

Background:

To begin with, it's important to note that the Tentative Order is intended to address violations from the November 2019 sanitary sewer overflow (SSO) at the North Coast Interceptor (NCI) for which the City of Laguna Beach (City) is the agency responsible for operation and maintenance. Therefore, the Prosecution Team's investigation and the proposed settlement are limited accordingly. Some comments received were focused on voter representation, impacts from and ways to reroute sewage flows, or ways to increase recycled water opportunities. Although thoughtful and worthwhile, these comments are beyond the scope of the Tentative Order, alleged violations, and the applicable Waste Discharge Requirements (WDRs), and therefore will not be addressed in the responses below. In many cases, the City is addressing these comments through a separate public process¹ and is willing to provide updates to the Board, if desired. Below is the Prosecution Team's response to the remaining comments received regarding the Tentative Order. Responses have been compiled into 5 general categories: volume calculations, spill response, harm to receiving waters, proposed ECA, and City asset management.

1. Volume Calculations:

Commenting parties had questions regarding how the volume of gallons discharged, which is used in the penalty calculation methodology, was calculated and expressed concerns about why this discharge volume was less than the average daily flows travelling through the NCI.

Summary Response:

The City submitted an initial volume estimate of 1.4 million gallons² on December 4, 2019, and a revised estimate of 1.87 million gallons with its 45-day report.³ The revised estimate was based on flow meter data recorded by the South Orange County Wastewater Authority treatment plant effluent meter, the Bluebird SOCWA effluent meter, and the volumetrics of the North Coast Interceptor.

As part of its investigation, the Prosecution Team asked the State Water Board's Special Investigations Unit (SIU) to do an independent evaluation of the City's flow calculations. As a result of SIU's evaluation, and some follow-up questions, the City conducted a discharge volume confirmation study on the Nyes Place Lift Station and in February 2020 developed a more robust approximation of gallons discharged (Exhibit 3) which totaled 1.7 million gallons.⁴ The Prosecution Team believes this calculation is a sufficient approximation, and does not recommend changes to the penalty.

¹ The City held a Wastewater System Workshop on February 16, 2021, for the public to discuss options to construct new NCI pipes to provide redundancy to the force main portions of the pipe and minimize future sewage spills. See Agenda at https://lagunabeachcity.granicus.com/GeneratedAgendaViewer.php?view_id=3&clip_id=1309.

² See "Spill Estimation Memo- NCI November 27, 2019 FINAL" uploaded to CIWQS 12/4/2019.

³ See [Attachment 2 to 45-day report, titled "SSO Volume Estimation Methodology Rev. from 15 Day Report"](#) uploaded to CIWQS 1/13/20.

⁴ See documents titled "[Attachment 2 SSO Volume Estimation Revised February 18 2020 w Confirming Pump Flowmeter Data.xlsx](#)" and "[R9 Staff Response Nyes Place LS Data Logger Information 1-27-20 to 2-3-20 .xlsx](#)", both uploaded to CIWQS 2/18/20.

It is important to note that not all flow from the 24" NCI was lost during the spill event; only what was leaking from a 3-inch hole at the Air Vacuum Release Valve (AVRV), which is why this discharge volume was less than the average daily flows travelling through the NCI. Treatment plant influent flows from the NCI were consistent with those of prior years for the Thanksgiving holiday.

2. Spill Response:

Commenting parties raised concerns that the City's spill response was hampered by inadequate communications and insufficient equipment availability.

Summary Response:

The City's spill response was considered by the Prosecution Team as part of the Cleanup and Cooperation penalty factor, which was assigned a neutral score of 1. After significant investigation and discussion with the City, the Prosecution Team finds that the response was appropriate considering the conditions at hand and does not recommend changes to this penalty factor.

- A) RESPONSE PREPAREDNESS – Following the SSO, the City prepared a specific emergency operations response plan to improve responses to any future spill events in the Canyon. This new Standard Operating Procedure includes specific access dimension maps for equipment, specialty contractor contacts, and training documentation to address staff turnover and succession planning.⁵
- B) COMMUNICATIONS - In January 2020, Laguna Beach news media reported that the cellular service was non-existent.⁶ According to the City, this is an inaccurate statement. The conditions in the canyon were such that cellular coverage was existent but spotty (based on cloud cover) and not reliable without walking to find an area where signal could be received. Although this was an inconvenience, it did not slow down or impede efforts to abate the SSO. Since that time, the City has met with the cellular companies and their cellular tower installation contractor to determine if cellular service can be installed in the canyon. Since that was determined to be economically infeasible, the City has purchased and activated satellite phones for future needs at various areas in the City with spotty cellular coverage, including Aliso Creek Canyon.
- C) EQUIPMENT- The City initially indicated that the 2019 SSO was hindered by an inability to readily acquire a pipe clamp. The City had several meetings with contractors and suppliers about pipe clamps used on Asbestos Cement (AC) Pipe and, based on these meetings and its experience, the City has concluded that it is not practical or feasible to procure pipe clamps in anticipation of any potential spill. The basis for these conclusions is as follows:

- a. The outside diameter of AC pipe varies significantly from end to middle.

⁵ See document titled "[City of Laguna Beach NCI Response in Aliso Creek Sept 2020 FINAL](#)" uploaded to CIWQS 12/29/20.

⁶ [Laguna Beach settles sewage spill case for \\$1.5 million, half earmarked for system upgrade - Laguna Beach Local News \(lagunabeachindy.com\)](#)

- b. Without exception, all AC pipes being repaired with a clamp must be measured in the exact location of the break. The clamps are fabricated with a marginal tolerance of size variation.
- c. The seals that are on pipe clamps have a relatively short shelf life. The City has experience using a backup clamp for an emergency pipe repair and the seal failed. The result caused a full 24-hour delay to remove the failed clamp and wait until the next low-flow cycle.
- d. Unless the pipe clamp is new, the resulting repair lacks reliability.

Furthermore, containment equipment such as inflatable dams, water storage bladders, and mobile storage tanks, were also considered by the City. The City explained that while this equipment could work in some situations, it would be difficult to predict emergency conditions in the field and keep the appropriate equipment on hand. Nevertheless, these are potential resources, so the City will continue to evaluate whether having some “stand by” containment equipment is warranted.

3. Harm to Receiving Waters:

Commenting parties noted the sensitivity of the receiving waters and the potential for harm to the coastal Marine Protected Areas. Potential for harm is a factor in the penalty calculation methodology. Some comments focused on the need for routine mapping and monitoring of the receiving waters or asked for consultation with the California Department of Fish and Wildlife (CDFW) for impacts to the Marine Protected Areas (MPAs).

Summary Response:

The Enforcement Policy requires that the Water Boards consider actual or potential for harm to Beneficial Uses. This enforcement action was initiated because a large amount of untreated sewage was discharged into Aliso Creek and the Pacific Ocean. Aliso Creek is considered a key area for habitats and ecosystems, and the Pacific Ocean is a key area for fish and shellfish consumption, recreation, and habitats and ecosystems. More specifically, the Laguna Beach State Marine Conservation Area and the Laguna Beach State Marine Reserve are both MPAs⁷ and areas of special importance for habitats and ecosystems. Discharges of untreated sewage into these key areas has the potential to harm all three key uses.

The Prosecution Team acknowledges that an SSO of this nature clearly has a high potential for harm. In this case, however, the City took additional measures to conduct water quality monitoring and an environmental damage assessment during and immediately after the SSO to estimate the actual harm to receiving waters as a result of the SSO.

⁷ As a matter of jurisdictional clarification, the San Diego Water Board is not authorized to enforce violations of the Fish and Game Code and, although CDFW is aware of both the SSO and Tentative Order, the Water Board is not acting on its behalf.

Monitoring data provided by the City (and available to the public in CIWQS)⁸ shows that harm to recreation and ecosystem health was observed but likely to attenuate without appreciable medium or long term acute or chronic effects. Beach closures were lifted prior to the end of the rain advisory, and subsequent ocean monitoring showed no exceedances or indication of materials of sewage origin. The Prosecution Team does not dispute that a discharge of this nature does contribute pollutant loads in the receiving waters and can exacerbate conditions related to harmful algal blooms but does not recommend changes to the penalty factor in response to these comments.

It is beyond our current capacity to determine the precise extent to which this SSO contributes to the overall loading and effects of specific pollutants to the receiving waters. And, although the Aliso Creek Ocean Outfall monitoring program, coupled with the Bight monitoring program, will continue to monitor (and map) long term trends in the area, this monitoring is not intended to determine to what extent a particular discharge event impacted the receiving waters in the long term.

4. Proposed ECA:

Commenting parties had several concerns about the proposed ECA. Some felt that the ECA should have previously been required, and/or that the proposed ECA does not meet the criteria to be a deferred liability project. Some felt that the deferred liability should have been spent on restoring the environmental harm with a Supplemental Environmental Project (SEP), rather than preventing future harm with the proposed ECA. Other comments were focused on the specific design of the ECA, expressing concerns that the ECA is coupled to a project that may limit the potential for implementation of future Aliso Creek estuary restoration.

Summary Response:

The Prosecution Team and the City discussed ideas for deferred liability projects in settlement negotiations, including projects from the [Water Board's list of pre-approved project concepts](#), and the prospect of habitat restoration along Aliso Creek. SEPs and ECAs must be proposed by the settling party (i.e. City) and must meet the criteria of the [SEP Policy](#) and [Enforcement Policy](#), including the requirement to select a project with a nexus to the violations that has discrete environmental benefits and can be completed within 36 months. These criteria make it very difficult to propose a suitable restoration project for this settlement.

Instead, the City proposed an ECA that would provide the City and South Coast Water District (SCWD) the ability to bypass either the NCI or SCWD's Lift Station 2 Force Main for maintenance or emergency repairs, thereby minimizing the risk and likelihood of a future SSO of this nature in the area. The proposed ECA (i.e. the "Intertie Project") is a small component of SCWD's larger \$20 million "Lift Station 2 Reconstruction Project" (LS2RP). The LS2RP recently completed CEQA public review of a [Mitigated Negative Declaration](#) (MND) (comment period closed on March 29, 2021) and will require review and permitting from several regulatory agencies (including the San Diego Water Board

⁸ See Attachments 6-9 of the 45-day report (uploaded 1/13/20) and document titled "[CLB Marine Analysis - SOCWA PC-23 Ocean Monitoring Response June 25 2020.pdf](#)" (uploaded 12/30/20) in CIWQS

for Clean Water Act Section 401 Water Quality Certification). For the ECA, the SCWD is acting as the City's SEP administrator, while the City maintains liability per the proposed Settlement terms until project completion.

If all permits are granted according to the schedule in the ECA, LS2RP construction should commence in the fall of 2021. Paragraph 18.e of the Tentative Order allows for up to a 1-year extension to the ECA Completion Date under circumstances specified therein. If the ECA cannot timely be completed, paragraph 18.n requires the City to refund the entire suspended liability, or a portion thereof.

- A) The proposed ECA meets the criteria in the Enforcement Policy and conforms to the 2017 SEP Policy. The proposed ECA is not required by law and is not designed to bring the discharger into compliance.
- 1) To clarify, the proposed ECA is not replacement of the AVRVs, or scheduled inspection and maintenance to the NCI; for this case, those actions, further discussed in the 45-day report and Attachment A to the Tentative Order, are what is necessary to bring the discharger into compliance.
 - 2) Rather, the ECA is a supplemental upgrade to the NCI for which the City asserts it has not received any loans, contracts, or grants, or any other financial assistance, and had not made any commitments to its implementation prior to settlement negotiations. Although the LS2RP may have been planned by SCWD, the proposed Intertie Project was not a part of the LS2RP project and not planned prior to settlement negotiations.
 - 3) Although lift station rehabilitation may be considered a standard industrial practice, the implementation of the ECA (Intertie Project) is not. Neither the State-wide nor Regional General WDRs for Sanitary Sewer Systems (i.e. SSS WDRs) require transmission line bypass or redundancy as a condition of compliance. Based on a survey conducted by the City, most of the collection systems in the San Diego region do not have line redundancy. The State Water Board's SIU confirmed to the Prosecution Team that line redundancy is not a prevailing industry practice throughout the State.
- B) On the issue of whether the City should have implemented the ECA sooner, independent of the suspended liability, the proposed ECA is only feasible because of SCWD's concurrent LS2RP. In other words, the ECA could not be implemented without the LS2RP. As part of its investigation, the Prosecution Team considered whether the City should have implemented similar improvements along the NCI sooner based on recommendations in a 2003 report.⁹ The City explained its decision to delay NCI redundancy/replacement based on the information available at the time. First, the City had determined that the NCI was in good condition and had only reached approximately half of its useful life, and as such, the City did not see a need to prioritize the NCI parallel interceptor project. From 2007 to 2018 the City collaborated with SCWD (including a joint study) regarding realignment of the NCI

⁹ Technical Report, Exhibit 12, ECM DH 8862495

along Aliso Creek, and the City anticipated developing a project with SCWD. However, in January 2018, SCWD decided not to move forward with the project.

- C) SCWD and the City are in the process of determining whether the LS2RP can be modified to minimize impediments to potential future restoration at Aliso Creek estuary.
- 1) The ECA (Intertie Project) is a small portion of the much larger LS2RP; the ECA itself would not interfere with the design and implementation of the potential restoration project. However, the ECA is tied to the implementation of the LS2RP work, which also proposes the permanent road realignment of a 1,000-foot section of Country Club Drive. The proposed road realignment in the LS2RP interferes with anticipated potential public parking relocation to accommodate future estuary restoration. This was brought to the attention of the City and SCWD during the public comment period for the LS2RP MND and this Tentative Order.
 - 2) The LS2RP project is still undergoing planning and permitting and therefore still subject to modification. SCWD has indicated that the proposed realignment, which was noted in the LS2RP Initial Study as a “permanent realignment,” will be clarified to be a “project road realignment” intended to meet safety and operational requirements for SCWD, enhance public safety and circulation, improve site accessibility to operational facilities and underground infrastructure, and address existing site constraints. SCWD is open to adjusting the road alignment in the future to accommodate a restoration project site configuration that is agreed upon by all impacted landowners.
 - 3) SCWD has formed an Ad Hoc Committee to work with the restoration proponents, stakeholders, and agencies to discuss and coordinate potential future restoration. On May 4, 2021 the Laguna Beach City Council authorized Mayor Whalen to represent the City in efforts to advance the restoration development.¹⁰
 - 4) The estuary restoration project is still a conceptual plan, and the stakeholders with property interests have not agreed to transfer any property interests which would be necessary for the restoration to occur. Therefore, it will take some time to determine whether a viable solution exists that is amenable to all stakeholders.
 - 5) The City and SCWD have reached out to the Laguna Ocean Foundation and participated in a charrette on April 23, 2021, to discuss the conceptual restoration plan. The stakeholders agreed to continue discussions and to explore solutions to accommodate potential future restoration. An update on these discussions will be available when the Tentative Order is presented to the Board.

¹⁰ https://lagunabeachcity.granicus.com/player/clip/1358?view_id=3&redirect=true

- 6) The City remains confident that this issue can be resolved and that the ECA can be completed by the completion date specified in the Tentative Order or otherwise agrees to refund the ECA Amount in accordance with paragraph 18.e of the Tentative Order.
- 7) The ECA remains a priority project for the City, and the Laguna City Council has approved moving forward on both the ECA project and the replacement of the NCI in Aliso Creek. The City Council has approved taking the next steps to fund the new NCI along Aliso Creek (pending a protest vote process).

5. City Asset Management:

Parties commented on how the City should revise its wastewater operations, maintenance, and infrastructure. Some parties commented on NCI realignment options, and ways to increase water reclamation. One party asked that bypass opportunities be explored along the entire NCI; not just in Aliso Creek, and that where no bypass is available, additional mitigation (response) measures be considered. The City's progress should be reported on and measured as a condition of compliance.

Summary Response:

As part of its investigation, the Prosecution Team did evaluate the City's expenditures and implementation of wastewater related Capital Improvement Projects, and more specifically, its decision to defer improvements to the NCI. In general terms, like all sanitation agencies, the City made decisions on where, how, and how much to invest in its infrastructure based on the risk known and/or perceived at the time. To the extent that these decisions were flawed, the outcome is manifested in the resulting penalty and no adjustments to the penalty are recommended as a result of the comments received.

Since that time, the City has taken additional steps to safeguard its infrastructure. After the November 2019 spill, Laguna Beach staff provided several updates to the City Council. In February 2020, the City Council directed staff to assess the NCI and bring back recommendations to increase the transmission pipeline's reliability, including but not limited to installing parallel transmission pipelines. In response, City staff presented the North Coast Interceptor Reliability Assessment Study to the City Council at their February 16, 2021, Wastewater System Workshop. The workshop provided City staff with positive feedback and direction from the City Council to pursue rate increases necessary to fund the replacement of the North Coast interceptor along the Aliso Creek. Furthermore, City Council directed its staff to engage a financial consultant to evaluate the financing plan and hire a consultant to perform a peer review of the North Coast Interceptor Reliability Assessment Study.

The City Council authorized a protest vote process to increase sewer user rates by 6 percent in each of the next five years. The rate increases reflect the financing plan and capital improvement program that would replace and/or upgrade the NCI's entire length in the next 20 years. The Council's direction included continuing progress on the remaining elements of the collection system, namely, lift station, pipeline, and maintenance hole rehabilitation and replacements.

Conclusion:

In closing, all responsive comments have been addressed in the Tentative Order, its Attachments and Exhibits, and herein. Additionally, the Prosecution Team is available to address any additional concerns through oral testimony for consideration of the Tentative Order. We expect the City to provide an update during this Board item regarding stakeholder discussions related to the ECA and potential lagoon restoration. The Prosecution Team's position is that if it is possible to adjust the LS2RP so as not to impede potential future restoration, and if stakeholders¹¹ are willing to work diligently to identify an optimal design alternative for restoration, then the Tentative Order should be adopted as proposed with the understanding that the City assumes the risk if the issue cannot timely be resolved.

cc: via email to all commenting parties and Advisory Staff.

¹¹ At a minimum, stakeholders should include the Laguna Ocean Foundation, South Coast Water District, City of Laguna Beach, County of Orange, and The Ranch.