

**STATE OF CALIFORNIA  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION**

In the Matter of:

City of Beaumont	)	Mandatory Minimum Penalty Order
550 E. 6 <sup>th</sup> Street	)	Order No. R8-2015-0012
Beaumont, CA 92223	)	Stipulations for
Attn: Elizabeth M. Gibbs-Urtiaga	)	Settlement of Mandatory Minimum
City Manager	)	Penalties

**A. INTRODUCTION:**

This is a Mandatory Minimum Penalty (MMP) Order (hereinafter Order) presented to the Executive Officer of the Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), for consideration. This Order accepts the stipulations for settlement (Agreement) of an MMP Complaint (hereinafter "Complaint" that was issued as an Expedited Payment Letter) issued by the Regional Board's Division Chief to the City of Beaumont (City) (hereinafter Discharger).

**B. BACKGROUND:**

The Discharger owns and operates the Beaumont Wastewater Treatment Plant. The discharge of treated wastewater from the treatment plant is regulated under Order No. R8-2006-0003. On April 27, 2015, the Regional Board's Division Chief issued a Mandatory Minimum Penalty Complaint (issued as an Expedited Payment Letter) to the Discharger for alleged violations of effluent limitations set forth in Order No. R8-2006-0003 subject to MMPs under California Water Code (Water Code) section 13385(i). The Complaint recommends imposing a mandatory minimum penalty totaling \$48,000 for the alleged violations subject to MMPs as identified in Attachment 1 of the Complaint. The Complaint is attached hereto as Exhibit A and is incorporated by this reference. The Discharger responded to the Complaint, agreed to settle the alleged violations without further administrative proceedings, and proposed to participate in a Supplemental Environmental Project (SEP) as part of this Agreement. The SEP was proposed by the Santa Ana Watershed Project Authority and was approved by the Executive Officer as an acceptable SEP. Attachment 2 (Acceptance of Conditional Resolution and Waiver of Right to

Mandatory Penalty Order and Settlement Agreement  
City of Beaumont, Order No. R8-2015-0012

Hearing) to the Complaint was subsequently amended to incorporate the SEP and is included as Attachment 2A. This Agreement stipulates the terms and conditions for settlement of the Complaint.

**C. PARTIES TO THIS AGREEMENT:**

1. Regional Board's Prosecution Team represented by the Division Chief
2. City of Beaumont (Discharger)
3. Santa Ana Watershed Project Authority (SEP Proponent)

**C. MMP COMPLAINT BEING SETTLED:**

Expedited Payment Letter issued on April 27, 2015 (Complaint), proposing mandatory minimum penalty against the Discharger in the amount of \$48,000 pursuant to Water Code section 13385(i), as set forth in Exhibit A.

**D. PROPOSED SETTLEMENT:**

The Discharger agrees to settle the liabilities assessed in the Complaint (total liability: \$48,000) in accordance with the following:

1. The Discharger agrees to pay \$24,000 to State Water Resources Control Board. A check for \$24,000 shall be made payable to the State Water Pollution Cleanup and Abatement Account, referencing Order No. R8-2015-0012. This is the initial payment and it shall be mailed to the following address within 30 days of adoption of this Order:

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

2. The Discharger agrees to pay \$24,000 to the Santa Ana Watershed Project Authority (SAWPA) for a Supplemental Environmental Project (SEP). This is the suspended liability payment and is also due within 30 days of adoption of this Order and shall be mailed to the address indicated in Item 1, above. A check for \$24,000 shall be made payable to the Santa Ana Watershed Project Authority (SAWPA). The suspended liability shall be deemed satisfied once the Discharger funds the SEP project and the SEP is completed by the SEP Proponent in accordance with the schedule proposed in the SEP proposal, attached hereto as Exhibit B and is incorporated by this reference.
3. SAWPA shall utilize the SEP allocation of \$24,000 as per the proposed budget in accordance with the schedule included in Exhibit B.

## E. STIPULATIONS

The Parties incorporate Sections A through D above by this reference, as if set forth fully herein, and stipulate to entry of the Order set forth below, and recommend that the Executive Officer issue the Order to effectuate the settlement.

1. The Complaint (in this case, an Expedited Payment Letter) was issued to the Discharger for violating the California Water Code by discharging wastewater with constituents that exceeded the permit limits. The Discharger waived its right to a hearing for the Complaint. The total assessed liability for the Complaint is \$48,000.
2. The Discharger agrees to settle this Complaint by making an initial payment of \$24,000 to the State Water Pollution Cleanup and Abatement Account and by funding a SEP project for the suspended liability of \$ 24,000.
3. The SEP Proponent agrees to complete the SEP project as per the proposed budget and the schedule included in the SEP proposal, Exhibit B.

### 4. SEP Definitions

- a. "Cleanup and Abatement Account": the State Water Pollution Cleanup and Abatement Account.
- b. "Designated Regional Board Representative": The representative from the Santa Ana Regional Water Quality Control Board responsible for oversight of the supplemental environmental project (SEP). The contact information for this representative is as follows:

Name: Mr. David Woelfel

Address: Santa Ana Regional Water Quality Control Board

3737 Main Street, Suite 500

Riverside, CA 92501-3348

Phone: 951-782-7960

E-mail: [david.woelfel@waterboards.ca.gov](mailto:david.woelfel@waterboards.ca.gov)

- c. "SEP Proponent": An independent third-party with whom the Discharger has contracted with or otherwise engaged to perform or implement the SEP; in this case, the Santa Ana Watershed Project Authority.
- d. "Milestone Requirement": A requirement with an established time schedule for meeting/ascertaining certain identified measurements of

completed work. Upon the timely and successful completion of each milestone requirement, an amount of liability will be permanently suspended or excused as set forth in the SEP proposal, Exhibit B.

- e. "SEP Completion Date": The date in which the SEP will be completed in its entirety.
5. **Description of the SEP:** See Exhibit B.
6. **Deliverable Products from SEP:** See Exhibit B.
7. **Budget and Milestones:** See Exhibit B.
8. **Representations and Agreements by the SEP Proponent:** As a material consideration for the Executive Officer's acceptance of this Order, the SEP Proponent represents that it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule in Exhibit B. The SEP Proponent understands that its promise to implement the SEP as described in Exhibit B, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Board. The SEP Proponent agrees that the Regional Board has the right to require the SEP Proponent to implement the SEP in accordance with the terms of this Order if it has received funds for that purpose from the Discharger. The SEP Proponent agrees to submit to the jurisdiction of the Regional Board to enforce the terms of this Order for purposes of implementation of the SEP.
9. The SEP Proponent represents to the Parties and to the Regional Board that the SEP Proponent will: 1) spend the SEP payment as described in the Order as per the project description in Exhibit B; and 2) provide a certified, written report to Regional Board staff consistent with the terms of this Order detailing the implementation of the SEP. The SEP Proponent agrees that Regional Board staff has the right to require an audit of the funds provided to it by the Discharger and expended by it to implement the SEP.
10. **Publicity:** Wherever the Discharger or its subcontractors or agents or the SEP proponent or its agents or subcontractors publicizes one or more elements of the SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Discharger.
11. **Public Notice:** The MMP Complaint, the SEP proposal and this Agreement and Order were publicly noticed at least for 30 days before the Executive Officer's approval. All public comments received have been considered and responded to. This Discharger agrees that it may not rescind or otherwise withdraw its approval of this Agreement and Order.

12. **Regional Board Staff Oversight Costs:** Regional Board staff does not anticipate any staff oversight costs for the proposed SEP.
13. **Submittal of Progress Reports:** The SEP Proponent shall provide quarterly progress reports to the Designated Regional Board Representative on the 15<sup>th</sup> day of the month following the quarter; the first quarterly report is due on: August 15, 2015. .
14. **SEP Program Audit:** The SEP Proponent shall allow Regional Board staff to audit the SEP project during normal business hours.
15. **Final Certification:** On or before December 31, 2017, the SEP Proponent shall submit certified statements by responsible corporate officials representing the SEP Proponent documenting the respective expenditures by the SEP Proponent to implement and to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The SEP Proponent shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify the SEP Proponent's SEP expenditures. The certification need not address any costs incurred by Regional Board staff for oversight. The final report shall include a certification by the SEP Proponent (see Attachment B), under penalty of perjury, stating that the SEP has been completed in accordance with Exhibit B and any agreed upon written changes between the authorized representatives of SEP Proponent and Regional Board and the applicable provisions of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the SEP Proponent. The final Certification may be provided on Exhibit C, Certificate of Completion.
16. **Third Party Audit:** If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the SEP Proponent has not expended money in the amounts claimed by the SEP Proponent, or has not adequately completed any of the work in the SEP proposal, as described in Exhibit B, the Designated Regional Board Representative, may require, and the SEP Proponent shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Regional Board providing such party(ies)'s professional opinion that the SEP Proponent has expended money in the amounts claimed by the SEP Proponent. In the event of such an audit, the SEP Proponent agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Water Board Representative within three (3) months of the completion of the SEP Proponent's SEP

obligations. The audit need not address any costs incurred by the Regional Board staff for oversight.

17. **Regional Board's Acceptance of Completed SEP:** Upon the SEP Proponent's satisfaction of its obligations under this Order, the completion of the SEP and any audits, the Designated Water Board Representative, shall request that the Executive Officer issue a "Satisfaction of SEP Letter." The issuance of the Satisfaction of SEP Letter shall terminate any further obligations of the SEP Proponent and the Discharger under this Order.
18. **Failure to Expend All Suspended Liability on the Approved SEP Project:** In the event that the SEP Proponent is not able to demonstrate to the reasonable satisfaction of the Regional Board staff that it has spent the entire SEP Amount for the completed SEP, the SEP Proponent shall pay the difference between the SEP funds and the actual amount expended.
19. **Failure to Complete the SEP:** If the SEP is not fully implemented as per the schedule in Exhibit B or there has been a material failure to satisfy a Milestone Requirement, the Designated Regional Board Representative shall issue a Notice of Violation. As a consequence, the SEP Proponent shall be liable to pay the entire SEP funds or, some portion thereof less the value of the completion of any Milestone Requirements. Unless otherwise ordered, the SEP Proponent shall not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Designated Regional Board Representative. The amount of the SEP funds owed shall be determined via a "Motion for Payment of SEP Funds" before the Regional Board. Upon a determination by the Regional Board of the amount of the SEP funds, the amount owed shall be paid to the State Water Pollution Cleanup and Abatement Account within thirty (30) days after the service of the Regional Board's determination. In addition, the SEP Proponent shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the suspended liability amount will satisfy the SEP Proponent's obligations to implement the SEP.
20. **Regional Board is not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the SEP Proponent or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by the SEP Proponent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
21. The SEP Proponent and the Discharger covenant not to sue or pursue any administrative or civil claim or claims against the Regional Board, or its officers,

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employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Mandatory Minimum Penalty Complaint, this Order or the SEP project.

22. Upon adoption of this Order by the Executive Officer, incorporating this Agreement, this Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint against the Discharger and its subsidiaries, successors, assigns, and their officers, directors, employees, representative agents, and attorneys. The provisions of this Paragraph are expressly conditioned on the full payment of the mandatory minimum penalty by the deadlines and full satisfaction of the obligations specified in this Order.
23. The Discharger hereby waives its right to petition the Regional Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Regional Board or its delegate related to this Order, including, but not limited to time extensions, completion of SEP milestones, or other terms contained in this Order.
24. The Parties agree that the procedure contemplated for adopting this Order by the Regional Board and review of this Agreement and Order by the public is lawful and adequate. In the event procedural objections are raised prior to this Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
25. Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
26. The Executive Officer may extend any of the due dates in this Order upon the joint request of the Parties. Such extensions must be in writing.
27. The effective date of this Order shall be the date on which it is adopted by the Executive Officer.
28. This Order relates only to MMP violations alleged in the Complaint and the SEP proposal. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations that occur after the date on which the Division Chief signed the Complaint.

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29. In the event of a dispute, SEP Proponent shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Board and the SEP Proponent shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Board and SEP Proponent are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final.
30. Each person executing this Agreement in a representative capacity represents that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.
31. This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
32. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be made in writing and approved by the Executive Officer.
33. This Agreement is severable; should any provision be found invalid the remainder shall remain in full force and effect.
34. This Agreement may be executed by the parties 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.

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IT IS SO STIPULATED<sup>1</sup>

*Michael Adackapara*

for Michael Adackapara,  
Division Chief  
For the Santa Ana Regional Water Quality Control Board  
Prosecution Team

Date 7/23/15

*Elizabeth M. Gibbs-Urriaga*

Mr. Alan Kapanicas, Elizabeth M. Gibbs-Urriaga  
City Manager (Acting)  
For the City of Beaumont

Date 7-22-15

\_\_\_\_\_  
Mark Norton  
For the Santa Ana Watershed Project

Date \_\_\_\_\_

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<sup>1</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

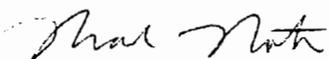
IT IS SO STIPULATED<sup>1</sup>

\_\_\_\_\_  
Michael Adackapara,  
Division Chief  
For the Santa Ana Regional Water Quality Control Board  
Prosecution Team

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mr. Alan Kapanicas,  
City Manager  
For the City of Beaumont

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Mark Norton  
For the Santa Ana Watershed Project Authority

6/18/15  
Date

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<sup>1</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

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HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulations are incorporated into this Order.
2. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Board as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order includes a SEP (Exhibit B) and the Discharger shall provide the SEP Proponent \$24,000 for the work. To the extent this Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The SEP Proponent will bear the costs, including the Regional Board's costs, of determining whether implementation of any required plan by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Board shall enter into a memorandum of understanding with the Board regarding such costs prior to undertaking any environmental review.
3. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with California Water Code section 13385(i) and the Enforcement Policy.
4. The SEP Project is consistent with the State Water Resources Control Board's Policy on Supplemental Environmental Projects because: (1) Its scope and parameters are defined at this time; (2) The SEP Project directly benefit the area impacted by the discharge; and (3) There is a nexus between the "Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project" and the nature of the violations alleged above, as well as a geographic nexus between the SEP Project and the location of the violations.
5. In adopting this Stipulated Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13327. The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

Pursuant to section 13385 of the California Water Code and section 11415.60 of the California Government Code, the Executive Officer hereby adopts this Order.

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K.V. Berchtold      8/26/15  
Kurt V. Berchtold      Date  
Executive Officer  
Santa Ana Regional Water Quality Control Board

Exhibits:

- A. Complaint (Expedited Payment Letter and Attachments 1 and 2A)
- B. SEP Proposal
- C. SEP Certification of Completion

Santa Ana Regional Water Quality Control Board

**Attachment 1 (to 4/27/15 EPL)**

Effluent Limit Violations of Order No. R8-2006-0003, NPDES No. CA0105376  
Monitoring Period Covered: January 2011 to December 2014  
City of Beaumont  
Order No. R8-2015-0012

Parameters/ Limits Violated	Total Coliform 2.2 MPN/100 ml weekly avg.	Total Coliform >23 MPN/100 ml more than once per month	Total Coliform >240 MPN/100 ml	Turbidity No more than 10 NTU at any time	pH Instantaneous Minimum <6.5 su	Total Violations	Violations Subject To Mandatory Penalties
Month of Violation							
January 2011					3	3	3
May 2011	1	1	1			3	3
September 2011		1				1	1
No violations between September 2011 – June 2012 (8-months)							
June 2012				[1]		1	0
December 2012			[1]			1	0
May 2013		[1]				1	0
June 2013			3			3	3
September 2013				1		1	1
January 2014				2		2	2
March 2014		1				1	1
September 2014			1	1		2	2
Totals	1	4	6	5	3	19	16

Notes : [ ] = Non-serious violations not subject to mandatory penalties pursuant to water Code Section 13385(i)



**Santa Ana Regional Water Quality Control Board**

April 27, 2015

Mr. Alan Kapanicas, City Manager  
City of Beaumont  
550 East 6<sup>th</sup> Street  
Beaumont, CA 92223

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**EXPEDITED PAYMENT OPTION TO ADDRESS MANDATORY MINIMUM  
PENALTIES FOR VIOLATIONS OF ORDER NO. R8-2006-0003, NPDES NO.  
CA0105376**

Dear Mr. Kapanicas:

This is to notify the City of Beaumont (hereinafter the "City"), that the City is alleged to have violated California Water Code (CWC) Section 13385(i) for which the Regional Board shall assess mandatory minimum penalties. This letter outlines an expedited methodology for settling the outstanding violations and the mandatory minimum penalties associated with them.

**VIOLATIONS AND STATUTORY AND DISCRETIONARY LIABILITIES:**

Attachment 1 to this letter identifies the City's violations of its Waste Discharge Requirements that are subject to mandatory penalties. Pursuant to CWC Section 13385(i), a mandatory penalty of three thousand dollars (\$3,000) shall be assessed for each chronic violation that occurs four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations that occur in any six-month period, provided that they are not serious violations.

As shown in Attachment 1, in accordance with Section 13385 (i), the City incurred a total of nineteen reported violations between January 2011 and September 2014. For the nine month period covered by Attachment 1, three non-serious violations (one violation in June 2012, one violation in December 2012, and one violation in May 2013) are not subject to mandatory penalty assessments. Therefore, sixteen violations out of the total of nineteen are subject to mandatory penalties of \$3,000 for each violation. In accordance with Water Code Section 13385 (i), the total mandatory penalty for the sixteen effluent limit violations cited in Attachment 1 is forty-eight thousand dollars (16 x \$3,000 = \$48,000).

Alternatively, in accordance with Water Code Section 13385(c), the Regional Board may impose discretionary administrative civil liability for the nineteen violations cited in Attachment 1. Although, nineteen violations are cited, these violations represent over three hundred and thirty days of violation (many of the violations are of daily limits). Therefore, in accordance with Section 13385 (c), the maximum administrative civil liability in accordance with Section 13385 (c) that may be imposed for these violations is \$3,300,000 (\$10,000 per day of violation, plus an additional assessment of \$10 per gallon of effluent discharged during the duration of the violation episode, in excess of the first 1000 gallons of effluent.)

#### **EXPEDITED PAYMENT PROGRAM:**

Generally, the Regional Board would issue a formal administrative civil liability complaint to assess these penalties and conduct a public hearing. To conserve the City as well as the Regional Board staff resources, the State Water Resources Control Board, through its Office of Enforcement, has developed a methodology for the City to settle these types of violations through an expedited payment program. If the City desires to have an expedited settlement as stipulated in Attachment 2, "Acceptance of Expedited Payment and Waiver of Right to a Hearing, City of Beaumont, Order No. R8-2015-0012", you must sign the Attachment and make a payment of forty-eight thousand dollars (\$48,000) to this office. If the City accepts this option by executing Attachment 2, you would also be waiving your right to a hearing. The Regional Board will then forgo issuance of a formal administrative complaint and will waive its right to seek additional discretionary civil liabilities for the violations identified in Attachment 1. Please note that the expedited payment option does not address any violation that is not specifically identified in Attachment 1.

#### **CITY'S OPTIONS:**

1. Accept this offer for expedited payment by signing and returning Attachment 2 by June 15, 2015. Federal regulations require the Regional Board to publish and seek public comments on any proposed settlement of actions related to NPDES permit violations (40 CFR 123.27(d)(2)(iii)). Upon receipt of the City's acceptance of the expedited payment option (signed Attachment 2), Regional Board staff will publish a notice of the proposed resolution of the violations cited in Attachment 1. If no significant public comments are received within 30 days, the Executive Officer will counter-sign Attachment 2 and it will be returned to you for payment of the mandatory minimum penalty of \$48,000 within 30 days of acceptance by the Executive Officer. If significant public comments are received during the public comment period, Board staff will try to address those comments. If the comments cannot be satisfactorily addressed by staff, the expedited payment option will be withdrawn and a formal administrative complaint may be issued and a public hearing may be scheduled at a regularly scheduled Regional Board meeting.

2. If the City chooses to contest any of the violations cited in Attachment 1, please identify the specific violation(s) and the basis for the challenge (e.g., factual error, affirmative defense, analytical error, etc.) prior to June 15, 2015 and contact Najah Amin of my staff at 951-320-6362. We will evaluate the contested violation(s) and determine that either the violation(s) is/are not supported and amend Attachment 1, or determine that the alleged violation(s) is/are meritorious and inform the City of the staff decision. If the City is not satisfied with the staff decision, a formal administrative complaint and a public hearing may be considered.

If you have any questions about this letter or the attachments, please contact Najah Amin of my staff at 951-320-6362 (najah.amin@waterboards.ca.gov).

Sincerely,



Michael J. Adjackapara  
Division Chief

Enclosures: Attachment 1- Effluent Limit Violations of Order No. R8-2006-0003,  
NPDES No. CA0105376  
Attachment 2- Acceptance of Expedited Payment and Waiver of right to a  
Hearing

cc w/enclosures (by electronic mail only):

Board Members  
Executive Officer (Regional Board Advisory Team)  
State Water Resources Control Board, Office of Chief Counsel – David Rice  
(Regional Board Advisory Team Attorney)  
State Water Resources Control Board, Office of Enforcement – Julie Macedo  
(Regional Board Prosecution Team Attorney)  
U.S. Environmental Protection Agency, Region 9 (WTR-7) – Ken Greenberg

CALIFORNIA REGIONAL WATER QUALITY CONTROL  
BOARD  
SANTA AN REGION

3737 Main Street, Suite 500, Riverside, CA 92501-3348  
Phone: 951-782-4130; Fax: 951-781-6288  
www.waterboards.ca.gov/santaana

**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

**Application Form**

**(Please review the General SEP Qualification Criteria and the SEP Evaluation Form before completing this form; please provide all relevant information that could be used for evaluating your application.)**

The following information is needed for consideration of a project for inclusion to the list of approved SEP projects for the Region.

**I. Information about the Entity Requesting SEP Funds (SEP Proponent)**

**Name of SEP Proponent:** Santa Ana Watershed Project Authority

**Address:** 11615 Sterling Avenue Riverside, California 92503

**Contact Name:** Mark Norton, Water Resources and Planning Manager

Phone number: 951 354 4221 Fax: n/a

E-mail address: mailto: [mnorton@sawpa.org](mailto:mnorton@sawpa.org)

**II. SEP Project Details**

**Name of Project:** Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement

**Project Summary: (include scope of work, methods and materials, water quality/environmental benefits from the project, work products, etc. You may attach the details on a separate sheet.)**

The Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project would be implemented in Reach 4 of the Santa Ana River to support the preservation of beneficial uses such as Warm Freshwater Habitat (WARM) and Wildlife Habitat (WILD)

by restoring habitat within the reaches that are of critical importance to the Santa Ana sucker (*Catostomus santaanae*). Since April, 2000 the sucker has been listed as “threatened” by the U.S. Fish and Wildlife Service (USFWS). The project will implement the *One Water One Watershed 2.0 Plan*, the Santa Ana River Watershed’s adopted watershed management plan by restoring, through a phased approach, approximately five acres of habitat under the Ecosystem Services goal.

In the USFWS’ *Draft Recovery Plan for the Santa Ana Sucker* released in November 2014, the Service states that “given the substantial reduction in the range of the species, the currently occupied areas, particularly in the Santa Ana River watershed, will likely not be sufficient to provide the resiliency and redundancy necessary for recovery.” To preserve the beneficial uses of the inland reaches of the Santa Ana River where rare or endangered species exist, special control requirements are necessary to assure attainment and maintenance of particular quality criteria, which may vary slightly with the environmental needs of the particular species.

Based on the Santa Ana Riverwalk Habitat Survey, conducted annually by the Santa Ana Sucker Conservation Team since 2006, the river channel is predominantly sand substrate upstream for 18.5 miles above Prado Dam. Based on the recently released draft USFWS Plan, regularly there have been low numbers of Santa Ana suckers at locations that historically had the highest abundances (San Marino Environmental Associates, Santa Ana sucker research progress report: 2010). According to the draft Plan, over a 10-year survey period from 2001 to 2011 results indicate a decline in the annual average estimate of Santa Ana suckers (San Marino Environmental Associates, Santa Ana sucker research progress report: 2009; San Marino Environmental Associates 2010).

The Project which was initially requested by, and will be developed in conjunction with, the USFWS, will include a phased approach of relocation of rocks and boulders within Reach 4 of the Santa Ana River in order to create scour and expose cobble and gravel that the Santa Ana sucker depend on for foraging and spawning. Due to the shallow depth of sand cover in parts of Reach 4 of the Santa Ana River, heavy rocks will expose gravel and cobble that are approximately 1 foot under the top layer of sand. Results from the 2014 study, *Habitat variability and distribution of the Santa Ana sucker, Catostomus santaanae, in the Santa Ana River from the confluence of the Rialto channel to the Prado Basin*, indicate that a substrate composition of cobble, gravel and boulders largely corresponds with the presence of Santa Ana suckers.

Creation of these habitat restoration areas are critically important as the River downstream from La Cadena Avenue in Reach 4 fluctuates in flow, which can strand suckers in pools. The major sources of flow near La Cadena Avenue include runoff, groundwater and discharges from wastewater treatments plants. The area is also the location of a nonnative, invasive, filamentous algae outbreak, first identified in February 2014 as *Compsopogon coeruleus*. According to the *Draft Recovery Plan for the Santa Ana Sucker*, the Santa Ana sucker is not known to forage on or spawn within filamentous algae.

The first phase of the project will include developing a project implementation plan whereby a certified hydrologist and/or engineer will assist in the development in the construction design of the rock structures and assess the project site. SAWPA staff will work with the resource agencies and the Regional Water Board to identify the specific location of the project within Reach 4. Digital map products will be developed and SAWPA staff will consult with the major landowners, likely the flood control district, and the Army Corps of Engineers. Detailed specifications will be included, which can include the size of the rock needed, their configuration, and the equipment needed to place them. A biologist and/or resource conservation district will also assist in the design and provide comments on the construction specifications as needed. Specifications for onsite monitoring and species protection measures will be provided. A logistical plan will also be developed in order to specify the staging area for the rocks and the access needed to place them in the wetted portion of the River. These detailed plans will be used to submit the required permits and agreements from the resource agencies, the flood control district who is the majority landowner in the area, and the Army Corps of Engineers.

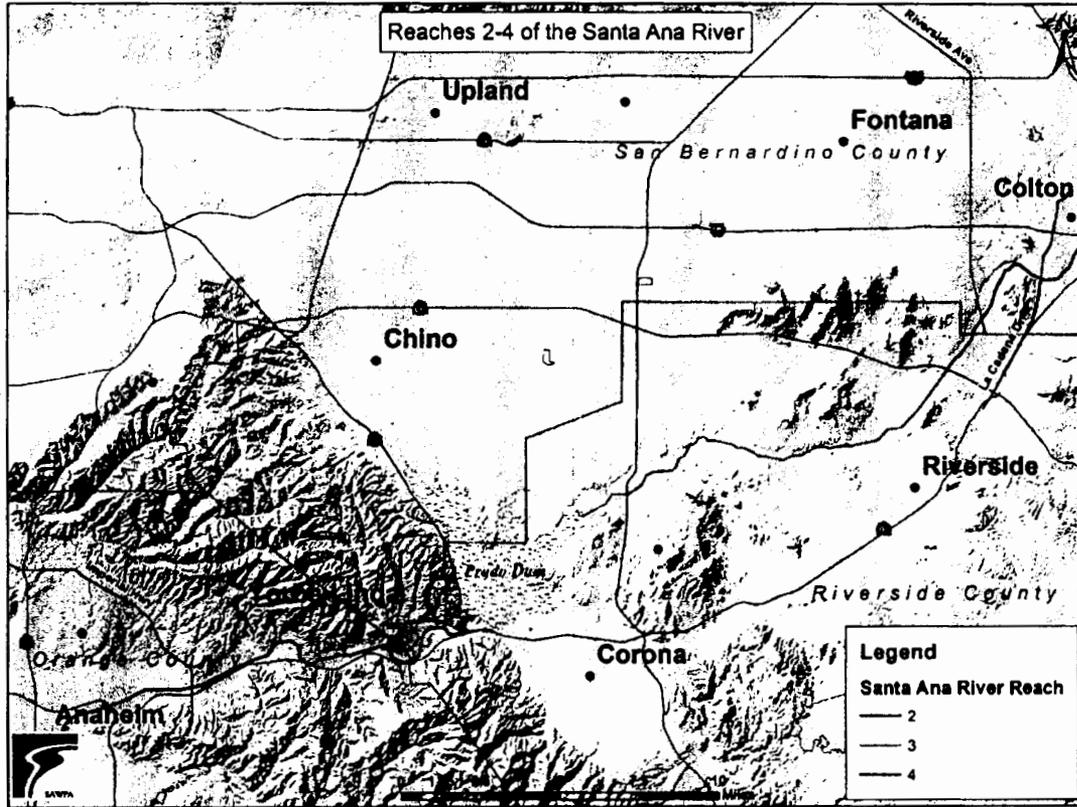
If there are funds remaining for the first phase, the Project will secure the purchase of rocks and heavy substrate material, and identify rocks within the River, and map their coordinates. The next phases of the project will include contracting with a construction contractor to utilize a backhoe and dump truck to place rocks in a staging area near a site and later place them in the River. A certified biologist will monitor the ambient water quality, collect information related to the ambient condition of biota, as well as conduct presence-absence surveys of Santa Ana sucker. Ambient water measurements will assist in maintenance of beneficial uses designations for this reach such as WARM and WILD whereby a further understanding of water quality, habitat improvements and the Santa Ana sucker's absence/presence can be drawn.

As the *Draft Recovery Plan for the Santa Ana Sucker* states, specific tolerances to water quality variables such as water temperature, dissolved oxygen, and turbidity have not been determined for Santa Ana sucker. Citizen monitoring may be enlisted in order to provide monthly measurements of riparian coverage and the size of the exposed gravel bars at the project site. The Santa Ana Sucker Conservation Team will provide press releases and summaries through member agency press offices and social media platforms to educate the public on the Project and the beneficial uses of the Santa Ana River.

Permits and certification that will be considered include a Streambed Alteration Permit from the California Department of Fish and Wildlife, 401 Certification from the Regional Water Quality Control Board, a 404 Permit from the Army Corps of Engineers and a right-of-way access permit from the Riverside County Flood Control and Water Conservation District.

**Location of Project: (include watershed or waterbody, location maps, etc.):**

With the analysis of the hydrologist, and in conjunction with the USFWS, the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project will be implemented in Reach 4 of the Santa Ana River in Riverside County. The total size of the project will not exceed five acres.



**Project Schedule: (include start date, expected end date, interim and final report dates [at a minimum, quarterly reporting is required by SEP Policy]):**

The Project timeline would begin in June 2015 and the overall estimated project deadline when all phases are complete would be up to October 31, 2017 to ensure at least a year surveying after the placement of rocks.

The Project would begin upon the proposals acceptance by the Regional Board and will be implemented timely after the end of the sucker’s spawning season (mid-March to early July) to provide immediate relief to the species.

This phase of the project, the project implementation plan, will be provided to the Regional Board by February 2016. In future phases, the rocks would be moved into place in the River in late summer and early fall of 2015 or 2016, depending on when funds are received, and biological monitoring will continue throughout the following year.

Overall Project Schedule (All Phases)

Task/Subtask	2015					2016					2017														
	J	A	S	O	N	D	F	M	A	M	J	A	S	O	N	D	F	M	A	M	J	A	S	O	
Overall Project	[Shaded]																								
Project Management	[Shaded]																								
Contract with Regional Board	[Shaded]																								
Submital of Quarterly Reports	[Shaded]																								
Implementation	[Shaded]																								
Project Implementation Plan	[Shaded]																								
Rock Surveying	[Shaded]																								
Additional Rock Purchase/Transportation	[Shaded]																								
Permitting	[Shaded]																								
Rock Location in River (Heavy Equipment)	[Shaded]																								
Monitoring	[Shaded]																								
Biological and Ambient Water Quality Monitoring	[Shaded]																								

**Deliverables: (interim and final reports, analytical results, model runs, etc.)-**

Deliverables will include the project implementation plan by February 2016 from the program manager and quarterly reporting. Quarterly reports will summarize progress made on the project implementation plan and the consultation with other agencies such as the Army Corps of Engineers and resource agencies.

**III. Total project cost and the amount of SEP money requested: (include a breakdown of project costs such as overhead/project management, design/consultation, construction/implementation, sample collection/analysis, report preparation; indicate other funding sources, if any. For other funding sources, indicate if the funds have been committed, any restrictions on the funds, and the amount.)**

The project cost for this phase is \$24,000. Costs include project management, acquiring site access, and contracts with a hydrologist and biologist. See detailed budget below.

Line Item	SEP Funding	Further Detail
<b>Project Implementation Plan</b>		
Hydrologist/Engineer	\$ 4,500	1 FTE, \$150/hour, 30 hrs
Biologist	\$ 7,500	1 FTE, \$125/hour, 60 hrs
Project Management & Access/Permit Planning	\$ 4,000	1 FTE, \$125/hour, 32 hrs
Permitting Support (as needed)	\$ 8,000	1 FTE, \$125/hour, 64 hrs
<b>Total</b>	<b>\$ 24,000</b>	

**IV. Nexus: (Explain how the proposed SEP project benefits the watershed impacted by the discharge for which a fine was assessed. This information may not be available during the initial SEP application process and may be submitted later.)**

The discharge is from the City of Beaumont into a tributary of San Timoteo Creek, which is tributary to the Santa Ana River. The proposed project is to benefit the designated beneficial uses of the Santa Ana River.

**V. Discharger: (If you are requesting SEP funds as part of a settlement for an enforcement action, include the name of the Discharger and the enforcement action; otherwise, leave it blank.)**

City of Beaumont, Mandatory Minimum Penalty Order No. R8-2015-0012.

### **Supporting Documents**

U.S. Fish and Wildlife Service Letter of Support for the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project, 2015.

Excerpt from the Draft Recovery Plan for the Santa Ana Sucker, U.S. Fish and Wildlife Service, 2014.

Orange County Water District. 2011. Santa Ana Sucker Habitat Restoration Project Monitoring Report.

**Exhibit C**  
**(MMP Order No. R8-2015-0012)**

State of California  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION  
(Region 8)

**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**  
**Certificate of Completion**

The following certification is provided by the SEP Proponent as proof of completion of the SEP project described below.

Project Proponent: Santa Ana Watershed Project Authority

Contact Person: Mark Norton

Phone: \_\_\_\_\_

E-Mail \_\_\_\_\_

Name of Project: \_\_\_\_\_

Project Summary: (you may attach a final project report or additional sheets for project summary)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Project Started: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

SEP Money Allocated for the Project: \$24,000

Enforcement Order No. and Name of Discharger: R8-2015-0012, City of Beaumont

Date the Amount Was Sent to Project Proponent: \_\_\_\_\_

Total Project Cost (including funds from other sources): \$ \_\_\_\_\_

How was the SEP Fund Used for This Project?

Overhead/Management \$ \_\_\_\_\_

Design/Consultation \$ \_\_\_\_\_

Construction/Implementation \$ \_\_\_\_\_

Lab and analytical costs \$ \_\_\_\_\_

Other expenses (explain) \$ \_\_\_\_\_

**Total Project Cost (SEP \$ only) \$ \_\_\_\_\_**

***On behalf of the Project Proponent receiving SEP funding, I certify that the entire amount of the SEP funding received has been used for the project as indicated above. I also certify that the portion of the project for which this SEP funding was earmarked has been completed. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.***

***SIGNATURE:*** \_\_\_\_\_ ***Date:*** \_\_\_\_\_

***Name:*** \_\_\_\_\_ ***Position:*** \_\_\_\_\_

(If a final copy of the report of the project is available, include a copy with this certification; provide copies of receipts, invoices, etc. to substantiate the expenses.)

**Santa Ana Regional Water Quality Control Board**

**Attachment 2A (Amendment of Attachment 2 to the April 27, 2015  
Expedited Payment Letter)**

ACCEPTANCE OF CONDITIONAL RESOLUTION AND WAIVER OF RIGHT  
TO HEARING  
City of Beaumont  
Order No, R8-2015-0012

By signing and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Order), the City of Beaumont (City) hereby accepts the resolution of the mandatory minimum penalty assessments for the violations cited in Attachment 1, City of Beaumont's Violations of Order No. R8-2006-0003, NPDES No. CA0105376, City of Beaumont, for which mandatory minimum penalties shall be assessed by the Regional Board. By signing the Acceptance and Order, the City also waives its right to a hearing before the Regional Board. Attachment 1 is incorporated into this Acceptance and Order by reference.

The City agrees that the April 27, 2015 Expedited Payment Letter and Attachments 1 and 2A (Attachment 2 that was sent with the April 27, 2015 Expedited Payment Letter was subsequently amended to incorporate the Supplemental Environmental Project described below) together will serve as a Complaint pursuant to Article 2.5 of the California Water Code (CWC) and that no separate Complaint is required by the Regional Board to assert jurisdiction over the alleged violations. The City agrees to pay the mandatory minimum penalty of \$48,000 as shown in the Complaint, which shall be deemed payment in full for the violations listed in Attachment 1, pursuant to CWC Section 13385. The City further agrees \$24,000 of the assessed amount shall be paid to the State Water Pollution Cleanup and Abatement Account and the remaining \$24,000 shall be paid to a Supplemental Environmental Project (SEP: Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project). The SEP Proponent is the Santa Ana Watershed Project Authority (SAWPA).

The City further agrees to enter into a Mandatory Minimum Penalty Order that incorporates the Stipulations for Settlement (Order). The City understands that pursuant to 40 CFR Section 123.27(d)(2)(iii), the Regional Board is required to provide public notice for at least 30 days and seek comments of any settlement agreement with the dischargers related to NPDES permit violations, prior to the Executive Officer

