

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

**IN THE MATTER OF CITY OF SAN DIEGO,
APRIL 2020 SANITARY SEWER OVERFLOW,
SWEETWATER RIVER, SAN DIEGO BAY, CA**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY**

ORDER NO. R9-2023-0017

I. INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) on behalf of the San Diego Water Board Prosecution Team (Prosecution Team), and the City of San Diego (City or Discharger) (collectively, Parties). This Order is presented to the San Diego Water Board for adoption as an order by settlement pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60.

II. RECITALS

2. The City owns and operates the municipal sanitary sewer system of the City and provides wastewater conveyance and treatment services to 15 other cities and special districts. The wastewater collection system serves approximately 1.3 million residents over 340 square miles and includes approximately 3,000 miles of sewer mains and 73 pump stations.
3. Pump Station 1 (PS1) is located at 3550 East Harbor Drive in National City, California, and transports wastewater from the South Bay region northward through a major pipeline known as the South Metropolitan Interceptor (SMI). PS1 was put into operation in 1963 and has six vertical shaft-driven centrifugal pumps. On average during dry weather, PS1 transports 40-50 million gallons a day (MGD) of wastewater using two pumps. PS1 is the City's second largest wastewater pump station and has a maximum pumping capacity of 160 MGD.
4. The City's collection system includes 12 major siphons (larger than 30 inches in diameter) in five locations that allow wastewater to traverse waterbodies. The major siphons are located at the Otay River, Tecolote Creek, San Diego River, Sweetwater River, and Chollas Creek.
5. The siphon at the Sweetwater River allows the SMI to traverse the River underground. The siphon was constructed in 1971 and consists of two transition

structures, one on each riverbank, and four elliptical barrels, roughly 400 feet long, encased in concrete. Should PS1 fail, the siphon has an emergency overflow structure on the south riverbank, allowing wastewater to overflow into the Sweetwater River.

6. The Sweetwater River discharges into lower San Diego Bay at its terminus. The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) designates the following existing and potential beneficial uses for the Sweetwater River:
 - a. Industrial Service Supply (IND) – Includes uses of water for industrial activities that do not depend primarily on water quality including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, or oil well re-pressurization.
 - b. Water Contact Recreation (REC-1) – Includes uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, swimming, wading, water-skiing, skin and SCUBA diving, surfing, white water activities, fishing, or use of natural hot springs.
 - c. Non-Contact Water Recreation (REC-2) – Includes the uses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.
 - d. Warm Freshwater Habitat (WARM) – Includes uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates.
 - e. Wildlife Habitat (WILD) – Includes uses of water that support terrestrial ecosystems including, but not limited to, preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.
7. In addition to the IND, REC-1, REC-2, WARM, and WILD beneficial uses as described above, the Basin Plan designates the following existing and potential beneficial uses for San Diego Bay:
 - a. Preservation of Biological Habitats of Special Significance (BIOL) – Includes uses of water that support designated areas or habitats, such as established refuges, parks, sanctuaries, ecological reserves, or Areas of Special Biological Significance (ASBS), where the preservation or enhancement of natural resources requires special protection.
 - b. Commercial and Sport Fishing (COMM) – Includes the uses of water for commercial or recreational collection of fish, shellfish, or other organisms

- including, but not limited to, uses involving organisms intended for human consumption or bait purposes.
- c. Estuarine Habitat (EST) – Includes uses of water that support estuarine ecosystems including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish, or wildlife (e.g., estuarine mammals, waterfowl, shorebirds).
 - d. Marine Habitat (MAR) – Includes uses of water that support marine ecosystems including, but not limited to, preservation or enhancement of marine habitats, vegetation such as kelp, fish, shellfish, or wildlife (e.g., marine mammals, shorebirds).
 - e. Migration of Aquatic Organisms (MIGR) – Includes uses of water that support habitats necessary for migration, acclimatization between fresh and salt water, or other temporary activities by aquatic organisms, such as anadromous fish.
 - f. Navigation (NAV) – Includes uses of water for shipping, travel, or other transportation by private, military, or commercial vessels.
 - g. Rare, Threatened, or Endangered Species (RARE) – Includes uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened or endangered.
 - h. Shellfish Harvesting (SHELL) – Includes uses of water that support habitats suitable for the collection of filter-feeding shellfish (e.g., clams, oysters and mussels) for human consumption, commercial, or sport purposes.
 - i. Spawning, Reproduction, and/or Early Development (SPWN) – Includes uses of water that support high quality aquatic habitats suitable for reproduction and early development of fish. This use is applicable only for the protection of anadromous fish.
8. In accordance with [Resolution No. R9-2017-0030](#),¹ San Diego Bay is considered a key area for three beneficial use categories: habitats and ecosystems, consumption of fish and shellfish, and recreation. San Diego Bay is a high priority waterbody for the San Diego Water Board for restoration and protection due to its ecological value and because it supports tourism, commercial and subsistence fishing, and a variety of recreational, maritime, industrial, commercial, and military uses.
9. The lower San Diego Bay, and the mouth of the Sweetwater River in particular, is surrounded by Disadvantaged Communities (DACs) as described in the Department of Water Resources Mapping Tool, and has a pollution burden percentile of 97,

¹ A copy of the Resolution is available at:
https://www.waterboards.ca.gov/rwqcb9/board_decisions/adopted_orders/2017/R9-2017-0030.pdf

according to CalEnviroScreen 4.0.² A “Disadvantaged Community” per Health and Safety Code section 39711 includes areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation; or areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment.

10. On April 10-11, 2020, after rainfall totaling almost 6 inches over 7 days (as measured by the County of San Diego’s Bonita rain gauge station), the City’s collection system failed, resulting in a sanitary sewer overflow (SSO) discharge of 11.23 million gallons directly into the Sweetwater River. The spill release point is located approximately one-quarter mile upstream of the mouth of the Sweetwater River, where it joins the lower San Diego Bay. The spill began on a Friday, but the City was unaware that it had occurred until the following Monday, when hydraulic modeling staff reviewed wastewater flow meter data from participating agencies, a routine practice following rain events. Seeing a discrepancy with the flow measured upstream of the south siphon transition structure (located at the south end of the Sweetwater River) and the flow measured at PS1, City staff determined that an SSO must have occurred.
11. The City was not aware that this SSO was occurring due to a failure in the alarm system. When the City learned that an SSO may have occurred on Monday, April 13, 2020, it initiated an investigation. The City informed the San Diego Water Board via email and phone of this investigation on April 14, 2020. Between April 13 and April 17, 2020, the City performed a comprehensive investigation regarding the anomaly in flow meter data including analyzing flow data from participating agencies, hydraulic modeling data, site inspections, and water quality testing. The City determined that an SSO must have occurred and submitted a technical report to the California Integrated Water Quality System (CIWQS) on Saturday, April 18, 2020 in accordance with the reporting requirements of Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-003-DWQ (Statewide General Order).
12. The City’s ability to learn of and respond to the SSO as it was occurring was compromised by a dead solar battery in the level sensor and alarm at the south siphon transition structure. The battery was designed to hold charge for about three days; but with the ongoing storm event (seven days), there was little sunlight to charge the battery. This resulted in a jumbled signal and a delay in knowledge that the spill had occurred.
13. According to a report commissioned by the City to determine the cause of the SSO, several factors contributed to the SSO: 1) higher than normal rainfall spanning several days, 2) reduction in siphon capacity due to a blockage in one barrel, 3)

² See Census Tract 6073021900 at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

debris buildup in all four siphon barrels, and 4) inoperability of one or more pumps at PS1. There is evidence that concrete corrosion around the emergency release valve at the south siphon transition structure may have allowed tidal surge to enter the collection system, also contributing to the SSO.

14. Areas of special importance downstream of the SSO location include Pepper Park, a community park with a fishing pier, boat dock, playground, and picnic tables, and the San Diego Bay National Wildlife Refuge with high value wetlands with important ecological functions. Discharges of untreated sewage negatively impact the Sweetwater River and San Diego Bay beneficial uses, and these areas in particular.
15. In accordance with the Enforcement Policy, the San Diego Water Board promotes enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations. This includes enforcing on SSOs that occur in DACs, such as the areas surrounding the mouth of the Sweetwater River.
16. The Statewide General Order regulates all entities that own or operate a sanitary sewer system, greater than one mile in length that collects or conveys untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. Prohibition C.1 of the Statewide General Order states that “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.”
17. In addition to the Statewide General Order, the San Diego Water Board adopted Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region (Order No. R9-2007-0005, Regional General Order). The Regional General Order establishes additional requirements beyond the minimum requirements established in the Statewide General Order. Prohibition B.1 of the Regional General Order states “[t]he discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.”
18. The City’s discharge of raw sewage on April 10-11, 2020, was in violation of Clean Water Act section 301 and Water Code section 13376, which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The discharge was also in violation of Basin Plan Waste Discharge Prohibition No. 1 which states “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Codes section 13050, is prohibited” and Prohibition No. 9 which states “[t]he unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.” The discharge of raw sewage was also a violation of the Statewide General Order and the Regional General Order. For the purposes of this Stipulated Order, the Prosecution Team is using its discretion to calculate a single base liability amount for all violations since the violations are not independent of one

another, are not substantially distinguishable, and are the result of a single act that violates similar requirements in different applicable permits and plans that are designed to address the same water quality issue.³

19. A discharger who violates Water Code section 13376 or Clean Water Act section 301 is subject to administrative civil liability pursuant to Water Code section 13385(a). Additionally, the unauthorized discharge of untreated sewage in violation of the Statewide General Order, Regional General Order, and Basin Plan Prohibitions is subject to administrative civil liability pursuant to Water Code section 13350. The San Diego Water Board Prosecution Team elected to pursue enforcement of the alleged violations pursuant to Water Code section 13385. Water Code section 13385(c) authorizes the San Diego Water Board to impose administrative civil liability up to \$10,000 per day of violation, plus \$10 for each gallon exceeding 1,000 gallons discharged but not cleaned up.
20. In June 2021, the Prosecution Team and the City entered into confidential settlement negotiations to resolve the alleged violation arising from the SSO. The Parties agreed to settle this matter without administrative or civil litigation by presenting this Order to the San Diego Water Board for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. Additional detail on the factors considered in determining the liability agreed upon by the Parties is discussed in Attachment A, attached hereto and incorporated by reference.
21. The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy ([Enforcement Policy](#))⁴ methodology as discussed in Attachment A.
22. The Prosecution Team asserts that the resolution of the alleged violations is fair, reasonable, and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A except as provided in this Order, and that this Order is in the best interest of the public.

III. STIPULATIONS

The Parties stipulate to the following:

23. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling FOUR MILLION, SIX HUNDRED NINE

³ See Enforcement Policy, Section VI.A, Step 4, Multiple Violations Resulting from the Same Incident.

⁴ A copy of the Enforcement Policy is available at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_fi nal%20adopted%20policy.pdf

THOUSAND, SEVEN HUNDRED TWENTY-FOUR DOLLARS (\$4,609,724), which includes \$43,755 in staff costs associated with the investigation and preparation of this enforcement action, to resolve the violations specifically alleged in this Stipulated Order as follows:

- a. Within thirty (30) days of the effective date of this Order, the Discharger agrees to remit, by check, \$907,901 payable to State Water Pollution Cleanup and Abatement Account, and shall indicate "Order No. R9-2023-0017" on the check. The Discharger shall send the original signed check to the following address:

State Water Resources Control Board; Accounting Office
ATTN: ACL Payment / Order No. R9-2023-0117
P.O. Box 1888
Sacramento, California 95812-1888

The Discharger shall send a copy of the check to the Prosecution Team Party Contact at the address listed in Paragraph 25. Alternative forms of payment are acceptable if agreed upon in advance.

- b. The State Water Board's May 3, 2018 Policy on Supplemental Environmental Projects ([SEP Policy](#)⁵) section VIII.B. provides:

"Unless otherwise permitted by statute or approved by the Director of [the Office of Enforcement (OE)] based on a finding of compelling justification due to exceptional circumstances ... no settlement shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the settling party. The total adjusted monetary assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs."

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment in cases where the SEP is located in or benefits a DAC, an environmental justice community, a community with a financial hardship, or where the SEP substantially furthers the human right to water.

Pursuant to the Director of OE's April 30, 2021 memorandum on approving DAC SEPs greater than 50 percent of the total adjusted monetary assessment (SEP Memo), more than 50 percent of the total adjusted monetary assessment may be dedicated to the SEPs because the Prosecution Team determined they are located in and/or benefit a DAC as shown in Attachments B and C, attached hereto and incorporated by reference. Notice and an opportunity to object was provided to the Director of OE.

⁵ A copy of the SEP Policy is available at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_fi_nal%20adopted%20policy.pdf

- c. Pursuant to Section VIII.G of the SEP Policy, if a Supplemental Environmental Project (SEP) directly benefits a DAC, the appropriate Water Board may approve a SEP which includes (its) oversight costs as part of the direct cost of the SEP, provided that the oversight costs are limited to no more than 5 percent of the total value of the SEP(s), and that the allowance is memorialized in the stipulated order. The San Diego Water Board estimates that it will spend \$20,000 to oversee the SEPs described in this order. These costs are less than the 5 percent limit of the total value of the SEPs, and both SEPs will benefit DACs. Therefore, the Board finds it appropriate to consider the \$20,000 in staff oversight to be considered part of the SEPs' suspended liability.
- d. The remaining \$3,681,823 in administrative civil liability will be satisfied through the complete implementation of two Supplemental Environmental Projects (SEPs): 1) Ocean Connector's Habitat Restoration and Education Program (\$1,081,823) and 2) Port of San Diego's Living Shorelines – Sweetwater Channel Project (\$2,600,000). The total cost associated with each SEP will be referred to as the "SEP Amount".

24. Compliance with Applicable Laws: The Discharger understands that the payment of administrative civil liability and implementation of the SEPs in accordance with the terms of this Order does not relieve the Discharger of its obligation to comply with applicable laws and new violations of the type alleged in Attachment A may subject it to further enforcement, including additional administrative civil liability.

25. Party Contacts for Communications related to the Order:

For the Prosecution Team:

Christina Arias
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, California 92108
sandiego@waterboards.ca.gov
(619) 521-3361

For the Discharger:

Tom Rosales
Public Utilities Department, City of San Diego
San Diego, California
trosales@sandiego.gov
(858) 292-6418

26. Supplemental Environmental Projects: The Parties agree that the SEP Amount specified in Paragraph 23 will be used to fund two SEPs. Both SEPs are located in, and intended to benefit DACs, at or near where the SSO occurred. For purposes of this Order, the amount associated with the SEPs shall be treated as a suspended administrative civil liability (Suspended Liability) once the SEPs are completed and

accepted by the San Diego Water Board. The San Diego Water Board is entitled to recover any portion of the Suspended Liability in accordance with this Order. Detailed project descriptions, including budgets, tasks, and deliverables, are attached hereto as Attachments B and C.

- a. **SEP (1): Ocean Connectors:** SEP (1) is the Ocean Connector's Habitat Restoration and Education Program, selected from the San Diego Water Board's list of pre-approved project concepts⁶ available for funding. This project shall consist of the following tasks:
 - i. Restoration and enhancement of approximately 6.5 acres of habitat directly adjacent to Paradise Creek, which is listed as impaired for Warm Freshwater Habitat (WARM), Commercial and Sport Fishing, and Shellfish Harvesting (SHELL) on the 2020-2022 California Integrated Report ([Integrated Report](#))⁷ and other areas of San Diego Bay, including the Sweetwater Marsh Unit and South San Diego Bay Unit of the San Diego Bay National Wildlife Reserve. SEP activities include litter abatement, invasive plant removal, native plant revegetation, and site monitoring and maintenance.
 - ii. Expansion of an environmental education program focusing on migratory species, climate change, and habitat restoration to an additional 3,500 students within the National City School District.
 - iii. Sponsoring 40 eco-tours and community-based education and outreach events for underserved communities in National City, Chula Vista, and Imperial Beach.
- b. **SEP (2): Living Shorelines:** SEP (2) is removal of riprap and installation of approximately 1,000 linear feet of biologically enhanced interlocking tidepool concrete units at the mouth of the Sweetwater River as it joins San Diego Bay. The concrete tidepool units provide tide-pool-like habitat opportunities that standard riprap does not. The project footprint replaces riprap at Pepper Park, the adjacent marina, and riprap bordering the National Wildlife Reserve with interlocking tide pool units to increase local biodiversity, productivity, and ecosystem services, while maintaining shoreline erosion protection. The project serves the surrounding DACs with habitat enhancement, coastal resiliency, and creation of recreational and environmental education opportunities. This project also supports the San Diego Water Board's Resolution Addressing Threats to

⁶ The list of pre-approved SEP concepts is located at:
https://www.waterboards.ca.gov/sandiego/water_issues/programs/compliance/environmental_projects.html

⁷ A copy of the Integrated Report is available at:
https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2020_2022_integrated_report.html

Beneficial Uses from Climate Change ([Resolution R9-2018-0051](#))⁸ to incentivize and prioritize coastal and inland shoreline protection techniques that protect, preserve, enhance, or restore beneficial uses.

- c. Agreement for the Discharger to Fund, Report, and Guarantee Implementation of the SEPs: The City represents that:
- i. The SEPs conform to the requirements of the SEP Policy;
 - ii. The SEPs are unrelated in scope to the actions completed to remedy the alleged violations identified in this Order, are not otherwise required by law, and the City is not otherwise obligated to undertake;
 - iii. It will fund the SEPs in the amounts described in this Order;
 - iv. It will provide certifications and written quarterly reports detailing SEP implementation, consistent with the terms of this Order; and,
 - v. It will guarantee payment by remaining liable for the Suspended Liability until the SEPs are completed and accepted by the San Diego Water Board according to the terms of this Order.
- d. **SEP Completion Dates:** The proposed timeline for completion of SEP (1) is consistent with the SEP Policy, which requires that all projects be completed within 36 months of the adoption of this order.

SEP (2) requires 48 months for completion. Pursuant to SEP Policy section VIII.B., the Director of OE may approve a project implementation schedule memorialized in a stipulated order allowing for a SEP to be completed within 48 months based on a finding that a SEP provides an exceptional environmental benefit. On January 25, 2023, the Director of OE granted the Prosecution Team's request for the 48-month project implementation schedule through issuance of the *Director of the Office of Enforcement's Findings of Exceptional Environmental Benefit for the City of San Diego's Proposed Supplemental Environmental Project with a 48-month Project Schedule*, based on finding an exceptional environmental benefit.

- e. **Representation of the Discharger:** As a material consideration for the San Diego Water Board's acceptance of this Order, the Discharger represents that it will utilize the Suspended Liability outlined in Paragraph 23 to implement the SEPs in accordance with the SEP proposals as described in Attachments B and C. The Discharger understands that its commitment to implement the SEPs in

⁸ A copy of the Resolution Addressing Threats to Beneficial Uses from Climate Change is available at: https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2018/R9-2018-0051.pdf

accordance with the schedule and deliverables for implementation is a material condition of this settlement of liability between the Parties.

- f. **Request for Extension of Completion Date:** If the City cannot complete the SEPs within 36 months of SEP (1) and 48 months for SEP (2) following adoption of the Order (Completion Dates), due to circumstances beyond the control of the City or its agents and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence, the City shall notify the San Diego Water Board Executive Officer in writing within thirty (30) days of the date that the City first knew of the event or circumstance that caused or would cause a violation of this Order. The notice shall describe the reason for the non-compliance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The City shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the City and its agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite timely good faith efforts, due to circumstances beyond its control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the City or its agents, a new compliance deadline shall be established. The Executive Officer will endeavor to grant a reasonable extension of time if warranted.

- g. **SEP Oversight:** The Discharger agrees to oversee implementation of the SEPs. The San Diego Water Board will provide additional oversight of the SEPs which includes, but is not limited to, updating regulatory and records databases (CIWQS and ECM), reviewing and evaluating progress, conducting site inspections, reviewing the final completion report, and verifying appropriate expenditure of Suspended Liability funds, which is estimated to cost \$20,000. Pursuant to Section VIII.G of the SEP Policy, these oversight costs will be treated as suspended liability.
- h. **Publicity:** If the Discharger publicizes the SEPs or results of the SEPs, it will state in a prominent manner that the SEPs are being undertaken as part of a settlement of a San Diego Water Board enforcement action.
- i. **Site Inspections:** The Discharger shall permit San Diego Water Board staff to inspect the SEP implementation locations during normal business hours as well as review any documents associated with SEP implementation at any time without notice.

- j. **Submission of Reports:** The Discharger agrees to submit quarterly progress reports to the San Diego Water Board. Quarterly progress reports will be due on the 15th day of each of the months of April, July, October, and January, starting with the first full quarter after the adoption date of this Order and will continue until SEP completion. The reports will include information relating to the implementation progress of the SEPs, including photo-documentation, and any relevant deliverables. The Discharger shall submit a Final Report within thirty (30) days of the SEP Completion Date. The reports shall be provided electronically to sandiego@waterboards.ca.gov with CArias:PIN#631631 included in the subject line.
- k. **Certification of Completion of SEP in Final Report:** Within thirty (30) days of the SEP Completion Date for each discrete SEP, the Discharger shall submit a certified statement of completion (Certification of Completion) as a component of the Final Report for that SEP. The Discharger's authorized representative shall submit the Certification of Completion under penalty of perjury to the Party Contact listed in Paragraph 25 above. The certification shall include the following:
- i. **Certification of Expenditures:** Certification documenting all expenditures by the Discharger must be provided to the San Diego Water Board. The expenditures may include external payments to outside vendors or contractors implementing the SEPs. The expenditures may include the costs of internal management resources, provided that such expenditures are directly related to the development and implementation of the SEPs. In making such verification, the official may rely upon normal company and project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental or information technology contractors or consultants. The Discharger shall provide any additional information requested by the San Diego Water Board staff which is reasonably necessary to verify SEP expenditures. The certification need not address any costs incurred by the San Diego Water Board for SEP oversight.
- ii. **Certification of Performance of Work:** Certification that the SEP has been completed in accordance with terms of this Order must be provided to the San Diego Water Board. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the San Diego Water Board to evaluate the completion of the SEPs and costs incurred by the Discharger.
- iii. **Certification that Work Performed Met the Requirements of CEQA and other Environmental Laws (where applicable):** Unless a project is categorically or statutorily exempt from compliance with CEQA, the Discharger shall, before initiating construction, consult with other interested State Agencies regarding potential impacts of the SEP. Other interested State Agencies include, but are not limited to, the California Department of Fish and

- Wildlife. To demonstrate compliance with CEQA where necessary, the Discharger shall provide the San Diego Water Board with the following documents prior to commencing the SEPs:
- a. Categorical or statutory exemptions;
 - b. Negative Declaration if there are no “significant” impacts;
 - c. Mitigated Negative Declaration if there are potential “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or,
 - d. Environmental Impact Report if there are “significant” impacts.
- l. **Third-Party Audit:** The SEP Policy requires that if a project has a direct cost of over one million dollars, the Discharger must have a third-party financial audit performed after the completion of the project. Pursuant to Section IX.I of the SEP Policy, the City shall submit an audit report prepared by an independent third party, acceptable to the San Diego Water Board, providing such party’s professional opinion that the City has expended money in the amount claimed by the City. This audit report shall be at the sole cost of the City and shall be submitted within three (3) months of the SEP Completion Date for each discrete SEP. The audit need not address any costs incurred by the San Diego Water Board for SEP oversight.
- m. **San Diego Water Board Acceptance of Completed SEPs:** Upon the Discharger’s satisfaction of its obligations under this Order, the completion of the SEPs and third-party audit, the Discharger’s Party Contact shall request that the San Diego Water Board, or the Board’s delegee, issue a statement indicating that the SEPs have been completed in satisfaction of the terms of this Order and that any remaining Suspended Liability is permanently suspended. The issuance of the statement shall terminate any further obligation of the Discharger under this Order.
- n. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEPs:** In the event that the SEPs are fully implemented but the Discharger is not able to demonstrate, through the submission of a third party audit as required by Paragraph 26.I, that the Suspended Liability amount listed in Paragraph 23 has been spent for the completed SEPs, the Discharger shall pay the difference between the Suspended Liability amount and the amount the Discharger can demonstrate was actually spent on the SEPs as an administrative civil liability.
- o. **Failure to Complete the SEPs:** If either of the SEPs is not fully implemented as described in Attachments B and/or C and required by this Order by the Completion Dates, the San Diego Water Board shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended

Liability, or some portion thereof. The Discharger shall be liable to pay the State Water Pollution Clean and Abatement Account the amount within thirty (30) days of receipt of the Notice of Violation.

- p. **Reporting Dates:** The following is a list of required reports and respective due dates for activities presented in the preceding stipulations:

Stipulated Order Reporting Dates – SEP (1)

Activity	Due Date to sandiego@waterboards.ca.gov
1st SEP Status Report	October 15, 2023
Remaining SEP Quarterly Reports	15 th day of April, July, October, and January until SEP completion
Final Report and Certification of Completion	No later than 37 months after adoption of this Order
Independent Audit Report and Request for SEP Completion Statement	No later than 39 months after adoption of this Order

Stipulated Order Reporting Dates – SEP (2)

Activity	Due Date to sandiego@waterboards.ca.gov
1st SEP Status Report	October 15, 2023
Remaining SEP Quarterly Reports	15 th day of April, July, October, and January until SEP completion
Final Report and Certification of Completion	No later than 49 months after adoption of this Order
Independent Audit Report and Request for SEP Completion Statement	No later than 51 months after adoption of this Order

27. **San Diego Water Board is Not Liable:** Neither the San Diego Water Board members nor the San Diego Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the acts or omissions by the Discharger, its directors, officers, employees, agents,

representatives, attorneys, or contractors in carrying out activities pursuant to this Order. Nor shall the San Diego Water Board, its members, attorneys, or staff be held as parties to, or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, attorneys, or contractors in carrying out activities pursuant to this Order.

28. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Agreement, this Order, or the SEPs.
29. **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.
30. **Covered Matters:** Upon the San Diego Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of alleged violations in this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in paragraph 23 and the successful completion of the SEPs as outlined in this Stipulated Order and Attachments B and C, or full payment of the associated Suspended Liabilities.
31. **Public Notice:** The Discharger understands that the San Diego Water Board will conduct a thirty (30) day public review and comment period prior to consideration and adoption of the Order. If significant new information is received that reasonably affects the propriety of presenting this Order to the San Diego Water Board for adoption, the Assistant Executive Officer may unilaterally declare this Order void and decide not to present it to the San Diego Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Order.
32. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the San Diego Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.
33. **Procedural Objections:** The Parties agree that the procedure contemplated for adopting the Order by the San Diego Water Board and review of this Order by the public is lawful and adequate. In the event procedural objections are raised prior to the 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 and advisable.
34. **Interpretation:** This Order shall be construed as if the parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

35. **Modification:** This 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 San Diego Water Board.
36. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the San Diego Water Board or is vacated in whole or in material part by the State Water Board or a final judgment of a court of competent jurisdiction, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board, on a future date after reasonable notice and opportunity for preparation, to determine whether to assess administrative civil liability 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 the settlement discussions will not be admissible as evidence in such a hearing. The Parties agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on a Complaint 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.
37. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323(b), and provided this Stipulated Order is approved by the San Diego Water Board, hereby waives its right to a hearing before the San Diego Water Board.
38. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the San Diego Water Board's adoption of the Order as written for review by the State Water Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
39. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
40. **No Third-Party Beneficiaries:** Except as described in this Order, the Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Order for any cause whatsoever.

41. **Effective Date:** This Order shall be effective and binding on the Parties on the date that the San Diego Water Board adopts the Order.
42. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterpart shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
43. **Severability:** The provisions of this Order are severable, and should any provision be found invalid, the remainder shall remain in full force and effect.

IT IS SO STIPULATED

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO
REGION, PROSECUTION TEAM**

By:

KELLY DORSEY, P.G., Assistant Executive Officer

CITY OF SAN DIEGO

By:

Approved As To Form By:

**ERIC K. DARGAN,
Chief Operating Officer**

**MELISSA ABLES,
Chief Deputy City Attorney**

IV. FINDINGS OF THE SAN DIEGO WATER BOARD

44. The San Diego Water Board incorporates Sections I through III by reference as if set forth fully herein.
45. In accepting this settlement, the San Diego Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the violations alleged herein or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers a portion of the costs incurred by the San Diego Water Board Prosecution Team for this matter.
46. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
47. The San Diego Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.
48. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
49. The attached Agreement between the Assistant Executive Officer and the Discharger, including Attachments A, B, and C, is approved pursuant to Water Code section 13323 and Government Code section 11415.60 and is incorporated by reference into this Order.

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

I, David W. Gibson, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region on June 14, 2023.

David W. Gibson
Executive Officer