
San Diego Regional Water Quality Control Board

July 16, 2021

Golden State Overnight
Tracking Number: 553907934

Ms. Patricia A. Butler
Chief Engineer
Santa Margarita Water District
26111 Antonio Parkway
Rancho Santa Margarita, California 92688

In reply refer to: SM-893360/CArias

Sent via email: triciab@smwd.com

Offer No. R9-2021-0272 to Settle Administrative Civil Liability for Alleged Violation of California Water Code Section 13376

Ms. Butler:

This letter (hereafter, "Settlement Offer") contains an offer from the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of an alleged violation of California Water Code (Water Code) section 13376. The Prosecution Team alleges that the Santa Margarita Water District (Discharger) violated Water Code section 13376 by failing to timely obtain regulatory coverage for the Aufdenkamp Connection Transmission Main Relocation Construction Project (Project).

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violation through payment of sixteen thousand, nine hundred forty dollars (\$16,940). Please read this letter carefully and respond no later than August 16, 2021.

Description of Alleged Violation

Water Code section 13376 requires that a person who discharges, or proposes to discharge, pollutants to the navigable waters of the United States within the jurisdiction of California shall file a report of the discharge in compliance with the procedures set forth in Water Code section 13260. Water Code section 13260 requires a report of waste discharge be submitted to the San Diego Water Board when any person discharges waste, or proposes to discharge waste, that could affect the quality of waters of the State in the San Diego Region. Discharges from construction sites greater than or equal to one acre must meet this requirement by timely enrolling in California State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, NPDES No. CAS000002, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, *National Pollutant Discharge Elimination System (NPDES) General Permit for*

Storm Water Discharges Associated With Construction and Land Disturbance Activities (CGP). To enroll in the CGP the Legally Responsible Person must electronically submit Permit Registration Documents (PRDs) including a Notice of Intent, Risk Assessment, Site Map, Storm Water Pollution Prevention Plan (SWPPP), Annual Fee, and Signed Certification Statement to the Stormwater Multiple Application and Report Tracking System (SMARTs) database prior to the commencement of construction activities. This requirement is described in Provision II.B. of the CGP.

In a letter dated May 3, 2021 to the State Water Board, the Discharger explained that it had inadvertently failed to submit the PRDs into SMARTs for the Project prior to the start of construction activities. Although it failed to timely obtain regulatory coverage, the Discharger stated that it had in fact prepared the PRDs. Most notably, it developed and implemented a SWPPP for the Project and took necessary action to protect water quality as required by the CGP. The Project began on July 1, 2020, and is now complete. The Discharger submitted the PRDs on May 7, 2021, resulting in 311 days of non-compliance for failure to obtain regulatory coverage pursuant to Water Code section 13376.

Statutory Liability

Pursuant to Water Code section 13385(c), the Discharger may be liable for administrative civil liability of up to \$10,000 per day of violation. Pursuant to Water Code section 13385(e) "liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The State Water Board's [Water Quality Enforcement Policy](#)¹ states that the minimum liability should be the economic benefit plus ten percent. For the alleged violation described in the attachments, the maximum liability is \$3,110,000, and the minimum liability is \$488.

Proposed Settlement Offer

The Prosecution Team proposes to resolve the alleged violation with this Settlement Offer of \$16,940. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the methodology set forth in the Enforcement Policy. The enclosed Exhibit 1 describes in detail the methodology used to reach the proposed liability amount. The Prosecution Team believes that the proposed resolution of the alleged violation is fair and reasonable, fulfills the San Diego Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose not to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint (ACL Complaint) or by referring the matter to the Attorney General's

1

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Office. If an ACL Complaint is issued, the Prosecution Team will include, at a minimum, staff investigation and enforcement costs, currently estimated at approximately \$4,000. Staff costs would continue to accrue until an ACL Complaint is issued.

The Prosecution Team also reserves the right to conduct additional investigations, including issuance of investigation orders and/or subpoenas to determine if additional violations occurred. Any additional violations subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a formal enforcement action and settle the alleged violations by accepting this Settlement Offer. Additionally, the Prosecution Team reserves the right to take further enforcement actions against the Discharger for any past violations not identified in this Settlement Offer.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) shall be completed and submitted, via email, no later than August 16, 2021, to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: SM-893360/Carias; R9-2021-0272
Email: SanDiego@waterboards.ca.gov

Important! Upon receipt of the Acceptance and Waiver, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the San Diego Water Board's Executive Officer to formally endorse the Acceptance and Waiver as an Order of the San Diego Water Board. The Discharger will be required to submit payment of the \$16,940 administrative civil liability within 30 days from when the Settlement Offer is signed by the Executive Officer.

If, however, substantive comments are received in opposition to this settlement or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. The unresolved violations will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

Option B: Reject the Offer

If the Discharger chooses to reject this Settlement Offer or does not complete and return the Acceptance and Waiver, the Discharger should expect that the Prosecution

Team would conduct further investigation of the violation, issue an ACL Complaint, and schedule a hearing. The Discharger will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this Settlement Offer, please contact Ms. Christina Arias at (619) 521-3361 or at christina.arias@waterboards.ca.gov.

Respectfully,

KELLY DORSEY, P.G.
Assistant Executive Officer

Copies to:

David Barker, San Diego Water Board, david.barker@waterboards.ca.gov
Jeremy Haas, San Diego Water Board, jeremy.haas@waterboards.ca.gov
Chiara Clemente, San Diego Water Board, chiara.clemente@waterboards.ca.gov
Laurie Walsh, San Diego Water Board, laurie.walsh@waterboards.ca.gov
Whitney Ghoram, San Diego Water Board, whitney.ghoram@waterboards.ca.gov
Laura Drabandt, Office of Enforcement, State Water Board,
laura.drabandt@waterboards.ca.gov

Enclosures:

Acceptance of Settlement Offer and Waiver of Right to a Hearing
Exhibit 1, Liability Methodology
Exhibit 2, Economic Benefit Analysis

Documents relied upon and available upon request:

Letter from the Santa Margarita Water District to the State Water Board dated May 3, 2021 (ECM Document Handle Number 9142000)

Staff Information

ECM PIN SM-893360

ORDER NO. R9-2021-0272

**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
SANTA MARGARITA WATER DISTRICT**

By signing below and returning this Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), the Santa Margarita Water District (Discharger) hereby accepts the Settlement Offer described in the letter dated July 16, 2021, and titled *Offer No. R9-2021-0272 to Settle Administrative Civil Liability for Alleged Violation of California Water Code Section 13376*. The Discharger also hereby waives the right to a hearing before the San Diego Water Board to dispute the alleged violation described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violation. The Discharger agrees to pay an administrative civil liability in the sum of sixteen thousand, nine hundred forty dollars (\$16,940) made payable to the "State Water Resources Control Board Cleanup and Abatement Account." This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.

The Discharger understands that by signing this Acceptance and Waiver, the Discharger has waived its rights to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation. The Discharger understands that this Acceptance and Waiver does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: SM-893360/CArias; R9-2021-0272
Email: SanDiego@waterboards.ca.gov

The Discharger understands that the San Diego Water Board Prosecution Team (Prosecution Team) publishes notice of and provides at least 30 days for public comment on any proposed resolution of an enforcement action for Water Code violations. Accordingly, this Acceptance and Waiver, prior to being formally endorsed by the San Diego Water Board Executive Officer (acting as the San Diego Water Board's delegated hearing officer), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this Acceptance and Waiver to the San Diego Water Board's Executive Officer for formal endorsement on behalf of the San Diego Water Board.

Order No. R9-2021-0272

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the Acceptance and Waiver will also be treated as withdrawn. The unresolved violation will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

The Discharger understands that once this Acceptance and Waiver is formally endorsed by signature of the Executive Officer, then the full payment is a condition of this Acceptance and Waiver. Full payment is due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

Signature:

Full Name:

Title:

IT IS SO ORDERED, pursuant to Water Code section 13385.

DAVID W. GIBSON
Executive Officer