEP) (**Supporting Document 3**).

Should the San Diego Water Board decide not to adopt the Tentative Order as drafted, the Prosecution Team may either take no action, re-open settlement discussions with the City, or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board.

PRACTICAL VISION

The San Diego Water Board's regional enforcement priorities align with the Practical Vision by focusing on violations that affect one or more key beneficial use categories in a key area for that use. This enforcement action was initiated because a very large amount of untreated sewage was discharged into Tecolote Creek and ultimately Mission Bay. Mission Bay is considered a key area for three key beneficial use categories:

Recreation; consumption of fish and shellfish; and habitats and ecosystems. Discharges of untreated sewage into Mission Bay can negatively impact all three of these key uses and is therefore a priority through the lens of the Practical Vision.

DISCUSSION

From January 5, 2016 to January 10, 2016 the City discharged 6,750,734 gallons of untreated raw sewage into Tecolote Creek from a section of 15-inch diameter pipe which broke during a storm event. Tecolote Creek flows into Mission Bay. The pipe, located in the canyon adjacent to Tecolote Creek, was damaged as result of stream bank erosion that occurred during an intense storm event in January 2016. The damaged pipe was identified by City staff after receiving several calls from citizens between January 8, 2016 and January 10, 2016 reporting a concern that sewage was flowing into Tecolote Canyon. The sewage discharge lasted for six days and the City, in collaboration with San Diego County Department of Environmental Health, subsequently closed down Mission Bay to recreational uses for a period of 11 days, from January 10, 2016 to January 21, 2016, and Tecolote Creek for 22 days from January 10, 2016 to February 1, 2016.

The City received Notice of Violation and Investigative Order No. R9-2016-0049 on February 10, 2016 and responded to the investigative order on March 30, 2016. In September 2017, the Prosecution Team and the City initiated confidential settlement negotiations to address the alleged violations from the sanitary sewer overflow.

Under the terms of the settlement, the City agrees to a total administrative civil liability of \$2,541,874, which includes \$41,874 in staff costs associated with the investigation and preparation of the enforcement action. Within thirty (30) days of the effective date, the City agrees to remit \$1,291,874, plus an additional \$6,000 for SEP oversight costs, to the State Water Pollution Control Board's Cleanup and Abatement Account. A summary of the penalty calculation is provided in **Supporting Document 2**. The total liability was determined by applying the calculation methodology in the [2010 State Board Water Quality Enforcement Policy](#).

The remaining \$1,250,000 in administrative civil liability will be satisfied through the successful implementation of the proposed *Northeast Mission Bay Wetland Restoration* SEP. The total cost associated with the SEP is \$1,293,605.

The proposed SEP is consistent with the San Diego Water Board's objective to: "Actively promote and advance restoration projects that play an essential role in the protection, enhancement, and recovery of beneficial uses, and lead to a meaningful net gain in aquatic ecosystems" ([Resolution R9-2015-0041](#)). It is also consistent with the San Diego Water Board's support of the Mission Bay Wetlands Conceptual Plan contained in directive 16.b of the Resolution.

The SEP is a multipronged approach to further the goals of environmental restoration and protection in northeast Mission Bay. Restoration of wetland habitat in the northeast corner of Mission Bay and lower Rose Creek will improve water quality and is a key environmental priority of the City's Mission Bay Park Master Plan. With the proposed SEP, the City would: 1) Conduct additional analysis and study of an expanded restoration alternative for the Programmatic Environmental Impact Report (PEIR) of the De Anza Cove Amendment to the Mission Bay Park Master Plan; 2) Fund additional technical studies to supplement the Mission Bay Park Improvement Plan PEIR and Rose Creek Preliminary Engineering Report; and 3) Implement native habitat enhancement and

restoration in the Kendall-Frost Reserve. Per the [2017 State Board SEP Policy](#), all SEP work must be completed within 36 months from adoption of the Tentative Order.

At the close of the written comment period (**Supporting Document 4**) on August 10, 2020, the San Diego Water Board timely received 20 comment letters. All comments timely received are included in **Supporting Document 5**. One additional comment letter in support of the Tentative Order was received after the close of the written comment period (**Supporting Document 6**). The Board Chair has allowed this late comment to be admitted. All comments received were in general support of adoption of the Tentative Order and implementation of the proposed SEP, but some comment letters asked for modifications to the SEP. The Prosecution Team did not make any changes to Tentative Order No. R9-2020-0150 in response to the public comments. A summary of responses to comments received is contained in **Supporting Document 7**.

On August 11, 2020, the City signed the stipulated order with two minor, non-substantive corrections on page 14 to update to the City's named signatory and correct a misspelled word. A copy of the corrected Tentative Order with signatures from the City and the San Diego Water Board Prosecution Team is attached as **Supporting Document No. 1**.

LEGAL CONCERNS

None.

PUBLIC NOTICE

A draft of the Tentative Order was publicly noticed on the San Diego Water Board website on July 8, 2020, with a 30-day comment period and emailed to the "Penalty Assessment Notice" email list subscribers. Notice was also provided through the August 2020 Executive Officer's Report.

The agenda notice for today's meeting was posted on the San Diego Water Board's website and sent to subscribers to the email list for Board meetings. This satisfies the Bagley-Keene Open Meeting Act requirements to publish the meeting notice and agenda.

SUPPORTING DOCUMENTS

1. Tentative Order No. R9-2020-0150
2. Tentative Order No. R9-2020-0150 Attachment A, Penalty Calculation Summary
3. Tentative Order No. R9-2020-0150 Attachment B, Northeast Mission Bay Wetland Restoration SEP Proposal
4. Notice of Written Comment Period for Tentative Order R9-2020-0150
5. Comment Letters Timely Received
6. Comment Letter Not Timely Received
7. Response to Comments