

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

**IN THE MATTER OF CITY OF SAN DIEGO,
APRIL 2020 SANITARY SEWER OVERFLOW,
SWEETWATER RIVER, SAN DIEGO BAY, CA**

**STIPULATION FOR ENTRY OF
CEASE AND DESIST ORDER
ORDER NO. R9-2023-0016**

Section I: INTRODUCTION

1. This Stipulation for Entry of Cease and Desist Order R9-2023-0016 (Stipulation) and Cease and Desist Order R9-2023-0016 (TENTATIVE) (Proposed CDO) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (San Diego Water Board), and the City of San Diego (City) on behalf of the San Diego Water Board Prosecution Team (Prosecution Team) and the City (together, the Parties).

Section II: RECITALS

2. The City owns and operates the sanitary sewer system of the City and provides wastewater conveyance and treatment services to 15 other cities and special districts. The sanitary sewer system serves approximately 1.3 million residents over 340 square miles and includes approximately 3,000 miles of sewer mains and 73 pump stations.
3. Pump Station 1 (PS1) is located at 3550 East Harbor Drive in National City, California, and transports wastewater from the South Bay region northward through a major pipeline known as the South Metropolitan Interceptor (SMI). PS1 was put into operation in 1963 and has six vertical shaft-driven centrifugal pumps. On average during dry weather, PS1 transports 40-50 million gallons a day (MGD) of wastewater using two pumps. PS1 is the City's second largest wastewater pump station and has a maximum pumping capacity of 160 MGD. City assets at PS1, the siphon barrels, and the north and south siphon transition structures are collectively referred to as "the Facilities".
4. The City is enrolled in the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ (2006 Statewide General Order), which regulates all entities that own or operate a sanitary sewer system greater than one mile in length that collects or conveys untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. Provision D.8 of the 2006 Statewide General Order states that the Enrollee shall properly manage, operate, and maintain all parts of the sanitary sewer system owned or operated by the Enrollee, and shall ensure that the

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system operators (including employees, contractors, or other agents) are adequately trained and possess adequate knowledge, skills, and abilities.

5. On December 6, 2022, the State Water Resources Control Board adopted Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems, Order No. 2022-0103-DWQ (2022 Statewide General Order). The 2022 Statewide General Order is effective June 5, 2023. Once effective, the 2022 Statewide General Order supersedes the 2006 Statewide General Order. Under section 2.1 of the 2022 Statewide General Order, the City is required to certify continuation of existing regulatory coverage within the 60-days-prior-to the effective date of the order.
6. Section 5.19 of the 2022 Statewide General Order contains a requirement similar to 2006 Statewide General Order, Provision D.8. Section 5.19 of the 2022 Statewide General Order states, "To prevent discharges to the environment, the Enrollee shall maintain in good working order, and operate as designed, any facility or treatment and control system designed to contain sewage and convey it to a treatment plant."
7. The City is alleged to have violated 2006 Statewide General Order, Provision D.8 and 2022 Statewide General Order, section 5.19. The 2022 Statewide General Order is expected to be in effective at the time of the CDO's adoption. The specific alleged violations are described in the Proposed CDO, which is attached hereto and incorporated by reference.
8. Section 13301 of the California Water Code (Water Code) states, in relevant part, that: "When a regional board finds that a discharge of waste is taking place, or threatening to take place, in violation of requirements or discharge prohibitions prescribed by the regional board or the state board, the board may issue an order to cease and desist and direct that those persons not complying with the requirements or discharge prohibitions (a) comply forthwith, (b) comply in accordance with a time schedule set by the board, or (c) in the event of a threatened violation, take appropriate remedial or preventive action...Cease and desist orders may be issued directly by a board, after notice and hearing."
9. The Parties have engaged in settlement negotiations and agree to present this Stipulation and Proposed CDO to the San Diego Water Board for adoption as decision by settlement, pursuant to Government Code section 11415.60.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **Jurisdiction:** The Parties agree the San Diego Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

11. **Waiver of Hearing:** The City has been informed of the rights provided by Water Code section 13301, and hereby waives its right to a full evidentiary hearing before the San Diego Water Board, and agrees to have the item heard by the San Diego Water Board as an uncontested item.
12. **Semi-Annual Reports:** The Proposed CDO requires submittals of semi-annual reports detailing progress with the tasks identified in Proposed CDO, Table 2. The City stipulates to the burden, including the costs of these reports, being outweighed by the needs and benefits to be obtained from the reports.
13. **Attorneys' Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
14. **Interpretation:** This Stipulation and Proposed CDO shall be construed as if the Parties prepared each jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
15. **Advocating for Adoption of the Proposed CDO:** The Parties expect the San Diego Water Board to consider adoption of the Proposed CDO on June 14, 2023. The Prosecution Team agrees to advocate in support of the Proposed CDO to the San Diego Water Board by having a representative appear before the San Diego Water Board at a public meeting to consider adoption of the Proposed CDO, and to speak in support of the Proposed CDO, as allowed. The City agrees to not oppose adoption of the Proposed CDO before the San Diego Water Board and agrees to have a representative available to appear before the San Diego Water Board at the public meeting to convey its agreement to enter into this Stipulation and support for adoption of the Proposed CDO, as necessary. If the Proposed CDO is on the consent calendar, the Parties agree to not request removal of the Proposed CDO from the consent calendar.
16. **Matters Covered:** This Stipulation and Proposed CDO concerns the issuance of a Cease and Desist Order pursuant to Water Code section 13301. This Stipulation and Proposed CDO do not preclude the San Diego Water Board or any other state, local or federal agency from seeking to impose civil liability for any alleged violations in the Proposed CDO or any future violations. In addition, this Stipulation and Proposed CDO does not preclude the San Diego Water Board or any other state, local or federal agency from requiring cleanup pursuant to Water Code section 13304, or from taking any other action to abate the effects of the discharge, as allowed by law.
17. **Modification:** This Stipulation shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing and signed by all Parties. The Parties acknowledge that if the San Diego Water Board provides prior notice to the City, the San Diego Water Board may make minor, non-substantive amendments to the Proposed CDO prior to adoption and without approval by the Parties, including assignment of a final

order number. The Parties agree that any substantive revisions to the Proposed CDO must be agreed to by all Parties and approved by the San Diego Water Board.

18. If the Proposed CDO Does Not Take Effect: In the event that the Proposed CDO does not take effect because substantive revisions to the Proposed CDO are not agreed upon by all Parties, it is not approved by the San Diego Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties agree that this Stipulation will be void and acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board to determine whether to issue a Cease and Desist Order, unless the Parties agree otherwise. The Parties agree that California Evidence Code sections 1152 and 1154 apply to oral and written statements and agreements made during the course of settlement discussions. The Parties agree to waive the following objections based on settlement communications in this matter:

- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors¹ and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that the City may object to members of the Prosecution Team serving as advisors to the San Diego Water Board in any such subsequent administrative or judicial proceeding or hearing and may object to the San Diego Water Board members or their advisors participation in a contested evidentiary hearing on grounds not related to the settlement process addressed in this paragraph; or
- b. Laches or delay or other equitable defenses based on the time-period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

19. Waiver of Right to Petition: The City hereby waives its right to petition the San Diego Water Board's adoption of the Proposed CDO for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

20. The City's Covenant Not to Sue: The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed and resolved by this Stipulation or Proposed CDO. This provision does not alter or

¹ Reference to San Diego Water Board members means board members as defined by Water Code section 13201. Reference to advisors means San Diego Water Board staff designated to advise the San Diego Water Board members, which specifically excludes San Diego Water Board staff that are members of the Prosecution Team.

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apply to the City's rights to petition, challenge, object to, sue or defend against any future San Diego Water Board actions that the San Diego Water Board may take against the City.

21. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
22. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
23. **Effective Date:** This Stipulation is effective and binding on the Parties upon execution. The Proposed CDO, as may be modified in accordance with Paragraph 17, shall be effective upon issuance by the San Diego Water Board.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
San Diego Region Prosecution Team**

By:

KELLY DORSEY, P.G., Assistant Executive Officer

CITY OF SAN DIEGO

By:

Approved As To Form By:

**ERIC K. DARGAN,
Chief Operating Officer**

**MELISSA ABLES,
Chief Deputy City Attorney**

Attachment 1: Cease and Desist Order No. R9-2023-0016 (TENTATIVE)