

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

**City of Los Angeles;
Bureau of Engineering**

**North Spring Street Viaduct Widening
and Rehabilitation Project**

ORDER R4-2021-0121 (Proposed)

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

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation or Stipulated Order) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the City of Los Angeles, Bureau of Engineering (BOE or City or Discharger) (collectively, Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

2. The Discharger was responsible for the widening and rehabilitating the North Spring Street Viaduct (Project) over the Los Angeles River. The Project included work within the Los Angeles River to construct the bridge foundation, river pier extension, and debris nosing. The purpose of the proposed project was to eliminate the existing design deficiencies associated with the North Spring Street viaduct and its approach roadways, to correct existing seismic vulnerabilities, and to improve pedestrian and bicycle travel through the project area.
3. The Discharger submitted an application to the Regional Water Board to obtain a Clean Water Act section 401 water quality certification (File No. 11-167) (401 Certification) and the Regional Water Board issued the 401 certification for the Project on February 28, 2012 and a subsequent amendment on August 13, 2014.
4. During a site inspection on October 2, 2014, Regional Water Board staff observed several violations of the 401 Certification including pressure washing a boom lift next to the Los Angeles River low flow channel, the discharge of groundwater from a dewatering well to the low flow channel, motor oil bottles stored on 55 gallon drums indicating maintenance activities had taken place in the Los Angeles River channel, a metal concrete washout bin with liquid inside, vehicles parked in the Los Angeles River channel without oil drip pans, and the storage of wood piles and drilling equipment stored directly on the Los Angeles River channel bottom.

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Settlement Agreement and Stipulated Administrative Civil Liability Order

5. During a site inspection on April 27, 2015, Regional Water Board staff observed a sediment ramp constructed in the Los Angeles River channel for workers and equipment to reach the viaduct expansion. There were also stockpiles of unprotected sediment in the low flow channel.
6. During a site inspection on June 2, 2015, Regional Water Board staff observed the sediment ramp and measured the linear extent of the project. The Discharger informed Regional Water Board staff that flow from the Los Angeles River had increased and caused flows to overtop the water diversion structure and flood the work area.
7. The Regional Water Board's Water Quality Control Plan (Basin Plan) designates the Los Angeles River warm freshwater habitat for the preservation or enhancement of aquatic habitats, vegetation, fish or wildlife and as habitat necessary for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened, or endangered. The Basin Plan lists the beneficial uses for the Los Angeles River as industrial process supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, wildlife habitat, and wetland habitat.
8. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires that dischargers engaging in activities that require a federal permit or license, which may result in a discharge of pollutants into waters of the United States, to obtain a state water quality certification from the Regional Water Board, certifying that the activity complies with all applicable water quality standards and restrictions.
9. The Prosecution Team alleges that the Discharger violated conditions of its 401 Certification, provisions of the Clean Water Act, and Porter-Cologne during the widening and rehabilitation of the North Spring Street Viaduct. The alleged violations are summarized below:
 - A. Violation 1: Failure to employ best management practices (BMPs) to isolate the work area from the river as required by 401 Certification, Attachment A Condition 15 and Attachment B Additional Condition 4.
 - B. Violation 2: Failure to implement avoidance BMPs so that concrete wash water is not discharged into the Los Angeles River as required by 401 Certification, Attachment A Condition 15 and Attachment B Condition 4 and 8.
 - C. Violation 3: Failure to remove stockpiled waste from the Los Angeles River channel as required by 401 Certification, Attachment A Condition 15.
 - D. Violation 4: Failure to properly use drip pans as required by 401 Certification, Attachment A Condition 15.

- E. Violation 5: Failure to use screens and traps to prevent construction debris or silt from entering the channel in compliance with 401 Certification, Attachment A Condition 15.
 - F. Violation 6: Unauthorized discharge of waste from a waste management bin into the low-flow channel during the October 2, 2014 inspection.
 - G. Violation 7: Unauthorized discharge of water from the construction area to the Los Angeles River while disassembling drilling equipment during the October 2, 2014 inspection.
 - H. Violation 8: Unauthorized discharge of rocks and dirt debris in the low-flow channel.
 - I. Violation 9: Unauthorized discharge of construction equipment and portable toilet to the Los Angeles River during the 5/6/2013 and 9/15/15 storm events.
 - J. Violation 10: Unauthorized discharges to the low flow channel from washing construction equipment in the Los Angeles River channel.
 - K. Violation 11: Unauthorized discharges exceeding effluent limitations for turbidity.
 - L. Violation 12: Unauthorized discharges of groundwater from a dewatering well into the low flow channel of the Los Angeles River. Regional Water Board staff observed this violation on two separate inspections, on October 2, 2014 and on April 27, 2015.
 - M. Violation 13: Unauthorized discharge of approximately 201,990 gallons of material to create a sediment ramp in the Los Angeles River channel.
 - N. Violation 14: The Discharger exceeded the 2.49-acre footprint allowed for in the 401 Certification Attachment A No.12.
10. These alleged violations constitute violations of Water Code section 13385, subdivision (a) for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivisions (c).
11. Water Code section 13385, subdivision (a)(2), authorizes the Regional Water Board impose administrative civil liability for failing to comply with water quality standards, limitations, and restrictions a 401 Certification. Pursuant to Water Code section 13385, subdivision (c), the Regional Water Board may impose civil liability of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, the Regional Water Board may impose

additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

12. Water Code section 13385, subdivision (e) states: “In determining the amount of any liability imposed under this section, the Regional Water Board, the state board, or the superior court, as the case may be, shall take into account 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.”
13. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Office of Administrative Law approved the Enforcement Policy on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Team considered the methodology set forth in the Enforcement Policy for the alleged violations, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.
14. On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020, which adopted the 2017 Water Quality Enforcement Policy (2017 Enforcement Policy). The 2017 Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017.
15. The Prosecution Team developed the proposed administrative civil liability based on the Enforcement Policy approved by the Office of Administrative Law on May 20, 2010 since the alleged violations occurred prior to the adoption of the 2017 Enforcement Policy.¹ The 2017 Enforcement Policy provides clarification of some portions of the 2010 Enforcement Policy.
16. The Parties have engaged in settlement negotiations and agree to settle the alleged violations as summarized above without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. During the course of the negotiations, the Parties agreed to modifications to the Prosecution Team’s proposed penalty methodology for three

¹ On April 4, 2017, the State Water Board adopted Resolution No. 2017-0020 amending the 2009 Enforcement Policy. The Office of Administrative Law approved the 2017 Enforcement Policy effective October 5, 2017. The 2009 Enforcement Policy was effective at the time of the violations alleged herein and is applied throughout, except where the use of 2017 Enforcement Policy clarifies some elements common between both versions of the policy. https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2017/final_enforcement_policy_memo.pdf

of the fifteen originally alleged violation categories based on information provided by the City during the course of the negotiations. The Prosecution Team's proposed penalty methodology is attached hereto as Attachment A and incorporated by reference. Specifically, the Parties agreed to the deletion of Violation Category 8, described on page 11 of Attachment, modification of the number of alleged days of violation for Violation Category 12, and a revised volume estimate of 201,990 gallons associated with Violation Category 14. The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the Enforcement Policy's methodology and takes into account the litigation risks associated with proceeding to hearing. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged above, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

17. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
18. **Administrative Civil Liability:** The Discharger agrees to the imposition of administrative civil liability in the amount of TWO HUNDRED NINE THOUSAND FORTY NINE DOLLARS (\$209,049.00) (Liability Amount), which the Discharger agrees to pay in accordance with Paragraph 18, below.
19. **Payment of Liability Amount:** The Discharger shall pay the Liability Amount by check made payable to the "Waste Discharge Permit Fund," no later than 30 days following the Regional Water Board, or its delegee, executing this Stipulated Order. The check shall reference the Stipulated Order number indicated on page one of this Stipulated Order. The original signed check shall be sent to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office
1001 I Street, 18th Floor
Sacramento, California 95814

Copies of the check shall be sent to Russ Colby
(russ.colby@waterboards.ca.gov) and Daniel S. Kippen
(dan.kippen@waterboards.ca.gov).

20. Compliance with Applicable Laws: The Discharger understands that payment of 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 continuing violations of the type alleged above may subject it to further enforcement, including additional administrative civil liability.

21. Party Contacts for Communications related to this Stipulated Order:

For the Regional Water Board:

Russ Colby, Chief
Compliance and Enforcement Section
Regional Water Quality Control Board, Los Angeles Region
320 W. 4th Street, Suite 200
Los Angeles, California 90013
(213) 620-6375
russ.colby@waterboards.ca.gov

For the Discharger:

Ted Jordan
Assistant City Attorney
City of Los Angeles
200 N. Main Street, 7th Floor
City Hall East, Room 700
Los Angeles, California 90012
(213) 978-8199
Ted.Jordan@lacity.org

22. Attorney's Fees and Costs: Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

23. Matters Covered by this Stipulation: Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged above or which could have been asserted based on the specific facts alleged against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger's full payment of administrative civil liability by the deadline specified in Paragraph 18 herein.

24. Public Notice: The Discharger and the Regional Water Board Prosecution Team understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board,

or its delegee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulated Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Stipulated Order as necessary or advisable under the circumstances.

25. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for adopting the Stipulated Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.

26. Interpretation: This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

27. Modification: This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.

28. If the Stipulated Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. 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 the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

A. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Attachment A in this matter; or

B. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

29. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Stipulated Order.

30. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

31. **The Discharger's 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 Stipulated Order.

32. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

33. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

34. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Stipulated Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

Los Angeles Regional Water Quality Control Board Prosecution Team

By: Original Signed by Hugh Marley
Hugh Marley
Assistant Executive Officer

September 24, 2021
Date

City of Los Angeles
Board of Public Works

By: Original Signed by Greg Good

Greg Good
President

November 5, 2021

Date

Approved as to Form

By: Original Signed by Edward M. Jordan, Esq.

Edward M. Jordan, Esq.
Attorney for City of Los Angeles
Bureau of Public Works

November 4, 2021

Date

HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:

35. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 33 above, by this reference, as if set forth fully herein.
36. The Discharger shall pay the administrative civil liability in the amount of TWO HUNDRED NINE THOUSAND FORTY NINE DOLLARS (\$209,049.00) to the "Waste Discharge Permit Fund" no later than 30 days following execution of this Stipulated Order.
37. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e) (see Attachment A, incorporated herein by reference). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in Paragraphs 1 through 9 or otherwise provided to the Regional Water Board. This settlement recovers the costs incurred by the Prosecution Staff in investigating and pursuing enforcement of the allegations set forth in Paragraphs 1 through 9 as "other matters as justice may require".
38. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
39. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Stipulated 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

Attachment A: Enforcement Policy Methodology

Attachment A – Specific Factors Considered
Administrative Civil Liability Complaint No. R4-2016-0073
City of Los Angeles, Department of Public Works, Bureau of Engineering
North Spring Street Viaduct Widening and Rehabilitation Project

File No. 11-167

The City of Los Angeles, Department of Public Works, Bureau of Engineering (Discharger) failed to implement the requirements of Clean Water Act Section 401 Certification No. 11-167 (401 Certification or Certification) while conducting work in the Los Angeles River Channel (LA River or Channel) to eliminate the existing deficiencies associated with the viaduct, and to correct seismic vulnerabilities, and improve pedestrian and bicycle travel. The Los Angeles Regional Water Quality Control Board (Regional Board) issued a water quality certification on February 28, 2012 and a subsequent amendment on August 13, 2014.

Factors required to be considered in determining the amount of civil liability pursuant to California Water Code sections 13327 and 13385(e) are presented below for each violation.

Violation 1: Failure to employ best management practices (BMPs) to isolate the work area from the river.

Attachment A Condition No.15 and Attachment B Additional Condition No.4 of the Certification require the Discharger to implement avoidance and minimization BMPs to protect the Los Angeles River from Project activities. “Work areas within the Los Angeles River channel will be isolated from the river flow using sandbags, k-rails, rubber dams, and waterproof membranes.”

As observed during the October 2, 2014 Regional Board staff inspection, work areas were not isolated from the Los Angeles River flow. In the northern part of the Project area, a k-rail was replaced with sandbags, which were flattened and did not appear to be effective. There was a gap between the inner layer of the k-rails and the sandbag dam in the low flow channel. Water from the flowing Channel appeared to be seeping through the sandbags and k-rails into the staging area. On the June 2, 2015 inspection, the City indicated that the flow from the Los Angeles River had increased and caused river water to overtop the water diversion structure and flood the work area. Regional Board staff observed this violation on two days, October 2, 2014, and June 2, 2015; therefore, this violation is assessed for two days.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 3. Per Day Assessment for Non-Discharge Violations: 0.25

Potential for Harm: Moderate

The Potential for harm for this violation is characterized as Moderate. The Project is located within Reach 2 of the Los Angeles River; the existing and potential beneficial uses of Reach 2 of the Los Angeles River include body contact and non-body contact recreation, wildlife habitat, warm freshwater habitat and municipal water supply. The Clean Water Act Section 303(d) list identifies Reach 2 of the Los Angeles River as impaired by nutrients, oil, trash, and coliform bacteria. Failure to isolate the work area from the Los Angeles River, and implement BMPs presents a moderate potential for harm to the Los Angeles River, a water of the State and of the U.S., because a leaky or ineffective diversion that allows river water to intrude the work area and that fails to contain waste generated from construction activities could discharge trash, sediment, bacteria, viruses, oil and grease, and other hazardous materials directly into the Los Angeles River. This poses a substantial threat to existing and potential beneficial uses.

Deviation from Requirement: Minor

This violation is characterized as a Minor deviation from the Requirement. The City attempted to keep water from intruding into the work area by using plastic sheeting. However, this alone was not effective. There was also a gap between the inner layer of the k-rails and a sandbag dam that was a part of the diversion. A wood panel was used to close the gap, but this did not prevent water from seeping through the sandbags and into the staging area. The effectiveness of the requirements was partially achieved in that the diversion was intact and kept a majority of the river water from the work area. However, the requirement of isolating the work area was not met because water was observed flowing from behind the north diversion k-rail across the work-area. Therefore, a Minor deviation from requirement is appropriate.

Step 4. Adjustment Factors

Culpability: 1.3

The culpability multiplier ranges between 0.5 and 1.5. The City proposed the isolation of the work area as a "special BMP" in its 401 Certification application. A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of a 401 Certification. The Discharger should have walked the site, evaluated compliance with the Certification, and taken efforts to fix any noncompliance in advance of the announced inspection by Regional Board staff. A multiplier of 1.3 was assessed.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. After receipt of the Regional Board's Notice of Violation, issued on April 13, 2015, the Discharger installed additional BMPs to isolate the work area from the Los Angeles River. A neutral factor of 1.0 was assessed.

History of Violations: 1.1

The Discharger has also been in violation of 401 certification conditions for similar projects in the Los Angeles River. The Regional Board adopted a cleanup and abatement order requiring the Discharger to take remedial action to clean-up the actual and threatened discharges of construction materials, debris, and vehicles on the Los Angeles River at the First Street construction project in 2009. (Cleanup and Abatement Order No. R4-2009-0083). Prior to the issuance of the Cleanup and Abatement Order, the Discharger was in violation of multiple conditions of its 401 certification. The Discharger failed to install avoidance and minimization BMPs; materials stored on the viaduct were not secured to prevent discharges into the Channel via wind; the Discharger also failed to install drip pans under all vehicles. The Discharger conducted dewatering activities without following certification requirements. Fueling, lubrication and maintenance of vehicles and equipment caused unauthorized discharges. Piles of debris were placed into waters and construction activities produced downstream runoff. Additionally, on May 2, 2011 the Regional Board adopted Order No. R4-2010-0012 imposing penalties for failing to obtain a 401 certification prior to commencing project activities and for a 40 gallon spill of hydraulic fluid into the Big Tujunga Wash for the Foothill Blvd., bridge widening project. Since the Discharger has a history of repeat violations, a minimum multiplier of 1.1 was assigned.

Step 5. Total Base Liability: \$7,150

Violation 1: 0.25 (Per Day Factor) X 2 days X \$10,000 per day (Statutory Max) X 1.3 (Culpability) X 1.0 (Cleanup and Cooperation) X 1.1 (History of Violation) = \$7,150. The statutory maximum penalty is \$20,000.

Violation 2: Failure to implement avoidance BMPs so that concrete wash water is not discharged in the Los Angeles River.

Attachment A Condition 15 and Attachment B Condition 4 and 8 of the Certification provide that, "Concrete washout areas will be located outside of the Los Angeles River channel near the channel access connection . . . at the river maintenance access located off San Fernando Road under Arroyo Seco Parkway."

A yellow metal concrete washout bin, which was filled to capacity, was observed on October 2, 2014 in the Channel on the north side of the Project area. Another metal concrete washout bin was located next to the low flow channel located south of the

staging area. Regional Board staff observed this violation on October 2, 2014; therefore, 1 day of violation is assessed.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

Potential for Harm: Moderate

The Project is located within Reach 2 of the Los Angeles River; the existing and potential beneficial uses of Reach 2 of the Los Angeles River include body contact and non-body contact recreation, wild life habitat, warm freshwater habitat and municipal water supply. The Clean Water Act Section 303(d) list identifies Reach 2 of the Los Angeles River as impaired by nutrients, oil, trash, and coliform bacteria. It is important to store concrete wash water outside of the Los Angeles River to avoid accidental spills. Concrete washout water (or wastewater) is a slurry containing toxic metals. It is also caustic and corrosive, having a high pH of near 12. Caustic wash water can harm fish gills and eyes and interfere with their reproduction system. A high pH can increase the toxicity of other substances in the surface waters and soils. In addition, rainfall may cause concrete washout containers that are uncovered to overflow and spill wash water into surface waters. Because concrete washout water presents a substantial threat to beneficial uses a score of moderate is appropriate.

Deviation from Requirement: Major

This violation is characterized as a Major deviation from the Requirement. The Enforcement Policy defines a Major deviation from Requirement as "The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions). The City did not adhere to the avoidance and minimization requirement to conduct concrete wash water activities and storage of related wash water outside of the Los Angeles River. A yellow washout container that was nearly full to capacity was observed during the October 15, 2014 inspection despite an explicit prohibition from doing so as stated in the 401 Certification. The City disregarded this 401 Certification requirement and rendered the requirement ineffective.

Step 4. Adjustment Factors

Culpability: 1.4

The culpability multiplier ranges between 0.5 and 1.5. A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have

necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of the 401 certification. The Discharger should have walked the site, evaluated compliance with the certification, and taken efforts to fix any noncompliance in advance of the announced inspection by Regional Board staff. The City had been notified previously that it is prohibited from storing concrete wash containers in the Channel. It was not reasonable or prudent of the City to store a concrete washout container, as seen at the October 2, 2014 inspection, even after being notified of the identical violation on July 23, 2014 by the City's biological monitor, Stan Glowacki. As described in the 2014 Mitigation Monitoring Report, the biological monitor reported to the City that storage of a concrete washout container was prohibited. The City removed the concrete bin on or before August 26, 2014. On October 2, 2014, Regional Board staff noted concrete washout containers at full capacity stored once again in the Channel. A higher degree of culpability is appropriate where the City should have been aware of the Certification requirements and was put on notice of the noncompliance issue by the biological monitor, but chose to continue to store washout containers in the Los Angeles River. The Prosecution Team assessed a multiplier of 1.4.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The City should have proactively managed the construction site during the 2014 construction season so that the City could identify and correct the violation rather than rely on Regional Board staff. The Regional Board issued a Notice of Violation on April 13, 2015 notifying the City that storing concrete wash water in the Channel is prohibited by the 401 Certification. In the City's response dated May 13, 2015, the City promised to comply in the 2015 construction season. No concrete wash water has been observed in the Los Angeles River during this 2015 construction season. A multiplier of 1.0 was assessed.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, as described above, a minimum multiplier of 1.1 is appropriate.

Step 5. Total Base Liability: \$8,470

Violation 2: 0.55 (Per Day Factor) X 1 day X \$10,000 per day (Statutory Max) X 1.4 (Culpability) X 1.0 (Cleanup and Cooperation) X 1.1 (History of Violation) = \$8,470. The statutory maximum per day penalty is \$10,000.

Violation 3: Failure to comply with Attachment A Condition 15 of the Certification:
“All debris and waste will be stockpiled outside of the Los Angeles River channel.”

During the October 2, 2014 inspection, various stockpiles of sediment, earth, and rocks were observed un-protected and placed directly on the bottom of the Los Angeles River Channel. One stockpile of sediment, more than 8 feet high, was observed by Regional Board staff to have overflowed the k-rail barrier that was intended to contain it. Regional

Board staff observed this violation on one day, October 2, 2014; therefore, this violation is assessed for 1 day.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

Potential for Harm: Moderate

Uncontained debris and waste placed directly in the river channel has the potential to scatter and pollute the work area and the active low-flow channel. The discharge of sediment, dirt, and rocks into the Channel presents a moderate potential for harm to the Los Angeles River. These materials as they travel down in surface water break down into sediment particles. Concentrations of sediment in surface water increases turbidity, reducing light penetration that reduces the sight of feeding predators. In addition, turbidity clogs fish gills and disrupts and potentially destroys the habitat of aquatic and benthic species. A discharge of this kind creates an additional load of pollutants to an already impaired river. Failing to comply with this avoidance requirement presents a substantial potential for harm to beneficial uses.

Deviation from Requirement: Major

This violation is characterized as a Major deviation from the Requirement. The City did not adhere to the avoidance requirement in its Certification, which is necessary to protect surface water from discharges associated with the stockpiling of debris and waste. High winds, unstable stockpiles, and rain events could cause discharges of debris and waste into the flowing Channel. The prohibition prevents this from occurring. By stockpiling material inside the Channel the prohibition was rendered entirely ineffective in its essential functions. A major deviation from the requirement is appropriate.

Step 4. Adjustment Factors

Culpability: 1.4

The culpability multiplier ranges between 0.5 and 1.5. A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of the 401 Certification. The Discharger should have walked the site, evaluated compliance with the Certification, and taken efforts to fix any noncompliance in advance of the announced inspection by Regional Board staff. The City failed to review its Certification, and identify and fix noncompliance before being told

to do so by Regional Board staff. Additionally, the City was previously notified by the biological monitor on his July 23, 2014 inspection that the dirt and spilled concrete not contained by fiber rolls or sand bags was a noncompliance issue. While the City resolved those issues in August 2014, the City once again, on October 2, 2014, proceeded to store debris in large piles uncontained and without of a liner underneath the pile. A higher multiplier of 1.4 is assigned where the City had been previously told of the deficiency but subsequently either intentionally or negligently disregarded the requirement.

Cleanup and Cooperation: 1.2

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. During the June 2, 2015 inspection, stockpiles of rebar, sandbags, and sediment lay on the slope of the Channel adjacent to the sediment ramp. In the City's response to the Notice of Violation, it indicates that temporary storage of construction debris is necessary and removed daily. The City should have notified Regional Board staff and requested an amendment to modify the Certification restriction rather than proceeding without authorization to carry out a prohibited activity in the Channel. A multiplier of 1.2 was assessed.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, as described above, a minimum multiplier of 1.1 is appropriate.

Step 5. Total Base Liability: \$10,164

Violation 4: 0.55 (Per Day Factor) X 1 day X \$10,000 per day (Statutory Max) X 1.4 (Culpability) X 1.2 (Cleanup and Cooperation) X 1.1 (History of Violation) = \$10,164. The statutory maximum per day penalty is \$10,000.

Violation 4: Failure to comply with Attachment A Condition 15 of the Certification: "Drip pans will be used under all vehicles and equipment placed in the Channel or the viaduct when expected to be idle for more than one hour."

Various passenger and commercial vehicles were observed parked next to the flowing Los Angeles River north of the North Broadway Bridge without drip pans for more than one hour on the October 2, 2014 inspection. Regional Board staff observed this violation on one day, October 2, 2014; therefore, this violation is assessed for 1 day.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

Potential for Harm: Moderate

Motor oil from vehicles and equipment poses a substantial threat to beneficial uses. The Clean Water Act 303(d) list identifies Reach 2 of the Los Angeles River as impaired by oil. Without containment measures such as drip pans, motor oil from vehicles and equipment will leak directly onto the Channel, making it susceptible to discharge to the river upon a storm event or from wastewater that flows into the low-flow channel. Failing to comply with this best management practice presents a substantial potential for harm to beneficial uses by further impairing the quality of water for wildlife and freshwater habitat and potentially contaminating or degrading the quality of municipal water. The characteristics of the violation present at least a moderate threat to beneficial uses given that this habitat is impaired for the same pollutant that the Certification requirement is designed to limit.

Deviation from Requirement: Major

This violation is characterized as a Major deviation from the Requirement. The City did not adhere to the minimization requirement. The requirement to use drip pans to prevent vehicles and equipment from leaking motor oil was rendered ineffective in its essential functions where the City failed to employ drip pans. A major deviation from the requirement is appropriate where this Certification requirement was not met.

Step 4. Adjustment FactorsCulpability: 1.3

The culpability multiplier ranges between 0.5 and 1.5. The City proposed in its 401 Certification application that “drip pans will be used under all vehicles and equipment placed in the channel or on the viaduct when expected to be idle for more than one hour.” A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of the 401 Certification. The City proposed the use of drip pans as a minimization best management practice in its Spill Prevention Plan submitted as part of its 401 Certification application. Therefore, the Discharger was aware of the requirement and either intentionally or negligently disregarded this BMP. A multiplier of 1.3 is appropriate.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. After having been informed by Regional Board staff that the use of drip pans was required by the 401 Certification, the Discharger took efforts to ensure that drip pans were used. During the April 27 and June 2 2015 inspections, the City demonstrated compliance with the 401 Certification by utilizing drip pans and making drip pans available in a labeled box. A multiplier of 1.0 was assessed.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, as described above, a minimum multiplier of 1.1 is appropriate.

Step 5. Total Base Liability: \$7,865

Violation 5: 0.55 (Per Day Factor) X 1 day X \$10,000 per day (Statutory Max) X 1.3 (Culpability) X 1.0 (Cleanup and Cooperation) X 1.1 (History of Violation) = \$7,865. The statutory maximum per day penalty is \$10,000.

Violation 5: Failure to use screens and traps to prevent construction debris or silt from entering the channel in compliance with Attachment A Condition 15 of the Certification.

During the October 2, 2014 and April 27, 2015 Regional Board staff inspections, Regional Board staff observed that the Discharger had failed to implement BMPs to prevent debris from construction activities from entering the low-flow portion of the Channel. Regional Board staff observed this violation on two days, October 2, 2014 and April 27, 2015; therefore, this violation is assessed for two days.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

Potential for Harm: Moderate

Silt fences, gravel bags and other BMPs were not consistently implemented. The low flow channel had no fiber rolls or sandbags to prevent sediment and soil from the project area from entering the flowing water. During the April 27, 2015 inspection a rock screen was located next to stockpiles of various colors and types of sediment. The piles were un-protected and placed directly on the ground of the Los Angeles River. Wood panels bridging the low flow channel were used inconsistently and/or ineffectively because mud tracking into and out of the low flow channel was seen throughout the Project site. A plastic sheet was placed down for the drilling core on October 2, 2014 but was inadequate to prevent the runoff from this area from discharging to the low flow channel. Discharges of such kind pose a substantial threat by introducing pollutants to the Channel environment which serves as habitat or potential habitat for aquatic and wildlife species. Proper screens and traps were not used to contain construction debris from entering the Channel. The Clean Water Act 303(d) list identifies Reach 2 of the Los Angeles River as impaired by nutrients, oil, and trash. Failure to isolate the work area from the Los Angeles River and implement BMPs presents a substantial potential for harm because it could result in the

discharge of construction waste containing trash, sediment, oil and grease, and other hazardous materials directly into the Los Angeles River, creating an additional load of pollutants to an already impaired waterbody.

Deviation from Requirement: Major

This violation is characterized as a Major deviation from the Requirement. The lack of adequate housekeeping and implementation and maintenance of screens and traps along the low flow channel rendered ineffective the avoidance and minimization requirements in the Discharger's 401 Certification.

Step 4. Adjustment Factors

Culpability: 1.4

The culpability multiplier ranges between 0.5 and 1.5. The Prosecution Team assigned a multiplier of 1.4 for this violation. A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of the 401 Certification. The Discharger should have walked the site, evaluated compliance with the Certification, and taken efforts to fix any noncompliance in advance of the announced inspection by Regional Board staff. It was not until after receipt of the Regional Board's Notice of Violation, which was issued on April 13, 2015, that the Discharger installed additional BMPs to isolate the work area from the Los Angeles River.

Prior to Regional Board staff's initial inspection on October 2, 2014, the Discharger's consultant notified the Discharger during the consultant's August 20, 2014 inspection that, "there were no fiber rolls or other BMPs . . . to prevent soil and other sediments from entering [the] water in the low-flow channel." Given that the City was previously put on notice by the Discharger's consultant of the need to protect the low flow channel, the failure to employ fiber rolls and other BMPs along the low flow channel as observed during the October 2014 inspection warrants a higher culpability factor of at least 1.4. A reasonably prudent discharger on notice of a specific inadequacy would have improved its practices accordingly. Instead, the failure of the City to employ sediment control measures along the low flow channel permitted the discharge of construction debris into the low flow channel. A higher multiplier of 1.4 is appropriate where specific requirements and prohibitions were brought to the City's attention but the City chose not to change its practices to comply with the 401 Certification.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Prosecution Team assigned a multiplier of 1.0. The Regional Board issued a Notice of Violation dated April 13, 2015 notifying the City, in part, of the requirement to employ screens and traps to prevent construction debris from entering the low flow channel. In subsequent inspections on April 27 and June

2 by Water Board staff, the Discharger employed straw waddles and sand bags in some areas to protect debris from entering the low flow channel. A temporary steel bridge was later appropriately constructed as a means to cross the low-flow channel. On balance, a multiplier of 1.0 was assessed.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, as described above, a minimum multiplier of 1.1 is appropriate.

Step 5. Total Base Liability: \$16,940

Violation 6: 0.55 (Per Day Factor) \times 2 day \times \$10,000 per day (Statutory Max) \times 1.4 (Culpability) \times 1.0 (Cleanup and Cooperation) \times 1.1 (History of Violation) = \$16,940. The statutory maximum penalty is \$20,000.

Violations 6 through 8: Unauthorized Discharges of Sediment

Additional Condition 8 of Attachment B provides, “[n]o construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or threatened discharge to waters of the State.” There were four distinct incidents throughout the Project site, where material discharged and/or posed a threat of discharge to the Los Angeles River channel in violation of Attachment A Condition 15 and Attachment B Additional Condition 8. A description of each is provided below.

- a. Violation 6: A Waste Management roll-off bin placed immediately adjacent to the low-flow channel was observed leaking and discharging into the low-flow channel during the October 2, 2014 inspection. Regional Board staff observed this violation on one day, October 2, 2014; therefore, this violation is assessed for 1 day.
- b. Violation 7: Mud and puddles of water covered the area where the drilling equipment was being disassembled and trails of runoff were observed that discharged into the low-flow channel during the October 2, 2014 inspection. Regional Board staff observed this violation on one day, October 2, 2014; therefore, this violation is assessed for 1 day.
- c. Violation 8: In the area where groundwater was discharged into the low-flow channel, sandbags covered with rocks and dirt were buried in the low-flow channel of the Los Angeles River during the October 2, 2014 inspection. Loose sediment was observed throughout this area without adequate isolation. Regional Board staff observed this violation on one day, October 2, 2014; therefore, this violation is assessed for 1 day.

These discharges from project activities likely occurred continuously beyond the days that Regional Board staff conducted an inspection. This penalty calculation

conservatively alleges only days of violation based on observations during an inspection.

Step 1. Potential for Harm for Discharge Violations: 6

The Potential Harm to Beneficial Uses factor considers the harm to beneficial uses that may result from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement. The Potential for harm to the environment for this Project is associated with the discharge of construction related materials and activities.

Factor 1: Harm or Potential Harm to Beneficial Uses: Moderate (3)

The Harm or Potential Harm to beneficial uses ranges between 0 and 5 based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0) to major (5).

In this case, the Harm or Potential Harm for these discharge violations is characterized as moderate. The Enforcement Policy defines moderate as “impacts that are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects.”

As mentioned, above, the Project is located within Reach 2 of the Los Angeles River; the existing and potential beneficial uses of Reach 2 of the Los Angeles River include body contact and non-body contact recreation, wildlife habitat, warm freshwater habitat and municipal water supply. The Clean Water Act 303(d) list identifies Reach 2 of the Los Angeles River as impaired by nutrients, oil, trash, and coliform bacteria.

The Discharger failed to implement necessary house-keeping and avoidance and minimization best management practices prior to conducting project activities. This failure resulted in the discharge of a potentially significant amount of construction material and waste to the low flow channel of the Los Angeles River. During heavier precipitation events, construction equipment and materials from the site were washed downstream when the surface water diversion was overwhelmed by the amount of precipitation. The discharge of construction waste from these project activities is likely largely composed of sediment. The discharge of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which has the potential to negatively impact aquatic organisms. The contents of the white substance are unknown and conservatively pose a moderate potential for harm.

The Discharger's failure to meet the conditions of the 401 Certification likely resulted in project activities exceeding water quality standards. On the October 2, 2014 inspection, Regional Board staff observed the violations described above as Violations 6 through 8. Regional Board staff took turbidity measurements on October 2, 2014 and found that turbidity was 74% greater than the turbidity measured upgradient from project activities. The nature and extent of the sloppy and poor housekeeping measures, partial implementation of best management practices were likely the cause of elevated turbidity levels downstream of the project area. Impacts to beneficial uses are reasonably expected but are likely to attenuate without appreciable acute or chronic effects to beneficial uses. A moderate potential for harm or a score of 3 was assessed.

Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 2

A score between 0 and 4 is assigned based on a determination of the risk and threat of the discharged material. In this case, a score of 2 was assigned. A score of 2 is defined as the chemical and/or physical characteristics of the "discharged material poses a moderate risk or threat to potential receptors." Sediment-laden water is severely degraded water. As described in more detail in Factor 1, sediment-laden water poses a moderate level of concern to ecosystem health exposure pathways. Sediment-laden water on contact is not immediately harmful or deadly to aquatic life, therefore a higher score of 4 is not appropriate. Sediment poses a moderate risk or threat to potential receptors because organic pollutants bind to sediment and subsequently ingested by benthic organisms create a bioaccumulation of toxic pollutants. Fish and wildlife that feed on these benthic organisms biomagnify the toxicity when ingested, potentially shorten the lifespan of these populations and/or hindering growth and/or reproduction. Based on the characteristics of the discharge, a score of 2 was assigned, as sediment-laden water poses a moderate threat.

Factor 3: Susceptibility to Cleanup or Abatement: 1

A score of 1 is appropriate where less than 50% of the discharge is susceptible to cleanup or abatement. Because the discharge of sediment and construction debris dispersed and likely dissipated in the watershed, cleanup or abatement is not possible. A factor of 1 is appropriate for Violations 6 through 8 where 50% or more of the discharge is not susceptible to cleanup or abatement.

Potential for Harm Final Score: 6

A final score of 6 was calculated by adding Factors 1, 2, and 3 together.

Step 2. Assessment for Discharge Violations

Per Day Assessments for Discharge Violations: 0.22

When there is a discharge, the Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Extent of Deviation from Requirements. The Potential for Harm score from Step 1 is 6 for Violations 6 through 8.

Deviation from the Requirement: Major

The Extent of Deviation from Requirements is considered Major because the 401 Certification conditions prohibiting the discharge or threat of discharge from equipment maintenance activities and construction material and debris associated with the project were rendered ineffective when discharges were observed from multiple project areas into the Los Angeles River.

Table 2 of the Enforcement Policy (p. 15) is used to determine a “per day factor” based on the total score from Step 1 and the level of Deviation from Requirement. The per day factor for Violations 6 through 8 is 0.22. The Per Day Liability is calculated as per day factor x (number of days) x \$10,000 per day.

Violations 6, 7 and 8: Per Day Liability = \$10,000 X 0.22 X 1 day = \$2,200 per violation

Step 3. Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply.

Step 4. Adjustment Factors

Culpability: 1.2

The culpability multiplier ranges between 0.5 and 1.5. The Prosecution Team assigns a multiplier of 1.2. A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of the 401 Certification. The 401 Certification also notified the City that if construction or ground dewatering is proposed or anticipated, the City is required to file a report of waste discharge to the Regional Board, and to obtain any necessary National Pollutant Discharge Elimination System (NPDES) permits prior to discharging. The Discharger should have been fully aware of the requirements in the Certification and failed to ensure compliance.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Regional Board issued a Notice of Violation dated April 13, 2015 notifying the City of the noncompliance described in Violations 6 through 9. Subsequently, the Discharger stopped storing construction materials, spoils and debris in the Los Angeles River. Also, after receiving the Notice of Violation and having been reminded by Regional Board staff on the April 27, 2015 inspection, the City

ceased groundwater discharges to the Channel. During subsequent inspections, general housekeeping and cleanliness of the work area from construction debris was much improved. Regional Board staff did not continue to observe Violations 6, 7, and 8. The Prosecution Team assigns a multiplier of 1.0 for Violations 6, 7, and 8.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, as described above, a minimum multiplier of 1.1 is appropriate.

Step 5. Total Base Liability: \$18,480

Violations 6, 7 and 8: \$2,200 per violation X 1.2 (Culpability) X 1.0 (Cleanup and Cooperation) X 1.1 (History of Violations) = \$2,904 per violation

Violation 9: Unauthorized Discharge of Construction Equipment and Portable Toilet During Storm Events.

Additional Condition 8 of Attachment B provides, “[n]o construction material, spoils, debris, or any other substances associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or threatened discharge to waters of the State.” During the May 6, 2013 and September 15, 2015 storm events, the surface water diversion was overwhelmed and construction equipment in the work area, including a porta-potty, washed down the Los Angeles River. The Discharger reported this violation as having occurred during the May 6, 2013 and the September 15, 2015 storm events; therefore, this violation is assessed for 2 days.

Step 1. Potential for Harm for Discharge Violations: 6

Factor 1: Harm or Potential Harm to Beneficial Uses: Moderate (3)

The Prosecution Team assessed Harm or Potential Harm to Beneficial Uses as above Moderate with a score of 3 for this violation.

This poses at least a moderate potential for harm because the portable toilet contains fecal matter that can become a source of bacteria to the Los Angeles River. As stated previously herein, the Los Angeles River is impaired due to bacteria. The equipment and material in the Channel had the potential to contribute oil and grease and other hazardous materials into the Los Angeles River adding an additional load of pollutants to the Los Angeles River and contributing to the impairment due to oil and bacteria.

Construction equipment that washes downstream has the potential to cause degradation to water quality. Oil residue from equipment can destroy and significantly impair an ecosystem causing substantial impacts to aquatic and wildlife species that inhabit this area. The harm from oil and sediment may have been ameliorated by dilution. No impacts were observed and no temporary

restrictions were placed on beneficial uses, but impacts to beneficial uses were reasonably expected. Therefore, the potential for harm was described as moderate with a score of 3.

Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 3

The Prosecution Team assessed the physical, biological, or thermal characteristics of the discharge as above Moderate with a score of 3 for this violation.

Fecal matter contains pathogenic bacteria and viruses which endangers human health. Oil leaves a film on aquatic resources and has the potential to cause long-term contamination. Oil also causes harm to wildlife through physical contact, ingestion, inhalation and absorption. Floating oil can contaminate plankton, which includes algae, fish eggs, and the larvae of various invertebrates. Fish feeding on these organisms can subsequently become contaminated through ingestion of contaminated prey or by direct toxic effects of oil. Larger animals in the food chain can consume contaminated organisms as they feed on these fish. Oil also interferes with the water repellency of feathers and can cause hypothermia. Here, the discharge was likely oil and sediment water, which warrants a lower assessment than if the discharge was mostly oil.

Factor 3: Susceptibility to Cleanup and Abatement: 0

A score of 0 is assigned if 50% or more of the discharge is susceptible to cleanup or abatement. This violation relates to the discharge of construction equipment and a portable toilet that washed down the Los Angeles River after a storm event that was significant enough to transform the entire Channel into an active flowing body of water. Given the size and relative immobility of construction equipment and the portable toilet, it is susceptible to cleanup. A score of 0 is appropriate.

Potential for Harm Final Score: 6

A final score of 6 was calculated by adding Factors 1, 2, and 3 together.

Step 2. Assessment for Discharge Violations: 0.22

Per Day Assessments for Discharge Violations

When there is a discharge, the Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Extent of Deviation from Requirements. The Potential for Harm score from Step 1 is 6.

Deviation from the Requirement: Major

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Major Deviation from Requirement. Additional Condition 8 of

Attachment B prohibited the City from placing construction material and any other substances in a manner that may result in a discharge and adversely impact water quality standards. In addition, Attachment A Condition 6 of the Amended Certification and Attachment B Condition 14 of the Certification provided that “no work will take place in the Channel unless there is a five day clear forecast. All equipment, large or small, including all materials will be removed from the Channel starting five days in advance of any storm or rain event.” By not removing construction equipment/material and a portable toilet in advance of the storms, the City rendered the requirement ineffective. In addition, it was possible that a discharge resulting in adverse impacts to water quality would result if the construction equipment and portable toilet remained in the Channel during a significant precipitation event. A Major Deviation from the Requirement was assessed.

Step 3. Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply.

Step 4. Adjustment Factors

Culpability: 1.3

The culpability multiplier ranges between 0.5 and 1.5. The Prosecution Team assigns a multiplier of 1.3. The construction material and the portable toilet are not permanently anchored structures in the Los Angeles River. This incident has occurred twice. Especially after the first time equipment and the portable toilet washed away, the City should have directed the contractor to relocate the portable toilet in an area outside of the Channel to prevent it from washing away during storms especially if a storm is imminent and made efforts to evacuate the equipment and materials from the Channel. In addition, Regional Board staff were informed at one point by City staff that it was easier to pay the penalty than to mandate that City contractors to evacuate the channel during forecasted storm events. The City’s conduct extends beyond what is considered reasonable.

Cleanup and Cooperation: 1.3

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The City reported the non-compliance, but the City failed to prevent discharges like this from reoccurring. Therefore, a multiplier of 1.3 for this violation was assessed.

History of Violations: 1.1

The Discharger has a history of violations for similar projects as described above and therefore a multiplier of 1.1 is assigned.

Step 5. Total Base Liability: \$8,179

0.22 (Per Day Factor) X 2 days X \$10,000 per day (Statutory Max) X 1.3

(Culpability) X 1.3 (Cleanup and Cooperation) X 1.1 (History of Violations) = \$8,179. Statutory maximum is \$20,000.

Violation 10: Unauthorized Discharge of Equipment Wash Water

“Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the State.” (Attachment A, Condition 15 and Attachment B, Additional Condition No. 6). Failure to comply with Attachment A, Condition 15 and Attachment B Condition 6 of the Certification: “All equipment maintenance, cleaning, fueling, and storage will be performed outside of the Los Angeles River channel.” The Discharger conducted pressure-washing of a boom lift immediately adjacent to the Channel. Runoff from this equipment maintenance activity discharged to the low flow channel in violation of this condition.

The Discharger failed to comply with this requirement because during the October 2014 Regional Board staff inspection, a Project worker was observed pressure washing a man-lift in the Los Angeles River. Wash water was observed discharging into the Los Angeles River. Regional Board staff observed this violation on one day, October 2, 2014; therefore, this violation is assessed for 1 day.

Step 1. Potential for Harm for Discharge Violations: 7

Factor 1: Harm or Potential Harm to Beneficial Uses: Moderate (3)

The Prosecution Team assessed Harm or Potential Harm to Beneficial Uses as above Moderate with a score of 3 for this violation.

The wash water from the washing of the equipment had the potential to contain oily residues and sediment. These pollutants were discharged to a water body already impaired for oil and grease. This stretch of the Los Angeles River is located within Reach 2 which is identified by the Clean Water Act 303(d) list as being impaired by oil, the addition of oil residue from the washing of the equipment adds oil to the already impaired waterbody. This additional load of oil causes a direct threat to the potential receptors of the Los Angeles River. The discharge of pressure washing fluids into the Los Angeles River likely exceeded quality standards.

Reach 2 of the Los Angeles River is also tributary to Reach 1 of the Los Angeles River and to the Los Angeles River estuary. Both of these water bodies are habitat for migratory birds including fish-eaters like waders (herons, egrets, occidental bitterns, and rails), terns, osprey (a fish-eating hawk), pelicans and cormorants. Some of these birds, such as the California Brown Pelican, and the California Least Tern, are Federally Endangered Species. Given the duration of this construction project, regular discharges of the kind observed on the day of the inspection have the potential to cause degradation of Reach 2 and potentially also to Reach 1. Oil residue can destroy and significantly impair

an ecosystem causing substantial impacts to aquatic and wildlife species that inhabit this area. The harm from oil and sediment was likely diluted by the amount of water, but nonetheless, impacts to beneficial uses were reasonably expected.

Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 3

The Prosecution Team assessed the physical, biological, or thermal characteristics of the discharge as above Moderate with a score of 3 for this violation.

Oil creates a film on aquatic resources and has the potential to cause long-term contamination. Oil also causes harm to wildlife through physical contact, ingestion, inhalation and absorption. Floating oil can contaminate plankton, which includes algae, fish eggs, and the larvae of various invertebrates. Fish feeding on these organisms can subsequently become contaminated through ingestion of contaminated prey or by direct toxic effects of oil. Larger animals in the food chain can consume contaminated organisms as they feed on these fish. Oil also interferes with the water repellency of feathers and can cause hypothermia. Here, the discharge was likely oil and sediment water, which warrants a lower assessment than if the discharge was mostly oil.

Factor 3: Susceptibility to Cleanup and Abatement: 1

The Prosecution Team assessed the susceptibility to cleanup and abatement of the discharge with a score of 1 because less than 50% of the discharge is susceptible to cleanup or abatement.

Potential for Harm Final Score: 7

A final score of 7 was calculated by adding Factors 1, 2, and 3 together.

Step 2. Assessment for Discharge Violations: 0.31

Per Day Assessments for Discharge Violations

When there is a discharge, the Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Extent of Deviation from Requirements. The Potential for Harm score from Step 1 is 7.

Deviation from the Requirement: Major

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized this violation as a Major Deviation from the Requirement because the discharge of wash water from the washing of the equipment was in direct contradiction to the requirement in the 401 Certification to conduct all equipment maintenance, including the washing of equipment, outside of the Los Angeles River. The requirement was rendered ineffective and therefore the assessment of a "major" deviation from requirement is appropriate.

Step 3. Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply.

Step 4. Adjustment Factors

Culpability: 1.4

The culpability multiplier ranges between 0.5 and 1.5. The Prosecution Team assigns a multiplier of 1.4. The City proposed in its Certification application that it would carry out all equipment maintenance, cleaning, fueling, and storage outside of the Channel. Before being told by Regional Board staff that pressure washing was a violation of the Certification, the project manager stated, “my heart sank” after he saw the worker cleaning the equipment in the Channel. However, the project manager took no immediate action to stop the activity. A reasonable and prudent person who applies for and obtains a 401 Certification for a project would have necessary oversight and accountability measures in place to ensure that all workers involved in the Project adhere to the requirements of the 401 Certification. The Discharger should have walked the site, evaluated compliance with the Certification, and taken efforts to fix any noncompliance in advance of the announced inspection by Regional Board staff. The City failed to review its Certification, identify, and fix noncompliance before being told to do so by Regional Board staff.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. After having been issued a Notice of Violation, dated April 13, 2015, by Regional Board staff, the City promised to adhere to the Certification requirement. As of the April 27, 2015 and June 2, 2015 inspections, there did not appear to be equipment maintenance activities taking place in the Channel. A multiplier of 1.0 was therefore assessed.

History of Violations: 1.1

The Discharger has a history of violations for similar projects as described above and therefore a multiplier of 1.1 is assigned.

Step 5. Total Base Liability: \$4,774

0.31 (Per Day Factor) X 1 day X \$10,000 per day (Statutory Max) X 1.4 (Culpability) X 1.0 (Cleanup and Cooperation) X 1.1 (History of Violations) = \$4,774

Violation 11: Unauthorized Discharge Exceeding Water Quality Effluent Limits

Attachment B Additional Condition No. 19 of the Certification requires the Discharger to maintain turbidity levels downstream of the project within 20 percent of the levels

upstream. Seventeen turbidity exceedances and 42 total suspended solids (TSS) violations were noted in the Discharger's self-monitoring reports for the periods from May 2013 through October 2013, May 2014 through October 2014, and April 2015 through September 2, 2015. In addition, during the October 2, 2014 Regional Board staff's inspection, Regional Board staff measured turbidity downstream from the project and found that turbidity exceeded the turbidity measurements upstream from the project. A total of fifty-nine (59) days of violation are alleged.

Step 1. Potential for Harm for Discharge Violations: 6

Factor 1: Harm or Potential Harm to Beneficial Uses: Moderate (3)

The evaluation of Potential Harm to beneficial uses factor considers the harm that may result from exposure to the pollutants. A score between 0 and 5 is assigned based on a determination of Harm or Potential Harm to Beneficial Uses. The Prosecution team assessed Harm or Potential Harm to Beneficial Uses as Moderate.

Turbidity and TSS exceedances, though not overly alarming concentrations, were persistent every year for a period of three years. Impacts to beneficial uses are reasonably expected even if causing temporary impacts. Turbidity is the amount of material suspended in the water (e.g., sediment). Suspended solids prevent sunlight from reaching aquatic plants. Without light, photosynthesis cannot take place, which may reduce the amount of dissolved oxygen in the water. Dissolved oxygen is vital for fish and other aquatic life. Sediment also absorbs heat, so turbidity can also raise the surface water temperature. Turbidity can also make it hard for fish to see their prey. Heavy loads of suspended solids can even clog fish gills and filter-feeding devices of aquatic macroinvertebrates (water bugs). As solid matter settles, it may cover and harm bottom-dwelling plants and animals and spawning beds and affects light penetration.

Failure to meet the turbidity levels outlined in the Basin Plan and the 401 Certification is a violation of water quality standards. Failure to meet water quality standards means the Project likely contributed to the degradation of water quality and the beneficial uses of the Los Angeles River. A moderate potential for harm with a score of 3 was therefore assessed.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 2

This factor is scored based on the physical, chemical, biological and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. The Prosecution team assessed a score of 2. Turbidity affects the clarity of the Los Angeles River water and significantly reduces the aesthetic quality of the Los Angeles River, having a harmful impact on recreation and wildlife habitat beneficial uses. Sediment also

is a conduit for toxic organic chemicals to downstream receiving waters such as the Los Angeles River estuary.

Factor 3: Susceptibility to Cleanup or Abatement: 1

A score of 1 is assigned for this factor because less than 50% of the discharge is susceptible to cleanup or abatement.

Potential for Harm Final Score: 6

A final score of 6 was calculated by adding Factors 1, 2, and 3 together.

Step 2. Assessment for Discharge Violations: 0.22

Per Day Assessments for Discharge Violations

When there is a discharge, the Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Extent of Deviation from Requirements. The Potential for Harm score from Step 1 is 6.

Deviation from Requirement: Major

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Major Deviation from Requirement because the Discharger disregarded this requirement by exceeding levels of turbidity and TSS as prescribed in the 401 Certification and the Los Angeles Regional Water Quality Control Plan (Basin Plan, p. 3-38) by up to 59% and 137% respectively. Compliance with numeric water quality objectives were not achieved, thereby warranting the assessment of a “major” deviation from requirement.

Step 3. Per Day Assessments for Non-Discharge Violations

In this case, this factor does not apply.

Step 4. Adjustment Factors

Culpability: 1.4

The culpability multiplier ranges between 0.5 and 1.5; the Prosecution Team assigns a multiplier of 1.4 for this violation because a prudent person would have reviewed the data on the monthly monitoring reports and determined that the project needed to implement effective control measures to prevent the degradation of water quality from the project. Instead, for the duration of the Project, the City either negligently or intentionally failed to take the necessary corrective action to reduce discharges resulting in turbidity and total suspended solids exceedances to prevent the ongoing degradation of water quality.

Cleanup and Cooperation: 1.3

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Prosecution Team assigns a multiplier of 1.3. The Regional Board sent a Notice of Violation dated April 21, 2015 pointing out the turbidity and TSS exceedances

as documented in the City's monitoring reports. The City responded in a letter dated May 13, 2015 that it, "will be monitoring BMPS throughout the construction site to ensure their effectiveness is maintained." However, exceedances continued until the end of the 2015 construction season.

History of Violations: 1.0

Since the City has a history of repeat violations, as described above, a minimum multiplier of 1.1 is assigned.

Step 5. Total Base Liability: \$259,860

0.22 (Per Day Factor) X 3 days X \$10,000 per day (Statutory Max) X 1.4 (Culpability) X 1.3 (Cleanup and Cooperation) X 1.1 (History of Violations) = \$13,213. The statutory maximum per day penalty is \$30,000.

Violation 12: Unauthorized Discharge of Groundwater to the Los Angeles River

The 401 Certification Attachment B Additional Condition No.16 requires the applicant to implement the necessary control measures to prevent groundwater from the artesian well being discharged into the low flow channel. The Discharger failed to comply with this requirement. The groundwater should have been pumped into the City of Los Angeles Sewer System under the City of Los Angeles Industrial Wastewater Permit. The Discharger allowed groundwater from a dewatering well to discharge into the low flow channel of the Los Angeles River without an NPDES permit. Regional Board staff observed this violation on two separate inspections, on October 2, 2014 and April 27, 2015.

Step 1. Potential for Harm for Discharge Violations: 5

Factor 1: Harm or Potential Harm to Beneficial Uses: Below Moderate (2)

The evaluation of Potential Harm to beneficial uses factor considers the harm that may result from exposure to the pollutants. A score between 0 and 5 is assigned based on a determination of Harm or Potential Harm to Beneficial Uses. The Prosecution Team assessed Harm or Potential Harm to Beneficial Uses as below moderate. Groundwater, particularly from shallow sources, may contain pollutants that could affect freshwater ecology. A number of small fry were observed swimming in a pool fed by the overflowing groundwater well during the inspections. Though groundwater was not toxic enough to have an acute effect on aquatic life, its chronic effects on receptors or potential receptors are unknown. Impacts to beneficial uses can therefore be reasonably expected. Conservatively, a factor of below moderate was assessed or a score of 2 was selected.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 2

This factor is scored based on the physical, chemical, biological and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. The Prosecution team assessed a score of 2. A score of 2 is defined as “Discharged material poses a Moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged materials have some level of toxicity or pose a Moderate level or concern regarding receptor protection).” Groundwater is generally high in total dissolved solids and nutrients and in an urbanized area and typically contains contaminants. Groundwater discharges could change the chemical composition of the receiving water thereby impeding or temporarily damaging potential receptors. Groundwater poses a moderate threat to potential receptors and a score of 2 is appropriate.

Factor 3: Susceptibility to Cleanup or Abatement: 1

A score of 1 is assigned for this factor because less than 50% of the discharge is susceptible to cleanup or abatement. After the discharge took place, it was impossible to retrieve from the river flow.

Potential for Harm Final Score:

A final score of 5 was calculated by adding Factors 1, 2, and 3 together.

Step 2. Assessment for Discharge Violations: 0.15

Per Day Assessments for Discharge Violations

When there is a discharge, the Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Extent of Deviation from Requirements. The Potential for Harm score from Step 1 is 5.

Deviation from Requirement: Major

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Major Deviation from Requirement. The Discharger disregarded this requirement by failing to implement the necessary control measures to prevent the discharge of groundwater into the low flow channel.

Step 3. Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply.

Step 4. Adjustment Factors

Culpability: 1.5

The culpability multiplier ranges between 0.5 and 1.5; the Prosecution Team assigns a multiplier of 1.5 for this violation. A prudent person would have ensured there were the necessary precautionary measures to prevent the

discharge of groundwater into the Los Angeles River or obtain an NPDES permit. The City was notified in the Regional Board's April 13, 2015 Notice of Violation that the discharge of groundwater to the Channel was a violation of the Water Code and the Clean Water Act. The groundwater discharge to surface waters was not covered by the 401 Certification. 401 Certification Condition 17 in Attachment B provides that the City is required to "cease all activities in the areas where groundwater is present, file a Report Waste Discharge to this Regional Board, and obtain any necessary permit prior to discharging waste." The City did not cease discharging groundwater as required. It is the City's responsibility to obtain a permit from the Water Board for discharges to waters of the U.S. The City intentionally proceeded to discharge groundwater to the Channel knowing that it was unauthorized. A high culpability factor of 1.5 is warranted.

Cleanup and Cooperation: 1.3

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Prosecution Team assigns a multiplier of 1.3, because the City allowed the discharge of groundwater to continue even after having been notified that such conduct was a water quality violation. Regional Board staff first observed discharges of groundwater to surface water at the October 2, 2014 inspection. In the Notice of Violation issued on April 13, 2015, the Discharger was notified that the discharge of groundwater was a violation of the Certification and required an NPDES permit. On April 27, 2015, groundwater was once again observed discharging into the low flow channel. The Project Manager told Regional Board staff that the groundwater pump was not fast enough to keep up with the flow from the well. After Regional Board staff notified the Project Manager that the discharge was a violation, the Project Manager had sandbags, and plastic sheeting (visqueen) installed to pond the groundwater discharge and prevent it from flowing into the low flow channel. Taking into consideration the Project Manager's immediate response, a factor of 1.3 is appropriate.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, a minimum multiplier of 1.1 is assigned.

Step 5. Total Base Liability: \$6,435

0.15 (Per Day Factor) X 2 days X \$10,000 per day (Statutory Max) X 1.5 (Culpability) X 1.3 (Cleanup and Cooperation) X 1.1 (History of Violations) = \$6,435. Maximum liability for this violation is \$20,000.

Violation 13: Unauthorized Discharge of Sediment Ramp

The 401 Certification Attachment B Additional Condition No.18 requires that project activities not included in the Certification be reported to the Regional Board and that they may require additional Certification. Project activities that have the potential to

impact water quality are required to be authorized by a 401 certification. Discharges to surface waters that are not in compliance with a 401 certification or authorized by waste discharge requirements are a violation of the California Water Code and the Federal Clean Water Act. Regional Board staff first observed an access ramp consisting of sediment and k-rails constructed by the City on the west side of the Channel on April 27, 2015. The ramp was constructed to allow access to portions of the viaduct construction. The ramp was observed to have expanded in size by the June 2, 2015 inspection. The violation, is therefore, alleged to have occurred for 36 days. Regional Board staff have determined, based on observations and photographs taken at the site, that approximately 1,511 cubic yards, or the equivalent of 305,184 gallons of earth was used in constructing the ramp.

Step 1. Potential for Harm for Discharge Violations: 4

Factor 1: Harm or Potential Harm to Beneficial Uses: Moderate (2)

The evaluation of Potential Harm to beneficial uses factor considers the harm that may result from exposure to the pollutants. A score between 0 and 5 is assigned based on a determination of Harm or Potential Harm to Beneficial Uses. The discharge of sediment and dirt to the Channel is classified as a moderate risk or threat to potential receptors because discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease. The discharge has the potential to negatively impact aquatic organisms. A factor of 2 was assessed.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge: 2

This factor is scored based on the physical, chemical, biological and/or thermal nature of the discharge, waste, fill, or material involved in the violation or violations. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. The Prosecution team assessed a score of 2. Sediment-laden water is severely degraded water. As described in more detail in Factor 1, sediment-laden water poses a moderate level of concern to ecosystem health exposure pathways because of the great likelihood that the discharged material would harm aquatic life. Based on the characteristics of the discharge and whether the discharge poses a concern regarding receptor protection, a score of 2 was assigned, as sediment-laden water poses a moderate risk to potential receptors.

Factor 3: Susceptibility to Cleanup or Abatement: 0

A score of 0 is assigned for this factor because greater than 50% of the discharge is susceptible to cleanup or abatement. Barring a precipitation event that could wash the sediment down the Channel, the sediment ramp was confined to a portion of the dry Channel and greater than 50% was susceptible to cleanup.

Potential for Harm Final Score: 4

A final score of 4 was calculated by adding Factors 1, 2, and 3 together.

Step 2. Assessment for Discharge Violations: 0.025

Per Day Assessments for Discharge Violations

When there is a discharge, the Water Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Extent of Deviation from Requirements. The Potential for Harm score from Step 1 is 4.

Deviation from Requirement: Major

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “The requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger disregarded this requirement and chose not to notify the Regional Board and request an amendment to its Certification prior to its discharging approximately 305,184 gallons into the Los Angeles River to create the sediment ramp.

Step 3. Per Day Assessment for Non-Discharge Violations

In this case, this factor does not apply.

Step 4. Adjustment Factors

Culpability: 1.5

The culpability multiplier ranges between 0.5 and 1.5. A prudent person who regularly conducts bridge projects in the Los Angeles River would have contacted the Regional Board and applied for an amendment to its 401 Certification prior to placing approximately 305,184 gallons of sediment and dirt into the Channel. The Prosecution Team assigns a multiplier of 1.5, because on April 27, 2015 Regional Board staff informed City’s staff that the sediment ramp structure is not permitted by the 401 Certification. Instead, the City continued to use the ramp and, in fact, expanded the size of the ramp by the June 2, 2015 inspection. The City failed to contact the Regional Board to obtain authorization before continuing use of the ramp and adding more dirt and sediment. The City appeared to intentionally disregard Regional Board requirements by failing to obtain approval for discharging sediment and dirt into the Los Angeles River and continuing to engage in such illegal conduct even after warnings from Regional Board staff. A multiplier of 1.5 is appropriate.

Cleanup and Cooperation: 1.2

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Prosecution Team assigns a multiplier of 1.2, because the City eventually

removed the ramp from the Channel after several notifications and warnings from Regional Board staff.

History of Violations: 1.1

Since the Applicant has a history of repeat violations, a minimum multiplier of 1.1 is assigned.

Step 5. Total Base Liability: \$151,066

0.025 (Per Gallon Factor) X 201,990 gallons X \$10 per gallon (Statutory Max)
X 1.5 (Culpability) X 1.2 (Cleanup and Cooperation) X 1.1(History of Violations)
= \$99,985

Violation 14: Exceedance of Project's footprint 35 percent beyond the area permitted by the 401 Certification

401 Certification Attachment A No.12 requires the Discharger to not exceed 2.49 Acres for the Project's footprint. The Discharger failed to comply with this requirement. Construction activities were occurring upstream and downstream and within the Los Angeles River Channel for approximately 400 linear feet north of the North Spring Street Viaduct (NSV) and 700 linear feet south of the NSV. The Project's activity covered approximately 3.37 acres, instead of the combined temporary and permanent impacts of 2.49 acres permitted by the 401 Certification.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation (non-discharge violation alleged).

Step 3. Per Day Assessment for Non-Discharge Violations: 0.35

Potential for Harm: Moderate

The Violation poses either a Minor, Moderate, or Major threat to beneficial uses. The Potential for Harm for this violation is characterized as Moderate. The additional areas impacted by the Project and not covered by the 401 Certification resulted in the addition of sources that have the potential to release pollutants to the Los Angeles River. These additional areas lacked BMPs to contain construction materials and prevent pollutants from washing away during a rainstorm and impacting the river. The City failed to replace the loss of aquatic resource functions for the entire project area. In this regard, the extension of project activities by 35% presented a substantial threat to beneficial uses and substantial potential for harm to the environment.

Deviation from Requirement: Moderate

The violation is characterized as either a Minor, Moderate, or Major deviation from the requirement. In this case, the Prosecution Team characterized the violation as a Moderate Deviation from Requirement. The Discharger significantly expanded the work area of the project beyond what was approved by the Regional Board in its Certification. This requirement of the Certification was only partially achieved because the City underestimated the acreage of impacted surface waters from its project activities. Therefore, a moderate deviation from requirement is appropriate because the effectiveness of the requirement was only partially achieved.

Step 4. Adjustment Factors

Culpability: 1.5

The culpability multiplier ranges between 0.5 and 1.5. The Prosecution Team assigns a multiplier of 1.5 for this violation because the Discharger proceeded with construction activities in spite of knowing that the project activities exceeded the scope of the 401 Certification issued on August 13, 2014.

On April 13, 2013, Regional Board staff received a Water Diversion Plan that significantly exceeded the size and scope of the submitted application for the project and in May 2013 Regional Board staff notified City staff that an amendment to the 401 Certification was required if work was to be conducted in such a manner. However, during the October 2, 2014 inspection, Regional Board staff observed that the project's footprint extended approximately thirty-five (35) percent beyond the area permitted by the Discharger's Certification. Construction activities covered approximately 3.37 acres, instead of the 2.49 acres allowed for under the Certification. A high culpability factor is appropriate where the Discharger intentionally exceeded the permitted project size.

Cleanup and Cooperation: 1.5

The cleanup and cooperation multiplier ranges from 0.75 to 1.5. The Prosecution Team assigns a multiplier of 1.5. In the Notice of Violation issued on April 13, 2015, the Regional Board notified the City that the project's footprint on October 2, 2014 extended 35 percent beyond the area allowed for by the Certification. In the City's response, dated May 13, 2015, it ensured the Regional Board that "during the 2015 construction season the project area will not exceed the 2.49 acres permitted by the WQC." However, during the Regional Board's June 2, 2015 inspection, staff noted that the City had operated 20% beyond the area allowed for in the Certification. The City had been notified of this requirement in a NOV dated February 18, 2015, yet continued work outside of the permitted area without Regional Board authorization. Therefore, a multiplier of 1.5 is appropriate.

History of Violations: 1.1

Since the Discharger has a history of repeat violations, as described above, a minimum multiplier of 1.1 is assigned.

Step 5. Total Base Liability: \$17,325

0.35 (Per Day Factor) X 2 days X \$10,000 per day (Statutory Max) X 1.5 (Culpability) X 1.5 (Cleanup and Cooperation) X 1.1 (History of Violations) = \$17,325. Statutory Max is \$20,000 for two days.

Total Liability for All Violations

Violation Number	Number of Days or Gallons	Total Base Liability	Maximum Liability	Proposed Liability
1	2 days	\$7,150	\$20,000.00	\$7,150
2	1 day	\$8,470	\$10,000.00	\$8,470
3	1 day	\$10,164	\$10,000.00	\$10,000
4	1 day	\$7,865	\$10,000.00	\$7,865
5	2 days	\$16,940	\$20,000.00	\$16,940
6	1 day	\$2,904	\$10,000.00	\$2,904
7	1 day	\$2,904	\$10,000.00	\$2,904
8	1 day	\$2,904	\$10,000.00	\$2,904
9	2 days	\$8,179	\$20,000.00	\$8,179
10	1 day	\$4,774	\$10,000.00	\$4,774
11	3 days	\$13,213	\$30,000	\$13,213
12	2 days	\$6,435	\$20,000.00	\$6,435
13	201,990 gallons	\$99,985	\$2,019,900	\$99,985
14	2 days	\$17,325	\$20,000	\$17,325
TOTAL			\$2,219,900	\$209,049

Step 6. Ability to Pay:

The Discharger is a public agency, the City of Los Angeles. The Regional Board has determined that city governments have the ability to pay the proposed penalty amount. City governments, such as the City of Los Angeles, have the power to levee fees and raise revenue from a number of sources including property taxes, and sales taxes.

Step 7. Other Factors as Justice May Require:

If the Regional Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under this section if express findings are made. In addition, the costs of investigation and enforcement should be added to the liability amount. No adjustments have been identified as necessary. The Regional Board chose to forgo the pursuit of staff costs for this matter.

Step 8. Economic Benefit: \$18,548

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations. The violations described herein have associated delayed and avoided expenses that have significantly benefited the Discharger.

Through inspections conducted by Regional Board staff, inadequate storm water BMPs were identified over the period of construction, from October 2014 to June 2015. The Regional Board contends that the Discharger’s failure to address these deficiencies resulted in cost savings that would not have been realized had they complied with the conditions of the 401 Certification. Regional Board staff have assessed the inadequacies in the BMPs observed during inspections, and have proposed reasonable improvements based on best professional judgment for the purpose of computing the economic benefit. Such improvements include additional sandbags, straw wattles, plastic sheeting (visqueen), and concrete K-rails to properly implement the Water Diversion Plan, in addition to vehicle drip pans and a stockpile cover. Costs associated with these improvements were estimated using industry standards and include material, installation labor, and maintenance costs. The total cost of BMP improvements is estimated to be approximately \$9,145 and is considered to be a conservative estimate. In addition to BMP violations, the Discharger failed to adequately prevent groundwater from discharging to the Los Angeles River. The Regional Board ascertains that by actively allowing the discharge of groundwater to occur, the Discharger avoided obtaining a NPDES discharge permit. The avoided permit issuance cost is estimated at \$7,177. Other costs associated with treatment, monitoring, and reporting associated with the discharge were not assessed as part of the economic benefit analysis. Finally, the Discharger exceeded the approved project footprint by 35 percent. Permit fees are assessed for projects based on size. Regional Board staff determined that construction activities covered approximately 3.37 acres, rather than the combined temporary and permanent impacts of 2.49 acres permitted by the Certification. As a result, the Discharger avoided the increased fee expense of \$3,572.

The BEN financial model provided by the United States Environmental Protection Agency was used to compute the total economic benefit of noncompliance. Cost estimate and other assumptions are detailed in the attached table. For computational purposes, the penalty payment date was established as March 31, 2016. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$16,862. The proposed liability is greater than the estimated economic benefit plus ten percent or \$18,548.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

- a. Maximum: The table of total base liability, above, also includes the maximum liability for each violation. The proposed liability takes into consideration the statutory maximum for each violation.
- b. Minimum: The Enforcement Policy requires the Regional Board to recover, at a minimum, 10% more than the economic benefit. The minimum liability that may be imposed is \$18,548.

Step 10. Final Liability Amount: \$209,049

To determine the final liability amount, liabilities for each violation were summed together, provided the amounts were within the statutory minimum and maximum amounts. The final liability amount proposed by the Prosecution Team is **\$209,049**.