

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

**ADVISORY TEAM SUMMARY REPORT
JUNE 8, 2022**

ITEM 4

SUBJECT

Administrative Civil Liability Hearing: Administrative Civil Liability Complaint against Baldwin & Sons, Inc., et al. Portola Center South Construction Site, Complaint No. R9-2020-0006 (Tentative Order No. R9-2022-0094). (*Lori Okun, Vincent Vu*)

KEY ISSUE

Adoption of Tentative Order No. R9-2022-0094 (Tentative Order) will impose administrative civil liability in the amount of \$6,660,503 upon Baldwin & Sons, Inc.; Sunranch Capital Partners, LLC; Sunrise Pacific Construction, Inc.; SRC-PH Investments, LLC; Baldwin & Sons, LLC; Shawn M. Baldwin; Randall G. Bone, and Jose Capati (collectively, the Dischargers) for violations of State Water Resources Control Board Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Storm Water Permit).

PRACTICAL VISION

Consistent with the mission of the Strategize for Healthy Waters chapter of the Practical Vision, the Tentative Order imposes liability on the Dischargers for discharges of sediment and other construction related pollutants to Aliso Creek and its tributaries in violation of the Construction Storm Water Permit and for other violations of the Construction Storm Water Permit. Aliso Creek and its tributaries have the following beneficial uses: Agricultural Supply (AGR), Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). Stream systems, like Aliso Creek and its tributaries, have been identified as key areas in the San Diego region with the highest rank for habitats and ecosystems.

DISCUSSION

The San Diego Water Board Prosecution Team issued Administrative Civil Liability Complaint No. R9-2020-0006 (Complaint) on January 10, 2020, for alleged violations of the Construction Storm Water Permit at the Portola Center South Construction Site (Site) located in the City of Lake Forest, County of Orange. The Complaint alleged 162 days of violations and 6,297,438 gallons of unauthorized discharges from the Site into waters of the United States (Aliso Creek and its tributaries). The Complaint proposed assessment of administrative civil liability in the amount of \$9,115,932.

Pursuant to the Hearing Procedures for this matter, interested persons were required to submit non-evidentiary policy statements by January 8, 2021. The San Diego Water Board received two non-evidentiary policy statements from Orange County Coastkeeper and Tom Bistline Construction, Inc.

On January 10, 12, and 13, 2022, the San Diego Water Board held a public hearing to hear evidence and comments on the allegations contained in the Complaint and to consider assessment of administrative civil liability. In addition to the evidence and

comments heard at the hearing, the parties submitted evidence and briefings on this matter prior to the hearing. The San Diego Water Board Chair issued several rulings on the evidence and other matters prior to the hearing, during the hearing, and in the Tentative Order.

Adoption of the Tentative Order would impose administrative civil liability in the amount of \$6,660,503 upon the Dischargers for violations of the Construction Storm Water Permit. Violation No. 1 is for discharging sediment laden stormwater from the Site into Aliso Creek and tributaries to Aliso Creek on September 15, 2015, December 22, 2015, January 5, 2016, and January 6, 2016. The discharge volumes of the four storm events were 667,760, 1,584,406, 2,553,232, and 1,511,822 gallons, respectively. For these discharge violations, the Tentative Order would impose administrative civil liability in the amount of \$5,280,204. Violation Nos. 2 through 8 are for other non-discharge violations of the Construction Storm Water Permit. The Tentative Order would impose administrative civil liability in the amount of \$1,283,705 for Violation Nos. 2 through 8. The administrative civil liability amount also includes staff costs of \$96,594, for a total liability of \$6,660,503. The administrative civil liability in the Tentative Order was derived from the liability calculation methodology, as explained in detail in Attachment 1 to the Tentative Order (Supporting Document No. 2).

The Dischargers, the San Diego Water Board Prosecution Team, and interested persons may make oral comments on the Tentative Order at the June 8, 2022, meeting. No written comments or new evidence will be accepted.

PUBLIC NOTICE

The Tentative Order was sent to the parties on May 24, 2022. The Tentative Order was released for public review on the San Diego Water Board's meeting agenda webpage on May 25, 2022.

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. R9-2022-0094
2. Tentative Order No. R9-2022-0094 Attachment 1, Liability Methodology Decisions (includes Table 1: Total Assessed Liability, and Table 2: Liability Calculator)
3. Tentative Order No. R9-2022-0094 Attachment 2, Photo Comparison