

# Attachment A to Administrative Civil Liability Order No. R9-2023-XXXX: Liability Methodology

## A. Enforcement Policy Background

The State Water Resources Control Board (State Water Board) adopted updates to the [Water Quality Enforcement Policy](#)<sup>1</sup> (Enforcement Policy) in 2017 with the goal to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in the most fair, efficient, effective, and consistent manner. According to the Enforcement Policy, enforcement is a critical component in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Formal enforcement should always result when a non-compliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. Formal enforcement should be used as a tool to maintain a level playing field for those who comply with their regulatory obligations by setting appropriate civil liabilities for those who do not.

California Water Code (Water Code) section 13385(e) requires the San Diego Water Board to consider several factors in determining administrative civil liability, including the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Enforcement Policy incorporates these factors in a methodology for determining administrative civil liability in instances of noncompliance. This document describes the methodology and factors determined by the San Diego Water Board's Prosecution Team (Prosecution Team) for each of the alleged violations presented below.

## B. Site Background

The Vista Pacific construction site (Site) is a 3.5-acre residential housing project located approximately 400 feet northeast of the Rancho Del Oro Drive and Vista Way intersection in Oceanside, California. The Site is located on a previously undeveloped, steep hillside, which had a natural creek bisect the property before construction began. The Site receives run-on directly from the existing Buena Hills development and City of Oceanside's (City's) municipal separate storm sewer system (MS4) located immediately east of the Site. Runoff from the Site enters the City's MS4 via inlets on Rancho Del Oro

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<sup>1</sup> A copy of the 2017 Enforcement Policy is available at: [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Drive and Vista Way and discharges directly to Buena Vista Creek and subsequently Buena Vista Lagoon, a sensitive waterbody with important ecological functions. Buena Vista Creek and Buena Vista Lagoon are waters of the United States (U.S.).

The Site property owner is Quality Investors 1 2016 LLC, which is managed by David G. Epstein. David G. Epstein is the Legally Responsible Person and enrolled the Site in State Water Board Order No. 2009-0009-DWQ, NPDES No. CAS000002 (as amended), *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated With Construction and Land Disturbance Activities* (Construction General Permit)<sup>2</sup> on March 23, 2018. The Site was assigned Waste Discharge Identification No. 9 37C382834. According to the Stormwater Multiple Application and Report Tracking System (SMARTS) database, construction began at the Site on April 13, 2020, and is scheduled to be completed by September 30, 2024. Quality Investors 1 2016 LLC and David G. Epstein (Dischargers) are responsible for compliance with the Construction General Permit.

The Site is in the Carlsbad Watershed Management Area, Buena Vista Creek hydrologic subarea (904.21) approximately 0.3 miles upstream of Buena Vista Creek, which drains to Buena Vista Lagoon less than 2 miles away. As designated in the *Water Quality Control Plan for the San Diego Basin* (Basin Plan), Buena Vista Creek supports many beneficial uses, namely agricultural supply (AGR), industrial service supply (IND), rare, threatened, or endangered species habitat (RARE), water contact (REC-1) and non-contact recreation (REC-2), warm freshwater habitat (WARM) and wildlife habitat (WILD). Buena Vista Lagoon supports many beneficial uses, namely biological habitat of special significance (BIOL), estuarine habitat (EST), marine habitat (MAR), rare, threatened, or endangered species habitat (RARE), water contact (REC-1) and non-contact recreation (REC-2), warm freshwater habitat (WARM) and wildlife habitat (WILD). Because the Site's receiving waters support multiple ecologically important beneficial uses, and in accordance with San Diego Water Board Resolution No. [R9-2017-0030](#), the San Diego Water Board has identified Buena Vista Creek and Buena Vista Lagoon as key areas and a priority for protection within the region.

### C. Violation 1: Failure to Manage Run-on in Violation of Provision F of Attachment D to the Construction General Permit

The Prosecution Team alleges that the Dischargers violated Provision F of Attachment D to the Construction General Permit by failing to control run-on to minimize or prevent pollutants in stormwater discharges to the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard on at least 2 different days, December 14 and 24, 2021. Provision F of Attachment D to the Construction General Permit states that Dischargers must "effectively manage all run-

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<sup>2</sup> A copy of the Construction General Permit is available at: [https://www.waterboards.ca.gov/water\\_issues/programs/stormwater/docs/constpermits/wqo\\_2009\\_0009\\_complete.pdf](https://www.waterboards.ca.gov/water_issues/programs/stormwater/docs/constpermits/wqo_2009_0009_complete.pdf)

on, all runoff within the site and all runoff that discharges off the Site. Run-on from offsite shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations in this General Permit” to minimize or prevent pollutants in stormwater through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. The alleged violation is subject to a maximum administrative civil liability of \$10,000 per day of violation under Water Code section 13385(a)(2) and (c).

For background, between March 10, 2021, and August 13, 2021, the City issued five administrative citations and other enforcement actions to the Dischargers for repeated failure to implement erosion and sediment control best management practices (BMPs) at the Site, and control run-on from the Buena Hills neighborhood to the east. The construction project at the Site includes installation of a City-approved 32-inch diameter storm drain pipe and related infrastructure to collect runoff from Mira Pacific Drive and connect it to the City’s MS4 on Rancho Del Oro Drive; this major storm drain pipe effectively replaced what was once a natural creek. The storm drain pipe was designed to be underground, beneath the construction site, allowing stormwater runoff from the Buena Hills community to flow beneath the site without contacting disturbed soil.

The Dischargers commenced construction at the Site in 2020 but failed to install the storm drain infrastructure ahead of the 2021-2022 rainy season. The volume of runoff from the existing 20-acre Buena Hills neighborhood would have necessitated storm drain installation as the primary and most effective means for run-on control and flood management. Even though the Dischargers’ Stormwater Pollution Prevention Plan (SWPPP; a site-specific document that is required by the Construction General Permit) included alternative strategies for run-on management, the Dischargers did not implement any of them. Instead, the Dischargers dug an impromptu dirt pit at a depression in the center of the disturbed Site to capture run-on from the Buena Hills neighborhood. Flows to the pit and from the pit lacked an effective combination of erosion and sediment control BMPs and were not in compliance with the effluent limitations of the Construction General Permit. The pit was not featured in the Dischargers’ SWPPP or City-approved erosion control plans. In contrast, the pit was constructed on an impromptu basis in preparation for impending storms but was not engineered to satisfy minimum run-on volumes. The pit was never approved by the City or the Qualified SWPPP Developer (QSD). This is contrary to the SWPPP, which requires explicit approval from the QSD for alternative strategies for run-on management.

As a result of the Dischargers’ failure to effectively manage Site run-on, during intense storms in December 2021, two major unauthorized discharge events occurred at the Site when run-on from the Buena Hills neighborhood filled and overtopped the pit and discharged off-site. These unauthorized discharges are also subject to penalties, as discussed under Violation 2.

The discharges associated with the overflowing pit were avoidable and partly caused by the Dischargers' failure to implement its own SWPPP. Section 2.3 of the Dischargers' SWPPP specifically states:

*Run-on shall be prevented from flowing through areas that are disturbed by construction until an onsite storm drain conveyance system is to connect to the existing 27" reinforced concrete pipe (RCP) outlet, and convey the runoff through the site.*

The Dischargers' SWPPP further explains that:

*Run-on areas will discharge to proposed portland cement concrete (PCC) drainage ditches, and be diverted around the project site or directed to the interior storm drain conveyance system such that it does not impact disturbed soil or material storage areas.... Within the project limits, to enhance the effectiveness of other BMPs [the contractor shall]:*

- *Divert storm water away from areas of soil disturbance,*
- *Divert storm water from top of disturbed slopes,*
- *Divert storm water around stockpiles, material storage areas or other sensitive areas and,*
- *Place BMPs so that diverted water is safely directed to an inlet, temporary conveyance, or infiltrated into a vegetated area.*

The Dischargers did not execute any of the strategies listed in its SWPPP. In contrast, the Dischargers disregarded the SWPPP and its run-on strategies when they dug the dirt pit to capture the run-on.

Moreover, the SWPPP further states:

*The Contractor may need temporary run-on control BMPs in other locations of the Project as work progresses to keep run-on from entering disturbed areas of the site. These measures will be determined by the contractor in the field: if measures are changed in the field, the SWPPP and the map in the construction trailer must be modified accordingly. **Use of alternative BMPs will require written approval by the QSD (emphasis added).***

The Dischargers failed to follow their own SWPPP when they did not obtain written approval by the QSD to use a dirt pit for run-on management, nor did they deploy any of the run-on strategies described in the SWPPP to achieve the BAT/BCT standard.

Ten-Step Penalty Calculation Methodology

**Step 1. Actual Harm or Potential for Harm for Discharge Violations**

This step is not applicable.

**Step 2. Assessment for Discharge Violations**

This step is not applicable.

**Step 3. Per Day Assessment for Non-Discharge Violations**

The “per day” factor is calculated for each non-discharge violation considering two factors: the potential for harm and the extent of deviation from the applicable requirements.

*Potential for Harm: Moderate*

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. A "moderate" potential for harm is appropriate when the characteristics of the violation have substantially impaired the San Diego Water Board's ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.

The circumstances of this violation presented a substantial threat to beneficial uses. The failure to control run-on to the BAT/BCT standard, as required in the Construction General Permit, has the potential to result, and in fact did result, in an unauthorized discharge of sediment-laden stormwater into the City's MS4, which discharges to Buena Vista Creek and Buena Vista Lagoon.

Buena Vista Creek and Buena Vista Lagoon are key areas for the habitat and ecosystem key beneficial uses. Buena Vista Creek is listed as impaired the [2020-2022 California Integrated Report](#) (Clean Water Act Section 303(d) List and 305(b) Report) due to benthic community effects, pyrethroids, bifenthrin, cyfluthrin, cypermethrin, indicator bacteria, nitrogen, phosphorus, selenium, total dissolved solids, and toxicity. Buena Vista Lagoon is listed as impaired for indicator bacteria, nutrients, sedimentation and siltation, and toxicity (the original listing status of Buena Vista Lagoon has not changed since 2016).<sup>3</sup> Discharges of waste containing sediment can contribute to these impairments directly, by causing or contributing to toxicity or benthic community effects in the receiving waters. Sediment discharges can also contribute to these impairments indirectly, by carrying pollutants that bind to sediment. The receiving waters are particularly sensitive to sediment discharges because they have no remaining assimilative capacity to accept additional loading for these impairments. The circumstances of the violation indicate a substantial potential for harm and a score of “moderate” is appropriate for this factor.

*Deviation from Requirement: Major*

The Enforcement Policy requires a determination of whether the violation represents a minor, moderate, or major deviation from the applicable requirements. A "major" deviation from requirement is appropriate when the requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).

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<sup>3</sup> The 2020-2022 California Integrated Report is available at: [https://www.waterboards.ca.gov/water\\_issues/programs/water\\_quality\\_assessment/2020\\_2022\\_integrated\\_report.html](https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html)

The Prosecution Team assigned a value of **major** for this penalty factor because the requirement to manage run-on was rendered ineffective by the Dischargers' failure to employ any of the strategies described in the SWPPP, resulting in substantial unauthorized discharges of sediment-laden stormwater that are discussed under Violation 2. Had the Dischargers employed any of the strategies described in the SWPPP to meet the BAT/BCT standard, the discharges may have been avoided or minimized. Instead, in contrast to the Dischargers' SWPPP instructions, the Dischargers dug a dirt pit without seeking approval from the QSD. Therefore, a major deviation from requirement is appropriate.

*Per Day Factor for Non-Discharge Violations = 0.55*

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.4 to 0.7 for non-discharge violations with a moderate potential for harm and major deviation from requirement. The Prosecution Team used 0.55, which is the midpoint of the range.

*Days of Violation = 2*

The Dischargers failed to implement BMPs to manage run-on from the onset of construction. Based on a project schedule provided to San Diego Water Board staff by the construction crew, storm drain and related infrastructure installation requires approximately 93 days to complete. Had the Dischargers embarked on this task at the onset of construction on April 13, 2020, the task could have been completed by July 15, 2020. The actual date of completion was on or about May 5, 2022. The Dischargers were out of compliance with the requirement to manage run-on for at least 660 days from July 15, 2020, to May 5, 2022. The Prosecution Team has exercised its prosecutorial discretion to allege only 2 days of violation when the failure to manage run-on caused and/or contributed to substantial unauthorized discharges of sediment-laden stormwater on December 14 and 24, 2021, as alleged in Violation 2 below.

*Initial Liability Amount = \$11,000*

The initial liability amount for the violation calculated on a per-day basis is:

$[\$10,000 \text{ (per day statutory maximum)} \times 0.55 \text{ (factor)} \times 2 \text{ (days of violation)}] = \mathbf{\$11,000}$

#### **Step 4. Adjustment Factors**

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the Dischargers' degree of culpability, the Dischargers' prior violation history, and the Dischargers' voluntary efforts to cleanup or its cooperation with regulatory authorities after the violation.

*Degree of Culpability = 1.4*

Higher penalties should result from intentional or negligent violations as opposed to accidental violations. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligent behavior. As discussed above, the Dischargers bear culpability for this violation because the SWPPP had specific run-on management strategies that the Dischargers failed to implement.

According to US Environmental Protection Agency (USEPA) guidance, SWPPPs are written documents that describe pollution prevention practices and activities that will be implemented on a construction site. It includes descriptions of the site and of each major phase of the planned activity, the roles and responsibilities of contractors and subcontractors, and the inspection schedules and logs. It is also a place to document changes and modifications to the construction plans and associated stormwater pollution prevention activities. Importantly, the SWPPP is a site-specific document that is meant to address site-specific challenges.

Here, the QSD was aware that the run-on from the Buena Hills neighborhood onto the Site would be substantial. This is apparent from the number of strategies for run-on management that are listed in the SWPPP. The QSD did not list a sediment basin, sediment trap, or a dirt pit as a suitable run-on management strategy, and the SWPPP requires QSD approval for the use of strategies outside those listed. The Dischargers' failure to consult its own site-specific SWPPP and QSD in preparation for storm events shows blatant disregard for its responsibility to implement pollution prevention concepts and the need to adhere to Construction General Permit requirements.

A reasonable and prudent person would have ensured run-on BMPs were available before construction began and implemented run-on management strategies listed in its own SWPPP. A score of 1.4 for this factor is appropriate due the Dischargers' degree of negligence and/or intentional misconduct.

*History of Violations = 1.0*

The Dischargers have no prior history of violating orders issued by the State Water Board or the San Diego Water Board.

*Cleanup and Cooperation = 1.0*

The cleanup and cooperation factor addresses a violator's voluntary efforts to cleanup and/or to cooperate with regulatory authorities after the violation. Adjustment should result in a multiplier between 0.75 to 1.5, using the lower multiplier for exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A reasonable and prudent response to a discharge violation should receive a neutral adjustment.

In January 2022, the City and San Diego Water Board met with the Dischargers to discuss the construction schedule and necessary actions to avoid additional unmanaged run-on. After the alleged violations occurred, the Dischargers started taking necessary actions in a timely manner, such as proceeding with storm drain installation, which was completed in May 2022. A score of 1 is appropriate because the Dischargers' response was reasonable and prudent, and consistent with the San Diego Water Board's expectations.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability Amount is determined by multiplying the initial liability by the Adjustment Factors in Step 4:

Total Base Liability Amount = [\$11,000 (initial liability amount) x 1.4 (degree of culpability) x 1.0 (history of violations) x 1.0 (cleanup and cooperation)] = **\$15,400.**

**Steps 6. Ability to Pay and Ability to Continue in Business**

See Section F, Factors Associated With All Violations.

**Step 7. Economic Benefit**

See Section F, Factors Associated With All Violations.

**Step 8. Other Factors as Justice May Require**

See Section F, Factors Associated With All Violations.

**Step 9. Maximum and Minimum Liability Amounts**

See Section F, Factors Associated With All Violations.

**Step 10. Final Liability Amount**

See Section F, Factors Associated With All Violations.

#### D. Violation 2: Failure to Prevent Unauthorized Discharges of Sediment-Laden Stormwater in Violation of Provisions III.B and V.A.2 of the Construction General Permit

The Prosecution Team alleges that the Dischargers violated Provision III.B. of the Construction General Permit on at least two different days because they failed to prevent unauthorized discharges of sediment-laden stormwater from the Site to waters of the U.S. (receiving waters) on December 14, and 24, 2021.

Provision III.B of the Construction General Permit prohibits all discharges except for stormwater and non-stormwater discharges specifically authorized by the Construction General Permit or another National Pollutant Discharge Elimination System (NPDES) permit. Provision V.A.2 of the Construction General Permit establishes a narrative effluent limitation that requires the Dischargers to minimize or prevent pollutants in stormwater discharges through the implementation of BMPs that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.

As described under Violation 1, the Dischargers failed to timely install a critical 32-inch diameter storm drain pipe beneath the Site, which would have allowed stormwater runoff from the upstream Buena Hills community to flow underground without contacting disturbed soil at the Site. Instead, the Dischargers deviated from the SWPPP when they failed to implement adequate means of run-on control to comply with the BAT/BCT standard, as required by the Construction General Permit. Such BMPs were documented in the Site's SWPPP and are described in industry literature such as BMP Handbooks published by the California Stormwater Quality Association (CASQA). Instead of employing any number of controls described in the SWPPP or CASQA literature, the Dischargers used a depression on the Site as an impromptu dirt pit for



run-on capture, approximately 12,000 cubic feet (89,766 gallons) in volume.<sup>4</sup> On at least December 14 and 24, 2021, the overflowing pit resulted in discharges of approximately 425,670 gallons of sediment-laden stormwater into the City's MS4 and caused flooding on public streets.<sup>5</sup> The December 14, 2021 discharge was so large that the City deployed emergency traffic control measures at the flooded intersection of Rancho Del Oro Drive and Vista Way to ensure public safety.

Because the Dischargers failed to meet the BAT/BCT standard through the implementation of BMPs, they failed to minimize or prevent pollutants in stormwater discharges, and hence violated Provision V.A.2. The Dischargers violated Provision III.B of the Construction General Permit by discharging sediment-laden stormwater not specifically authorized by the Construction General Permit or another NPDES permit.

The violation of the Construction General Permit's requirements subjects the Dischargers to administrative civil liability pursuant to Water Code section 13385(a)(2) and (c), which authorize the San Diego Water Board to impose administrative civil liability up to \$10,000 per day of violation, plus \$10 for each gallon exceeding 1,000 gallons discharged but not cleaned up.

#### Ten-Step Penalty Calculation Methodology

##### **Step 1. Actual Harm or Potential for Harm for Discharge Violations**

For discharge violations, the Enforcement Policy procedure consists of calculating a value using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement. Application of the three-factor scoring system to Violation 2 is set forth below.

##### *Factor 1: Degree of Toxicity of the Discharge = Moderate (2)*

The Enforcement Policy requires an evaluation, using a scale from zero to four (negligible to significant risk), of the degree of toxicity of the discharged material. The evaluation considers the physical, chemical, biological, and/or thermal characteristics of the discharge and the risk of damage the discharge could cause to the receptors or beneficial uses. A score of two or "moderate" degree of toxicity is appropriate when the discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of threat to potential receptors). "Potential receptors"

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<sup>4</sup> Estimate calculated using Google Earth areal image dated 2022, using estimates of 60 ft. and 40 ft. for length and width of the pit, and estimated depth of 5 ft. using City of Oceanside photos. (Document Handle Nos. 9460972, 9251040, 9349745 file BIPG9430).

<sup>5</sup> Some of the sediment-laden stormwater was captured in a subsequent pit that would eventually serve as a permanent, post-construction BMP. This pit was roughly 3,000 cubic feet in volume, using Google Earth areal image dated 2022 and estimates of 50 ft., and 20 ft. for length and width of basin, and estimated depth of 3 ft. using City of Oceanside photos (Document Handle Nos. 9572707 and 9251040).

are those identified considering human, environmental and ecosystem health exposure pathways.

The Prosecution Team assigned a “moderate” risk level for the discharges from the Site because the primary stormwater pollutant at construction sites is sediment. Sediment discharges can physically and chemically cause harmful effects to beneficial uses because sediment in receiving waters can interfere with the penetration of light, and adversely affect respiration and photosynthesis which aquatic organisms depend upon for survival. Sediment deposits can smother aquatic habitat and breeding areas, and result in habitat conversion over time.

*Factor 2: Potential for Harm to Beneficial Uses = Moderate (3)*

The Enforcement Policy requires a determination, using a scale from zero to five (negligible to major harm), of the actual or potential harm to beneficial uses in the affected receiving water body. This risk may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation(s). A score of three or “moderate” is typified by observed or reasonably expected potential impacts, but harm or potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects.

The receiving waters of Buena Vista Creek and Buena Vista Lagoon are listed as impaired on the 2020-2022 California Integrated Report, indicating limited assimilative capacity to accept additional pollutant loading. Buena Vista Lagoon is especially vulnerable to discharges of sediment. As explained above, the discharges from the Site were substantial in volume. The habitat and ecosystem beneficial uses of the receiving waters (i.e. RARE, WARM, WILD, BIOL, EST) were likely impacted by the discharges. Therefore, the Prosecution Team used a score of three because potential impacts were reasonably expected.

*Factor 3: Susceptibility to Cleanup or Abatement = 1*

A score of one is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if the Dischargers failed to cleanup 50 percent or more of the discharge within a reasonable amount of time. In this case, the discharge of sediment-laden stormwater quickly flowed offsite during intense storms in December 2021. The discharges were not susceptible to cleanup and abatement when they discharged into an MS4 inlet.

The Potential for Harm score for the discharges from the Site for the discharge events occurring on December 14, and 24, 2021 is:

Potential for Harm = 2 [Factor 1] + 3 [Factor 2] + 1 [Factor 3] = **6**

**Step 2. Assessment for Discharge Violations**

The Dischargers’ initial liability is based on the potential for harm score from Step 1 and the extent of deviation from requirement. The deviation from requirement must be characterized as either minor, moderate, or major.

The deviation from requirement is **major** because Provision V.A.2 of the Construction General Permit establishes a narrative effluent limitation that requires a discharger to minimize or prevent pollutants in stormwater discharges through the implementation of BMPs that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Failure to install essential storm drain infrastructure in a timely manner or implement effective alternative run-on controls specified in the SWPPP or CASQA literature resulted in run-on contact with disturbed soil which was discharged from the Site, rendering the requirement ineffective.

Provision III.B of the Construction General Permit prohibits all discharges except for stormwater and non-stormwater discharges specifically authorized by the Construction General Permit or another NPDES permit. The substantial discharges of sediment-laden stormwater were not authorized because little to no BMPs were implemented to meet the BAT/BCT standard, resulting in a major deviation from requirement.

#### *Per-Day Liability*

The per-day liability assessment is the per day factor from Table 2 of the Enforcement Policy multiplied by the maximum per day amount allowed under the Water Code. Using a potential for harm score of 6, and a major deviation from requirement, the per-day factor from Table 2 is 0.28.

The initial liability assessment calculated on a per day basis for this violation is:

$$[\$10,000 \text{ (per day statutory maximum)} \times 0.28 \text{ (per day factor)} \times 2 \text{ (days of violation)}] = \mathbf{\$5,600}$$

#### *Per-Gallon Liability*

The per-gallon liability assessment is the per gallon factor from Table 1 of the Enforcement Policy multiplied by the maximum per gallon liability allowed under the Water Code, multiplied by the number of gallons minus the first 1,000 gallons discharged and not cleaned up. Using a potential for harm score of 6 and a major deviation from requirement, the per gallon factor from Table 1 is 0.28. In accordance with guidance for High Volume Discharges in the Enforcement Policy, for discharges of construction stormwater between 100,000 and 2 million gallons, the Prosecution Team is electing to use a maximum penalty amount of \$2.00 per gallon.

The Prosecution Team calculated unauthorized discharges of approximately 425,670 gallons of sediment-laden stormwater on December 14 and December 24, 2021, from the Site.<sup>6</sup> The discharges were primarily caused by the failure to manage run-on.

The initial liability assessment calculated on a per gallon basis for this violation is:

$$[\$2.00 \text{ (high volume adjustment)} \times 0.28 \text{ (per day factor)} \times (425,670 - 1,000) \text{ gallons}] = \mathbf{\$237,815}$$

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<sup>6</sup> The methodology used to support the volume calculation is described in Document Handle 9618028.

*Initial Base Liability*

The total per-day and per-gallon liability assessment for this violation is:

[\$5,600 (per-day liability) + \$237,815 (per-gallon liability)] = **\$243,415**

**Step 3. Per Day Assessment for Non-Discharge Violations**

This step is not applicable.

**Step 4. Adjustment Factors**

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the Dischargers' degree of culpability, the Dischargers' prior violation history, and the Dischargers' voluntary efforts to clean up and cooperate with regulatory authorities after the violation.

*Degree of Culpability = 1.4*

Higher penalties should result from intentional or negligent violations as opposed to accidental violations. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligence behavior.

The Dischargers bear culpability for this violation. The failure to install underground storm drain infrastructure, or alternative run-on controls, before grading and disturbing land at the Site was irresponsible and negligent. A major discharge from the Site was foreseeable because the storm drain infrastructure was meant to replace an existing creek, and the construction site receives run-on from the approximately 20-acre Buena Hills neighborhood. The decision to proceed with land disturbing activities without effective means of run-on management caused major discharges of sediment-laden water during multiple storms in December 2021. A reasonable and prudent person would have implemented run-on controls prior to, or immediately after initiating soil disturbing activities.

Additionally, the City sent numerous citations to the Dischargers because they did not have adequate erosion and sediment BMPs, and the unconnected storm drain posed a threat of a discharge. On August 24, 2021, the City requested that San Diego Water Board staff, Erica Ryan, assist with getting the Dischargers into compliance. Ms. Ryan contacted the Dischargers on September 3, 2021, November 18, 2021, and December 16, 2021, warning of potential enforcement should the Dischargers fail to prepare for rain events. Noncompliance continued, and the San Diego Water Board issued Notice of Violation (NOV) No. R9-2022-0017 on January 4, 2022, and requested the Dischargers send photos showing progress with run-on management by January 14, 2022. The Dischargers submitted photos on January 16, 2021, but storm drain installation, which would have been the primary method to effectively manage run-on, was incomplete, and the Dischargers offered no other effective run-on management, leaving the site in violation and henceforth the threat of a future discharge that would further violate the Construction General Permit.

The Dischargers failed to recognize the urgency of the issue when both the City and the San Diego Water Board communicated numerous warnings. Absent the necessary infrastructure to manage run-on, a responsible and prudent person would have taken other measures to avoid a discharge of sediment-laden water, such as installing temporary v-ditches to direct run-on around the Site and minimize contact with disturbed soil. The only strategy the Dischargers deployed was to dig a dirt pit to capture run-on—a major deviation from the strategies outlined in the SWPPP. Both the City and the San Diego Water Board expressed concern regarding the legitimacy of the pit and the potential for failure, but the Dischargers did not attempt other methods of run-on control to avoid an unauthorized discharge. A score of 1.4 for this factor is appropriate.

*History of Violations = 1.0*

The Dischargers have no prior history of violating orders issued by the State Water Board or the San Diego Water Board.

*Cleanup and Cooperation = 1.0*

Following issuance of NOV No. R9-2022-0017, the City and San Diego Water Board met with the Dischargers to discuss the construction schedule and necessary actions to avoid additional discharges. After the alleged violations occurred, the Dischargers started taking necessary actions, namely proceeding with storm drain installation, which was completed in May 2022. This is consistent with the San Diego Water Board's expectations for a reasonable and prudent response to a discharge violation.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability Amount is determined by multiplying the initial liability by the Adjustment Factors in Step 4:

Total Base Liability Amount = [\$243,415 (initial liability amount) x 1.4 (degree of culpability) x 1.0 (history of violations) x 1.0 (cleanup and cooperation)] = **\$340,781.**

**Steps 6. Ability to Pay and Ability to Continue in Business**

See Section F, Factors Associated With All Violations.

**Step 7. Economic Benefit**

See Section F, Factors Associated With All Violations.

**Step 8. Other Factors as Justice May Require**

See Section F, Factors Associated With All Violations.

**Step 9. Maximum and Minimum Liability Amounts**

See Section F, Factors Associated With All Violations.

**Step 10. Final Liability Amount**

See Section F, Factors Associated With All Violations.

### E. Violation 3: Discharge of Sediment-Laden Stormwater in Violation of Provisions III.A of the Construction General Permit

The Prosecution Team alleges that the Dischargers violated Provision III.A. of the Construction General Permit on at least two different days because it caused an unauthorized discharge of sediment-laden stormwater from the Site to waters of the United States (receiving waters) when it used a pump to de-water the dirt pit on December 28 and 30, 2021, without evaluating BMP effectiveness or taking corrective actions to lower turbidity values, threatening to cause a condition of pollution.

Provision III.A of the Construction General Permit states that dischargers “shall not violate any discharge prohibitions contained in applicable Basin Plans or statewide water quality control plans.” The applicable water quality control plan for which Provision III.A refers is the *Water Quality Control Plan for the San Diego Basin* (Basin Plan).<sup>7</sup> Basin Plan Chapter 4 contains several distinct Discharge Prohibitions designed to protect receiving water quality. Basin Plan Discharge Prohibition 1 states, “The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Code section 13050, is prohibited.” “Pollution” means an “alteration of the quality of the waters of the state by waste to a degree which unreasonably affects,” among other things, the waters for beneficial uses. (Water Code Section 13050(I)). Additionally, Basin Plan Discharge Prohibition 14 states, “The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.”

The Construction General Permit contains Numeric Action Levels (NALs) that are designed to prompt a discharger to evaluate the effectiveness of BMPs and make corrective actions at a construction site to minimize the discharge of pollutants and to protect beneficial uses and receiving waters from the adverse effects of construction-related stormwater discharges. Specifically, NALs consist of pH and turbidity measurements of a site’s discharges to determine whether pollutant source(s) associated with construction activity have the potential to cause exceedances of receiving water quality objectives. Provision V of the Construction General Permit sets the NAL for turbidity at 250 Nephelometric Turbidity Units (NTU). If the NAL is exceeded, the Dischargers are required to immediately implement corrective actions so that discharges from the Site do not cause or contribute to exceedances of water quality objectives of Buena Vista Creek or Buena Vista Lagoon. The turbidity water quality objective for these receiving waters is 20 NTU. Thus, the NAL is one order of magnitude higher than the water quality objective.

After the December storms passed, the dirt pit remained full of captured stormwater. The Dischargers drained the pit by pumping the sediment-laden stormwater into a manhole connected to the City’s MS4 for several days after the storms. According to the

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<sup>7</sup> A copy of the Basin Plan is available at:

[https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/basin\\_plan/](https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/)

Site's Qualified SWPPP Practitioner (QSP), Dustin Glazier, in an email dated August 23, 2022 to Christina Arias of the San Diego Water Board, the turbidity exceeded the Construction General Permit's NAL of 250 NTU on December 28 and 30, 2021 (average values of 348, 292, and 426 NTU were recorded at three sampling events over the course of those two days). Even though the QSP consistently measured elevated turbidity at the discharge point, the Dischargers continued to pump the stored water out of the dirt pit and into the MS4 without evaluating the effectiveness of the Site's BMPs or taking corrective actions to reduce turbidity concentrations.

Discharges of waste from both days threatened to cause a condition of pollution to downstream receiving waters because the discharges from the Site contained earthen material, at levels far exceeding the turbidity receiving water quality objective designed to protect aquatic life beneficial uses (i.e. RARE, WARM, WILD, BIOL, EST). These concentrated flows occurred after the storm events and thus flowed undiluted, and unreasonably affected, or threatened to affect, beneficial uses of Buena Vista Creek and Buena Vista Lagoon.

#### Ten-Step Penalty Calculation Methodology

##### **Step 1. Actual Harm or Potential for Harm for Discharge Violations**

For discharge violations, the Enforcement Policy procedure consists of calculating a value using a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement. Application of the three-factor scoring system to Violation 2 is set forth below.

##### *Factor 1: Degree of Toxicity of the Discharge = Moderate (2)*

The Enforcement Policy requires an evaluation, using a scale from zero to four (negligible to significant risk), of the degree of toxicity of the discharged material. The evaluation considers the physical, chemical, biological, and/or thermal characteristics of the discharge and the risk of damage the discharge could cause to the receptors or beneficial uses. A score of two or "moderate" degree of toxicity is appropriate when the discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of threat to potential receptors). "Potential receptors" are those identified considering human, environmental and ecosystem health exposure pathways.

The Prosecution Team assigned a "moderate" risk level for the discharges from the Site because the primary stormwater pollutant at construction sites is sediment. Sediment discharges can physically and chemically cause harmful effects to beneficial uses because sediment in receiving waters can reduce the sunlight for aquatic plants, clog fish gills, smother aquatic habitat and breeding areas, and transport construction related pollutants such as nutrients, metals, oils, and grease.

*Factor 2: Potential for Harm to Beneficial Uses = Moderate (3)*

The Enforcement Policy requires a determination, using a scale from zero to five (negligible to major harm), of the actual or potential harm to beneficial uses in the affected receiving water body. This risk may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation(s). A score of three or “moderate” is typified by observed or reasonably expected potential impacts, but harm or potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects.

This sediment-laden stormwater was discharged first to the City’s MS4 via a manhole at the Site, and subsequently Buena Vista Creek (approximately 0.3 miles downstream) and Buena Vista Lagoon. The receiving waters of Buena Vista Creek and Buena Vista Lagoon are listed as impaired on California’s 2020-2022 Integrated Report, indicating limited assimilative capacity to accept additional pollutant loading. Buena Vista Lagoon is especially vulnerable to discharges of sediment. As explained above, the undiluted discharges of waste from the Site were above the NAL of 250 NTU, which is an order of magnitude higher than the Basin Plan water quality objective of 20 NTU that was established to support the habitat and ecosystem beneficial uses of the receiving waters (i.e. RARE, WARM, WILD, BIOL, EST). Waste discharges from the Site contained earthen material in amounts that caused turbidity, and likely unreasonably affected the beneficial uses of Buena Vista Creek and Lagoon. Therefore, the Prosecution Team used a score of three because potential impacts were reasonably expected from this discharge of waste.

*Factor 3: Susceptibility to Cleanup or Abatement = 1*

A score of one is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if the Dischargers failed to cleanup 50 percent or more of the discharge within a reasonable amount of time. In this case, the Dischargers intentionally used a pump to dewater the dirt pit directly into a manhole connected to the City’s MS4, rendering it not susceptible to cleanup or abatement.

The Potential for Harm score for the discharges from the Site for the discharges occurring on December 28 and 30, 2021 is:

Potential for Harm = 2 [Factor 1] + 3 [Factor 2] + 1 [Factor 3] = **6**

**Step 2. Assessment for Discharge Violations**

The Dischargers’ initial liability is based on the potential for harm score from Step 1 and the extent of deviation from requirement. The deviation from requirement must be characterized as either minor, moderate, or major.

The deviation from requirement is **major**. Provision III.A of the Construction General Permit prohibits the violation of any discharge prohibition contained in the Basin Plan or statewide water quality control plans. As discussed above, the unauthorized discharges of undiluted turbid, sediment-laden stormwater caused, or threatened to cause, adverse effects on the beneficial uses of Buena Vista Creek and Buena Vista Lagoon, in



violation of Basin Plan Prohibitions 1 and 14. Therefore, Provision III.A of the Construction General Permit was rendered ineffective in its essential function.

*Per-Day Liability*

The per-day liability assessment is the per day factor from Table 2 of the Enforcement Policy multiplied by the maximum per day amount allowed under the Water Code. Using a potential for harm score of 6, and a major deviation from requirement, the per-day factor from Table 2 is 0.28.

The initial liability assessment calculated on a per day basis for this violation is:

$$[\$10,000 \text{ (per day statutory maximum)} \times 0.28 \text{ (per day factor)} \times 2 \text{ (days of violation)}] = \mathbf{\$5,600}$$

*Per-Gallon Liability*

The Prosecution Team exercised its discretion and did not elect to calculate a per-gallon liability for this violation.

*Initial Base Liability*

The total per-day liability assessment for this violation is: **\$5,600**

**Step 3. Per Day Assessment for Non-Discharge Violations**

This step is not applicable.

**Step 4. Adjustment Factors**

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the Dischargers' degree of culpability, the Dischargers' prior violation history, and the Dischargers' voluntary efforts to clean up and cooperate with regulatory authorities after the violation.

*Degree of Culpability = 1.4*

Higher penalties should result from intentional or negligent violations as opposed to accidental violations. The Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligence behavior.

The Dischargers bear culpability for this violation. Following the December 2021 storms, the Dischargers used multiple pumps to dewater the dirt pit and discharge sediment-laden stormwater into the City's MS4 in excess of the NALs. There is no evidence that the Dischargers conducted an evaluation of the effectiveness of the BMPs or took corrective actions at the Site.

A reasonable or prudent person would have sought alternatives before knowingly discharging sediment-laden stormwater offsite, such as allowing the sediment time to settle or by using a filtration BMP. These strategies and others are readily available in the CASQA BMP Handbooks. Had the Dischargers implemented any strategies available in the literature, the discharge of sediment-laden stormwater in excess of the Site's NALs could have been avoided. A score of 1.4 for this factor is appropriate.

*History of Violations = 1.0*

The Discharger has no prior history of violating orders issued by the State Water Board or the San Diego Water Board.

*Cleanup and Cooperation = 1.0*

Following issuance of NOV No. R9-2022-0017, the City and San Diego Water Board met with the Dischargers to discuss the construction schedule and necessary actions to avoid additional discharges. After the alleged violations occurred, the Dischargers started taking necessary actions, namely proceeding with storm drain installation, which was completed in May 2022. This is consistent with the San Diego Water Board's expectations for a reasonable and prudent response to a discharge violation.

**Step 5. Determination of Total Base Liability Amount**

The Total Base Liability Amount is determined by multiplying the initial liability by the Adjustment Factors in Step 4:

Total Base Liability Amount = [\$5,600 (initial liability amount) x 1.4 (degree of culpability) x 1.0 (history of violations) x 1.0 (cleanup and cooperation)] = **\$7,840.**

**Steps 6. Ability to Pay and Ability to Continue in Business**

See Section F, Factors Associated With All Violations.

**Step 7. Economic Benefit**

See Section F Factors Associated With All Violations.

**Step 8. Other Factors as Justice May Require**

See Section F, Factors Associated With All Violations.

**Step 9. Maximum and Minimum Liability Amounts**

See Section F, Factors Associated With All Violations.

**Step 10. Final Liability Amount**

See Section F, Factors Associated With All Violations.

**F. Factors Associated With All Violations**

**Step 6. Ability to Pay and Ability to Continue in Business**

The Enforcement Policy states that the Total Base Liability Amount may be adjusted to address ability to pay or to continue in business if the San Diego Water Board has sufficient financial information necessary to assess a violator's ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on a violator's ability to continue in business. A violator's ability to pay an administrative civil liability is determined by its revenues and assets.

In most cases, it is in the public interest for a violator to continue in business and bring operations into compliance. While the Water Code requires the San Diego Water Board

to consider this issue when imposing civil liability, it does not require the Board to set civil liabilities at levels that allow a violator to continue in business. Civil liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance, whether or not the violator is able to continue in business after incurring the liability.

Quality Investors 1 2016 LLC owns the Site being developed. Based on real property tax assessor records for 2022, the Site is worth approximately \$798,360. The property value will increase when construction is completed. Publicly available financial information for the Quality Investors 1 2016 LLC is limited, but given the purchase price of the Site and the costs of construction, the Prosecution Team's preliminary financial investigation suggests that Quality Investors 1 2016 LLC can pay the proposed liability and continue in business.

A review of public information to determine David G. Epstein's ability to pay the proposed liability was inconclusive. No adjustment is proposed because the Dischargers are jointly and severally liable and the Prosecution Team has made an initial showing that Quality Investors 1 2016 LLC has the ability to pay the proposed liability. The burden of proof on this factor shifts to the Dischargers to produce sufficient evidence that they lack an ability to pay.

### **Step 7. Economic Benefit**

The economic benefit is any savings or monetary gains from noncompliance. The Dischargers gained an economic benefit by delaying installation of the critical storm drain infrastructure, which is estimated to cost approximately \$441,211 according to a bid proposal provided to the City by a third-party contractor in December 2021. The City, fearing additional flooding hazards, sought a bid from a third party to complete the work if the Dischargers were unable or unwilling to complete the storm drain installation. The cost estimate is conservative because some items that may have been required to complete the work were expressly excluded, such as the cost to obtain permits.

Work on the infrastructure resumed on February 8, 2022, and was expected to be completed on or around May 5, 2022. With a one-week margin of error, this equates to approximately 93 days for the necessary grading and installation of the storm drain infrastructure. Grading activities initially began at the Site on April 13, 2020, and storm drain work should have been a priority for completion. Had the Dischargers begun this work at the onset of construction, storm drain installation could have been completed within 93 days or by July 15, 2020. Completion of storm drain installation occurred on October 10, 2022. Using the USEPA model for economic benefit (BEN, version 2022.0.0), the Dischargers experienced an economic benefit of \$47,236 by delaying implementation 817 days.

The economic benefit is associated with alleged Violations 1, 2, and 3—had the Dischargers installed the storm drain infrastructure in a timely fashion, then it may have adequately managed run-on from the upstream communities and avoided unauthorized discharges of sediment-laden stormwater.

**Step 8. Other Factors as Justice May Require**

The Enforcement Policy allows an adjustment to the administrative civil liability, in consideration of the costs of investigating and enforcing the matter. Here, San Diego Water Board staff expended over 300 staff hours and accrued \$47,454 in staff costs associated with the investigation and preparation of Administrative Civil Liability Settlement Offer No. R9-2022-0065 and this Complaint. It is appropriate to increase the Total Base Liability Amount by \$47,454 for the three violations. The increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability Amount for the three violations, is warranted given the totality of the circumstances, and is intended to serve as a sufficient general and specific deterrent against future violations.

**Step 9. Maximum and Minimum Liability Amounts**

Maximum Liability -- A violation of the Construction General Permit's requirements subjects the Dischargers to administrative civil liability pursuant to Water Code section 13385(a)(2) and (c), which authorize the San Diego Water Board to impose administrative civil liability up to \$10,000 per violation per day, plus \$10 for each gallon exceeding 1,000 gallons discharged but not cleaned up.

Statutory maximum liability for Violation 1 = (660 days x \$10,000 per day) = \$6,600,000

Statutory maximum liability for Violation 2 (per day) = (2 days x \$10,000 per day) = \$20,000

Statutory maximum liability for Violation 2 (per gallon) = ([425,670 - 1,000] gallons x \$10 per gallon) = \$4,246,700

Statutory maximum liability for Violation 3 (per day) = (2 days x \$10,000 per day) = \$20,000

Statutory maximum liability for all Violations = **\$10,886,700**

Minimum Liability – Water Code section 13385 requires recovery of economic benefit. The Enforcement Policy states that the minimum liability should be at least ten percent higher than the economic benefit amount. Because the economic benefit is associated with all Violations, as discussed above, the minimum liability calculated below applies to all Violations, collectively.

Minimum liability for Violations 1, 2, and 3 = [\$47,236 + (\$47,236 X 10%)] = **\$51,960**

**Step 10. Final Liability Amount**

The Total Base Liability Amount for Violations 1, 2 and 3, is \$15,400, \$340,781, and \$7,840, respectively.

Based on the foregoing analysis, and consistent with the Enforcement Policy, the Final Liability Amount proposed is **\$411,475** (\$15,400 [Violation 1] + \$340,781 [Violation 2] + \$7,840 [Violation 3] + \$47,454 [staff costs]), which is in between the maximum and minimum liabilities.

## Evidence Relied Upon and Available Upon Request

<b>Exhibit No.</b>	<b>ECM Document Handle No.</b>	<b>Item</b>	<b>Date</b>
1	9440515	Vista Pacific Storm Water Quality Management Plan	02/27/17
2	9454696	Notice of Intent	03/15/18
3	9454698	Risk Level Determination	03/15/18
4	9574536	Memo: Estimated Stormwater Discharge from Portola Construction Site	12/30/19
5	9440511	Letter from B. Thomas (City of Oceanside) to D. Epstein describing previous citations and enforcement actions	08/13/21
6	9241823	Email from J. Gamble (City of Oceanside) to E. Ryan and L. Walsh (San Diego Water Board) requesting assistance	08/24/21
7	9251040	Email from E. Ryan to D. Epstein, first warning and Staff Enforcement Letter	09/03/21
8	9269301	Email from E. Ryan to J. Gamble describing phone call to Discharger and need to control run-on	09/07/21
9	9444154	Email and photos from J. Gamble describing escalated enforcement and unauthorized discharge	10/08/21
10	9444152	Email from E. Ryan to D. Epstein requiring additional monitoring and corrective actions	10/11/21

Exhibit No.	ECM Document Handle No.	Item	Date
11	9440559	Letter from City of Oceanside to D. Epstein describing lack of erosion controls	11/10/21
12	9437013	Email from E. Ryan to D. Epstein requiring response and corrective actions	11/18/21
13	9466270	3rd Party Storm Drain Bid	12/13/21
14	9436990	Email from J. Gamble to E. Ryan including films of December 14, 2021 discharge	12/15/21
15	9436949	Email from J. Gamble to E. Ryan including photos of December 26, 2021 discharge	12/27/21
16	9367465	Photos of December 28, 2021 Discharge using pumps	12/28/21
17	9367467	Post storm photos	12/28/21
18	9367402	Email from R. Rodman to C. Arias describing pumping of basin on December 15, 2021, December 27, 2021, and December 28, 2021	12/29/21
19	9349745	Photos from December 14, 2021 discharge event	12/30/21
20	9367451	Photos of December 24, 2021 discharge event	12/30/21
21	9367464	Video of December 24, 2021 discharge event	12/30/21

Exhibit No.	ECM Document Handle No.	Item	Date
22	9436928	Email from D. Glazier (South East Hydroseed) to E. Ryan describing turbidity measurements	01/03/22
23	9436854	Notice of Violation No. R9-2022-0017	01/05/22
24	9377178	Discharger Response to NOV	01/16/22
25	9436684	Email from D. Epstein claiming Trustee of Trust	02/03/22
26	9436697	Email from D. Epstein claiming Manager of Trust	02/03/22
27	9440513	Storm Water Pollution Prevention Plan (SWPPP) for Vista Pacific Construction Site, Amendment 4	02/07/22
28	9436657	Revised Vista Pacific Project Schedule	02/08/22
29	9441452	Land Vision Satellite Photo - Pre Construction	03/17/22
30	9446551	Email from E. Ryan to C.Arias describing construction sequencing	03/24/22
31	9460972	Google Satellite Photo of Ad-Hoc Dirt Pit	04/13/22
32	9495667	Settlement Offer No. R9-2022-0065	05/23/22
33	9515888	Discharger Response to Settlement Offer	06/21/22
34	9556406	Revocation of Settlement Offer	08/03/22

Exhibit No.	ECM Document Handle No.	Item	Date
35	9572617	Email from D. Glazier (South East Hydroseed) to C. Arias describing turbidity measurements	08/23/22
36	9572618	Email from C. Arias to C. Clemente describing phone call with City Inspector	08/23/22
37	9572620	Email from P. Pham to C. Arias concurring with BMP statements	08/23/22
38	9572707	Google Satellite Photo of Permanent Basin	08/23/22
39	9572709	Google Satellite Photo of Entire Site	08/23/22
40	9574461	Revised Staff Costs thru August 24, 2022	08/25/22
41	9574495	Rainfall Summary 12-14-21 to 12-30-21 (from sandiego.onerain.com)	08/25/22
42	9574539	NOAA Precipitation Frequencies	08/25/22
43	9574541	HEC-HMS Technical Reference Manual - CN Tables	08/25/22
44	9574543	USDA TR-55 Manual	08/25/22
45	9586644	Land Vision Property Detail Report 2022	09/12/22
46	9610047	Secretary of State LLC Info	10/07/22
47	9610048	CASQA Stormwater BMP Handbook	10/07/22
48	9618028	Estimated Volume Discharged on Dec. 14, Dec. 24 2021	10/12/22



<b>Exhibit No.</b>	<b>ECM Document Handle No.</b>	<b>Item</b>	<b>Date</b>
49	9659297	Declaration of C. Arias w/ Attachment	11/04/22
50	9659309	Economic Benefit Analysis	11/04/22