

## LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

**Alameda Corridor-East Construction Authority**

ORDER R4-2018-0091 (Proposed)

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER; ORDER (PROPOSED)**

### I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), on behalf of the Regional Board Prosecution Team (Prosecution Team), and Alameda Corridor-East Construction Authority, now known as San Gabriel Valley Council of Governments, (Discharger or ACE) (collectively known as the Parties) and is presented to the Regional Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

### II. Recitals

2. On July 13, 2018, the Assistant Executive Officer of the Regional Board issued Administrative Civil Liability Complaint R4-2018-0091 (Complaint) to ACE proposing \$1,268,502.80 in administrative civil liabilities. The Assistant Executive Officer alleged that ACE violated Clean Water Act Section 401 Certification No. 11-010 (401 Certification or Certification); National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges associated with Construction and Land Disturbance Activities (Construction General Permit) Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ, NPDES No. CAS000002, WDID No. 4 19C357348; Clean Water Act section 301, and Water Code section 13376 on September 15, 2015 by failing to implement an effective Surface Water Diversion Plan and Best Management Practices (BMPs) and discharging concrete, sediment, and raw sewage to the Rubio Wash, a water of the United States. The Complaint is attached as Exhibit 1 and the alleged violations are incorporated herein by reference.

3. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in the Complaint without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
4. For purposes of settlement, the Prosecution Team agreed to reduce the proposed administrative civil liability amount. This was achieved by lowering the Cleanup and Cooperation factor for Violations 1-4 and a consideration of hearing and/or litigation risks. The Cleanup and Cooperation factor for Violations 1-4 was lowered to 1.0 based on evidence presented by the Discharger regarding its cleanup efforts following the September 15, 2015 rain event. Pursuant to the State Water Resource Control Board's (State Board) 2010 Water Quality Enforcement Policy section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to further reduce the administrative civil liability amount in consideration of hearing and/or litigation risks.
5. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against ACE in the amount of eight hundred twenty-five thousand dollars (\$825,000).
6. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

### **III. Stipulations**

The Parties stipulate to the following:

7. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
8. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **eight hundred twenty-five thousand dollars (\$825,000)** to the Regional Board to resolve the violations specifically alleged in the Complaint. No later than 30 days after the Regional Board, or its delegee, signs this Order, the Discharger shall submit a check for **eight hundred twenty-five thousand dollars (\$825,000)** made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Order, and mail it to:

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Alameda Corridor-East Construction Authority

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement ([Kailyn.Ellison@waterboards.ca.gov](mailto:Kailyn.Ellison@waterboards.ca.gov)) and the Regional Board ([Barbara.Guia@waterboards.ca.gov](mailto:Barbara.Guia@waterboards.ca.gov)).

9. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

**10. Party Contacts for Communications Related to Stipulated Order:**

For the Regional Board:  
Barbara Guia  
Water Resources Control Engineer  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 620-6361  
[Barbara.Guia@waterboards.ca.gov](mailto:Barbara.Guia@waterboards.ca.gov)

For the Discharger:  
Mark Christoffels  
Chief Executive Officer  
Alameda Corridor-East Construction Authority  
4900 Rivergrade Road, Suite A120  
Irwindale, CA 91706  
(626) 962-9292  
[mchristoffels@theaceproject.org](mailto:mchristoffels@theaceproject.org)

11. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
12. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Board, or its delegee, for adoption, the Assistant Executive Officer and/or the Discharger may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Board, or its delegee.
13. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated 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.
14. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. 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 other than those addressed by this Order.
15. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Regional Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

16. **Interpretation:** This Stipulated Order 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.
17. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Board or its delegee.
18. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
19. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
  - a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

20. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Board, hereby waives its right to a hearing before the Regional Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Board or State Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
21. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Board, the Discharger hereby waives the right to petition the Regional Board's adoption of the Stipulated Order as written for review by the State Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
22. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
23. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations in the Complaint.
24. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
25. **Necessity for Written Approvals:** All approvals and decisions of the Regional Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
26. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
27. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

28. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
  
29. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

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Alameda Corridor-East Construction Authority

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board, Los Angeles Region Prosecution  
Team

By: *Hugh Marley*  
Hugh Marley  
Assistant Executive Officer

10/11/19  
Date



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Alameda Corridor-East Construction Authority

Alameda Corridor-East Construction Authority

By:  \_\_\_\_\_  
Mark Christoffels  
Chief Engineer  
SGVCOG Alameda Corridor – East  
Project

 \_\_\_\_\_  
Date

**HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:**

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

\_\_\_\_\_  
Renee Purdy  
Executive Officer  
Los Angeles Regional Water Quality Control Board

\_\_\_\_\_  
Date

Exhibit 1: Administrative Civil Liability Complaint R4-2018-0091