

5. The Discharger's application reported an expected project end date of December 1, 2012. On October 15, 2012, the Discharger notified Regional Board staff regarding the need for an amendment to the 401 Certification to accommodate work required to contain a leak discovered underneath the concrete-lined channel that allowed tidal flows to enter the Project site. Such work was not anticipated and the Discharger made an urgent request for a 401 Certification amendment proposing the placement of approximately 1,500 to 4,000 gallons of grout to create a barrier to fill the gaps discovered underneath the concrete. The Discharger failed to provide adequate responses to Regional Board requests to provide the necessary information for Regional Board staff to generate amended 401 Certification requirements that are protective of water quality. Regional Board staff was therefore unable to issue a 401 Certification amendment for the proposed activities. The Discharger proceeded to commence grouting activities without notifying or obtaining an amended 401 Certification from the Regional Board.

6. During a site inspection on November 14, 2012, Regional Board staff found that the Discharger injected grout underneath the concrete-lined channel without the amended 401 Certification and authorization from the Regional Board, diverted water without an approved Surface Water Diversion Plan, and failed to keep the project areas free of trash and debris. Regional Board staff also observed evidence of substrate material at the edge of the low-flow channel discharging directly into the San Gabriel River.

7. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires that activities requiring a federal permit or license, which may result in a discharge of pollutants into waters of the United States, must obtain a state water quality certification from the Regional Board, certifying that the activity complies with all applicable water quality standards, limitations, and restrictions. LACFCD was issued a 401 Water Quality Certification for Project activities.

8. The Prosecution Team alleges that the Discharger violated conditions of its 401 Certification, including conducting grouting activities in waters of the United States that exceeded the limitations and restrictions of the Discharger's 401 Certification. Below is a summary of the violations.

- a) Violation 1: Failure to report noncompliance to the Regional Board as required by 401 Certification, Condition 27.
- b) Violation 2: Failure to keep project areas free of trash and debris as required by 401 Certification, Condition 4.
- c) Violation 3: Failure to implement adequate best management practices at downstream project areas as required by 401 Certification, Conditions 4, 7, and 17.
- d) Violation 4: Failing to obtain a water quality certification or 401 Certification amendment for grouting activities as required by 401 Certification, Conditions 8 and 17.
- e) Violation 5: Failing to submit an adequate Surface Water Diversion Plan as required by 401 Certification, Condition 18.

9. Water Code section 13385(a)(2) authorizes that the Regional Board impose administrative civil liability for failing to comply with water quality standards, limitations, and restrictions in the Discharger's 401 Certification. Pursuant to Water Code section 13385(c), the Regional 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 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.

10. Water Code section 13385(e) states: "In determining the amount of any liability imposed under this section, the regional 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."

11. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The Prosecution Staff considered the methodology set forth in the Enforcement Policy for the violations, as shown in Attachment A, which is attached hereto and incorporated by reference as though fully set forth herein.

12. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations as described above without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Parties have agreed to the imposition of \$99,000 in liability. The amount of administrative civil liability imposed pursuant to this Stipulated Order is less than the liability assessed using the Enforcement Policy methodology in Attachment A. The imposition of a lesser liability takes into account the risks associated with proceeding to hearing and settlement considerations as specified in the Enforcement Policy and the specific factors required to be considered in Water Code section 13385(e). The Prosecution staff 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:

13. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

14. **Administrative Civil Liability:** The Discharger agrees to the imposition of administrative civil liability in the amount of NINETY NINE THOUSAND DOLLARS (\$99,000.00) payable to the "State Water Pollution Cleanup and Abatement Account," and shall indicate on the check the number of this Order.

LACFCD shall send the original signed check to:

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

A copy of the check shall be sent to Hugh Marley, Los Angeles Regional Water Quality Control Board, 320 West Fourth Street, Suite 200 Los Angeles, California 90013.

15. In addition to the payment of the administrative civil liability, the Discharger agrees to complete the following tasks:

Develop and use on all LACFCD channel maintenance projects requiring 401 Certification, the following:

a) A Water Diversion Manual

- The Water Diversion Manual shall set forth the usual methods and standard operating procedures that the Discharger follows when deploying water or stream diversion when executing projects permitted under Clean Water Act (CWA) section 401 water quality certifications. Plans for water diversion activities undertaken for the Discharger's future projects permitted under CWA Section 401 certifications, may, then, refer to the methods established in the Water Diversion Manual, improving communication between the Regional Board and the Discharger, and simplifying plan preparation for the Discharger. Additional requirements of the Water Diversion Manual are included in Attachment B of this Stipulation.

b) A Sampling Plan Guide

The Sampling Plan Guide shall set forth the usual methods and standard operating procedures that the Discharger follows when conducting water quality testing in compliance with requirements of a CWA Section 401 certification. Plans for water quality sampling undertaken for the Discharger's future projects permitted under CWA Section 401 certifications, may, then, refer to the methods established in the Sampling Plan Guide, improving communication between the Regional Board and the Discharger and simplifying plan preparation for the Discharger. Additional requirements of the Sampling Plan Guide are included in Attachment B of this Stipulation.

The Water Diversion Manual and Sampling Plan Guide shall be submitted for the Executive Officer's approval within six months of the execution of this Stipulation. The Water Diversion Manual and Sampling Plan Guide shall be implemented within one month of the Executive Officer's approval of the Water Diversion Manual and Sampling Plan Guide.

LACFCD shall provide the Regional Board an Annual Report describing the application of the Water Diversion Manual and Sampling Plan Guide to LACFCD projects involving in-stream activities. The Annual Report will be due June 1st of each year subsequent to the Executive Officer's approval of the Water Diversion Manual and Sampling Plan Guide.

16. As a negotiated term pursuant to Government Code section 11415.60, the Parties agree that failure by LACFCD to comply with the due dates for the development of the Water Diversion Manual and Sampling Plan Guide would be a violation of the terms of this Stipulation, and the Regional Board may assess a \$1,000 penalty per day of violation. If LACFCD fails to adequately implement the Water Diversion Manual or Sampling Plan Guide or if the Executive Officer determines that LACFCD is failing to implement the Water Diversion Manual or Sampling Plan Guide as described in paragraph 15 of this Order and/or Attachment B of this Order, LACFCD will have 30 calendar days to cure the failure. If the failure is not cured to the Regional Board's satisfaction within those 30 days, LACFCD must promptly provide a time schedule, to be approved by the Executive Officer, to fix the failures. The failure to adequately implement the Water Diversion Manual or Sampling Plan Guide, or any approved modifications or amendments to the Water Diversion Manual or Sampling Plan Guide, to the satisfaction of the Regional Board will result in a penalty of \$1,000 per day of violation.
17. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this 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.

18. Party Contacts for Communications related to this Stipulation and Order:

For the Regional Board:

Hugh Marley, 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
hugh.marley@waterboards.ca.gov

For the Discharger:

Sree Kumar
Assistant Deputy Director
Los Angeles County Flood Control District
Flood Maintenance Division
900 South Fremont
Alhambra, California 91803

19. **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.

20. **Matters Covered by this Stipulation:** Upon adoption by the Regional Board, or its delegee, as an Order, this Stipulation 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 14 herein.

21. **Public Notice:** The Discharger and the Regional Board Prosecution Staff understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. In the event objections are raised during the public review and comment period, the Regional Board or its delegee

may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

22. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for adopting the Order by the Regional Board and review of this Stipulation 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 or advisable under the circumstances.

23. Interpretation: This Stipulation and 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.

24. Modification: This Stipulation and 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 Board or its delegee.

25. If the Order Does Not Take Effect: In the event that this Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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 Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Exhibit 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.

26. 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 Board prior to the adoption of the Order.

27. Waiver of Right to Petition: The Discharger hereby waives its right to petition the Regional Board's adoption of the 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.

28. **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 Stipulation and Order.

29. **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.

30. **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.

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

IT IS SO STIPULATED.

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

Date: 5/18/2015 By: 
Paula Rasmussen
Assistant Executive Officer

Los Angeles County, Flood Control District

Date: 5/11/2015 By: 
Sree Kumar
Assistant Deputy Director

APPROVED AS TO FORM:

MARK J. SALADINO
County Counsel

By: 
Deputy

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

32. The Regional Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 31 above, by this reference, as if set forth fully herein.

33. In accepting this Stipulation, the Regional 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 Board's consideration of these factors is based upon information obtained by the Prosecution Staff in investigating the allegations in Paragraph 8 or otherwise provided to the Regional Board.

34. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

35. 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 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.

Samuel Unger, P.E.
Executive Officer

Date: _____

Attachment A – Specific Factors Considered

Los Angeles County Flood Control District San
Gabriel Invert Repair Project

California Water Code section 13385(e) factors, along with corresponding Enforcement Policy scores, are presented for each violation below. The penalty methodology addresses violations of the 401 Certification.

A. Violation 1: Failure to report noncompliance to the Regional Board as required by Condition 27.

- Step 1. Potential for Harm – not applicable.
- Step 2. Assessment for Discharge Violations – not applicable.
- Step 3. Per Day Assessment for Non-Discharge Violations: *0.30*
- a. Potential for Harm: *minor*.
The failure to report turbidity violations to the Regional Board poses a minor threat to beneficial uses where the harm of failing to notify the Regional Board does not directly affect water quality. Failing to communicate violations deprives the Regional Board of the information needed to evaluate the extent of the harm and assist the Discharger with coming back into compliance.
 - b. Deviation from Requirement: *major*.
The extent of deviation from the applicable requirements is major. A 401 certification certifies that the Discharger's activities comply with applicable state water quality standards, limits and restrictions. Exceedances of the Basin Plan were found every day sampling was conducted from late September 2012 through November 2012, nearly for the entire duration of the project for a total of 19 days. On each day, the Discharger failed to report the noncompliance to the Regional Board. Because the requirement was rendered ineffective in that the Regional Board was deprived of this information at the time of the project activities, the deviation from requirements was considered to be major.
- Step 4. Adjustment Factors
- a. Culpability: 1.1
The Discharger was assessed a multiplier value of 1.1 because the Discharger failed to timely recognize the elevated levels of turbidity during project activities which may have required additional steps to reduce, eliminate or prevent the recurrence of the noncompliance.
 - b. Cleanup and Cooperation: 0.90
The Discharger allowed the turbidity violations to persist throughout the project. A reasonably prudent discharger would have notified the Executive Officer of such noncompliance in writing within 5 days from the occurrence of the violation as required by Additional Condition 27 and would have identified if corrective actions were necessary and taken corrective action after water quality samples indicated turbidity exceeded the requirement of the 401 Certification. At the same time, the Discharger has been cooperative in expeditiously providing additional information requested by Regional Board staff and has conducted additional turbidity sampling. The Discharger was therefore assessed a multiplier of 0.90.
 - c. History of Violations: 1.1 The Discharger has a history of violation for a prior

enforcement action. The Regional Board obtained a judgment against the Discharger for \$225,000 in civil penalties for various violations of the Water Code with respect to actions undertaken in Sullivan Canyon.

Step 5. Total Base Liability: \$62,073.

0.30 (Per Day Factor) \times 19 days \times \$10,000 per day (statutory max) \times 1.1 (culpability) \times 0.90 (cleanup and cooperation) \times 1.1 (history of violations) = \$62,073.

- B. **Violation 2: Project areas not Kept Free of Debris/Trash.** Attachment B, Additional Condition 4. Debris generated from construction activities was not properly contained using appropriate BMPs. Additional Condition 8 provides that no construction material, debris, or any other substance associated with this project that may adversely impact water quality standards, shall be located in a manner which may result in a discharge or a threatened discharge to waters of the state.

Step 1. Potential for Harm for Discharge Violations – not applicable. Step

2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.20

- a. Potential for Harm: *minor*.

Drilling mud and trash were observed without proper containment. Drilling mud was seen deposited alongside the channel without appropriate waste containment. It appeared that little cleanup occurred while the project was ongoing. In an area with tidally influenced flow and a soft bottom channel, sloppy maintenance, specifically the disposal of small globs of mud at the edge of the sloped low-flow channel or construction debris left within the concrete channel in areas with no ongoing work, presents at least a minor threat to beneficial uses.

- b. Deviation from Requirement: *moderate*.

The purpose of this requirement is to ensure water quality is not adversely impacted by project activities. The general site conditions did not create a discharge or threaten to create a discharge during low tide. Because the Discharger had ample time to clean the site before work was completed and before the tide came in, the extent of deviation from the applicable requirements assessed was moderate.

Step 4. Adjustment Factors

a. Culpability: 1.1

The Discharger was assessed a multiplier value of 1.1 because although the Discharger had time to clean the site before work was completed and before the tide came in, a reasonable and prudent person obligated to comply with the terms and conditions of a 401 certification to protect water quality would have employed basic housekeeping measures to prevent the substrate material on the very edge of the sloped low-flow channel from discharging into the waterway and/or would have cleaned up mud and debris while project activities were underway to avoid a discharge or threatened discharge. . Therefore, a higher than neutral multiplier of 1.1 was assessed.

b. Cleanup and Cooperation: 1.0

The Discharger did not timely cleanup and contain the debris and substrate material thereby avoiding compliance with its 401 Certification and allowed debris to remain in the concrete channel and left substrate material on the edge of the sloped low flow channel after the commencement of work at the project site. However, the Inspector Notes from November 14, 2012 show that all dirt was cleaned up. Additionally, the Daily Progress Record for November 14, 2012 shows that the Discharger operated the sweeper for 3 hours in response to the State Board staff request, which shows at least a moderate degree of cleanup and cooperation. The Enforcement Policy requires that a higher multiplier should be used where a high degree of cleanup and cooperation is absent. Cleanup and cooperation was not absent here. Because the Discharger initiated cleanup shortly after Regional Board staff pointed out the violation, a neutral multiplier was assessed.

c. History of Violations: 1.1 See History of Violations description above.

Step 5. Total Base Liability: \$2,420.

0.20 (Per Day Factor) \times 1 day \times \$10,000 per day (statutory max) \times 1.1 (culpability) \times 1.0 (cleanup and cooperation) \times 1.1 (history of violations) = \$2,420.

- C. **Violation 3: Failure to Implement BMPs at Downstream Project Work Area.** Attachment B, Additional Condition 4 provides that BMPs will be implemented to minimize project sediment runoff and deposition. Attachment B, Additional Condition 7 provides that construction must follow best management practices to minimize impacts to water quality and beneficial uses. Attachment B, Additional Condition 11 provides that discharges must not create visual contrast with natural appearance or cause aesthetically undesirable discoloration of receiving waters.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations: *0.40*

a. Potential for Harm: *moderate*.

The characteristics of the violation present a substantial threat to beneficial uses where a device used to control sediment and erosion was not properly kept in place, thereby allowing sediment to wash downstream. In an area tidally influenced with a soft bottom channel, best management practices are necessary to comply with the 401 Certification to protect water quality. Failure to properly control sediment has the potential to block sunlight of in-stream habitat, cover benthic organisms, clog the gills of fish, and hinder the reproduction and growth of aquatic life. While no biological impacts were reported, Regional Board staff observed evidence of turbidity downstream. Therefore, a moderate factor was assessed because the violation indicates a substantial potential for harm.

b. Deviation from Requirement: *major*.

The intended purpose of the requirement is to ensure that precautionary measures are taken for erosion control and to protect from sediment runoff from project activities. Some BMPs were in place, but were ineffective. The evidence of turbidity impacts is at odds with the intended purpose of the requirement. The Discharger's intended effectiveness of the requirement was disregarded where the Discharger failed to implement appropriate best management practices to minimize sediment runoff and turbidity impacts. In addition, the boom employed was ineffective. Therefore, a major factor was assessed. Therefore, a major factor was assessed.

Step 4. Adjustment Factors

a. Culpability: 1.2

The Discharger was assessed a multiplier value of 1.2 because a reasonable and prudent person obligated to comply with the terms and conditions of a 401 certification to protect water quality would have implemented best management practices to ameliorate the turbidity and discharge of sediment. Therefore, a higher multiplier of 1.2 was assessed.

b. Cleanup and Cooperation: 1.2

The Discharger did not implement appropriate best management practices or fix the floating boom even after Regional Board staff notified the project manager of such concerns. Therefore, a factor of at least 1.2 is appropriate.

c. History of Violations: 1.1 See History of Violations description above.

Step 5. Total Base Liability: \$6,336.

0.40 (Per Day Factor) \times 1 day \times \$10,000 per day (statutory max) \times 1.2 (culpability) \times 1.2 (cleanup and cooperation) \times 1.1 (history of violations) = \$6,336.

- D. **Violation 4: Grout without 401 Certification.** Condition 17 provides that all project/construction/maintenance activities not included in the Certification, and which may require a permit, must be reported to the Regional Board for appropriate permitting. Condition 8 provides that no 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 a threatened discharge to waters of the state. Here, project activities were outside the scope of the original 401 certification and no 401 certification was obtained such activities. The span of the violation is over the three days the Discharger reportedly conducted grouting activities.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

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

a. Potential for Harm: *moderate*.

The Discharger notified Regional Board staff on October 15, 2014 regarding the need for a 401 certification amendment for additional work required to contain the leak underneath the concrete-lined channel that allowed tidal flows to enter

the contained project site. The proposal to remedy the problem consisted of placing approximately 1,500 to 4,000 gallons of grout to create a barrier to fill the gaps underneath the concrete. The content of the grout was stated to consist of aggregate (fine to course grained sand containing up to 25 percent of clay and silt fines), cement (Type II or Type III Ordinary Portland), sodium silicate, rheomac UW-450 anti washout admixture, glenium 3000H. No 401 certification amendment was issued because the Discharger did not provide the necessary information, including the specific amount of discharge material, the additional measures required to minimize water quality impacts (e.g. additional water quality

monitoring). The circumstances of the violation indicate a substantial potential for harm. Foreign substances such as concrete and aggregate, if released into the environment, have the potential to cause turbidity exceedances which pose substantial harm to aquatic life as the suspended solids may clog gills, impair visual feeders or predator avoidance and may be deposited, smothering benthic habitat. In addition, there are likely potential toxicity concerns from these foreign constituents that at the very least pose a moderate potential for harm to beneficial uses. As no direct toxicological information on MasterMix UW 450 is available, toxicity potential for the product has been assessed based on the individual component, 2-methylpentane, which may affect the central nervous system or kidneys. Additionally, a 401 certification for the proposed grout activities would have required the preparation of an updated surface water diversion plan that if properly contemplated, could have prevented water quality impacts². Because Regional Board staff have limited information regarding the amount and the potential of harm of the constituents of the grout, a potential for harm factor of at least moderate was assessed.

- b. Deviation from Requirement: *major*.
The Certification prohibits project and construction activities outside of the scope of the Certification. The intention of the requirement is to ensure that all contemplated project activities are considered in advance to project activities. Project activities beyond the scope of a certification are to be presented to the Regional Board for appropriate review for compliance with water quality standards, limits and restrictions. While the Discharger presented its proposal of additional project activities in advance of conducting such project activities, the Discharger proceeded before Regional Board staff received the necessary information from the Discharger to amend the 401 Certification. Where the requirement to comply with Condition 17 was rendered ineffective because it was not met, the deviation from requirement was assessed at major.

Step 4. Adjustment Factors

- a. Culpability: 1.4
Higher liabilities should result from intentional or negligent violations. The Discharger applied for the 401 Certification prior to the commencement of the grout project. Here, a reasonable and prudent person in the Discharger's circumstances would not have proceeded to conduct activities not authorized by its 401 certification before issuance of an amendment. While the Discharger may have been under time constraints to obtain the amendment due to unexpected and urgent circumstances, a reasonably prudent person would have continued to work together with Regional Board staff, encouraging an open dialogue about the outstanding issues and concerns, rather than moving forward with project activities not authorized by the Regional Board. Regional Board staff requested additional information related to proposed grouting activities on two occasions before the proposed commencement of grouting and the Discharger failed to provide a complete response to Regional Board inquiries. The Discharger never notified Regional Board staff of the commencement of grouting activities let alone respond to Regional Board staff's October 19, 2012 inquiries to Los Angeles County Flood Control Staff. While the Discharger may have been under time constraints to obtain the amendment due to unexpected and urgent circumstances, a reasonably prudent person would have continued to work together with Regional Board staff, encouraging an open dialogue about the outstanding issues and concerns, rather than moving forward with project activities not authorized by the Regional Board. Regional Board staff requested additional information related to proposed grouting activities on two occasions before the proposed commencement of grouting and the Discharger failed to provide a complete response to Regional Board inquiries. The Discharger did not notify Regional Board staff of the commencement of grouting activities nor respond to Regional Board staff's October 19, 2012 inquiries to Los Angeles County Flood Control District staff.. Because the Discharger was

aware of the requirement to obtain an amendment to its 401 certification before grouting the void underneath the concrete, an activity outside of the scope of the 401 certification, a culpability factor of 1.4 was appropriate.

b. Cleanup and Cooperation: 1.3

The Discharger does not warrant a high degree of cooperation where the Discharger did not voluntarily cooperate in returning to compliance. The Discharger failed to respond to Regional Board inquiries, which hindered Regional Board staff's progress to develop conditions sufficiently protective of water quality for the proposed activities. It was not until Regional Board staff conducted an impromptu inspection on November 14, 2012 where the Discharger conveyed that the grouting activities had

already been completed. A higher multiplier than a neutral multiplier was assessed.

c. History of Violations: 1.1 See History of Violations description above.

Step 5. Total Base Liability: \$33,033.

0.55 (Per Day Factor) \times 3 days \times \$10,000 per day (statutory max) \times 1.4 (culpability) \times 1.3 (cleanup and cooperation) \times 1.1 (history of violations) = \$33,033.

- E. **Violation 5: Deficient Surface Water Diversion Plan.** Additional Condition 18 provides that the Discharger develop and submit a Surface Water Diversion Plan containing the proposed method and duration of diversion activities, structure configuration, construction materials, equipment, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points.

Step 1. Potential for Harm for Discharge Violations – not applicable.

Step 2. Assessment for Discharge Violations – not applicable.

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

a. Potential for Harm: *minor*.

A plan is a key instrument necessary for a regulatory agency to evaluate compliance with laws and regulations. Here, a Surface Water Diversion Plan informs the Regional Board regarding how project activities will divert water away from the work area in a manner that minimizes water quality impacts. A plan that is deficient and lacks the required information arguably defeats the intended purpose of the requirement. Here, the Discharger submitted a diagram illustrating the diversion. The submitted diagram has no narrative description of the planned surface water diversion, it fails to identify the duration, intended installation date, and, in addition, it does not identify contingency measures to address various flow discharge rates as required by Additional Condition 18 of the Certification. The characteristics of the violation present a minor potential for harm to beneficial uses where without the submission of an adequate plan, the Regional Board lacks the necessary information to determine whether project activities will be conducted in a manner that minimizes impacts to water quality. The failure to provide a complete Surface Water Diversion Plan as required by the Water Quality Certification hinders Regional Water Board staff from determining compliance with conditions of the Certification and timely and accurately respond to water quality impacts.

b. Deviation from Requirement: *moderate*.

The failure to submit a Surface Water Diversion Plan with all of the necessary requirements is a moderate deviation from the requirement. Additional Condition 18 requires that the plan be submitted prior to any surface water diversions to divert flows away from the project work area in manner that minimizes water quality impacts. While the Discharger submitted a diagram, the requirements of a Surface Water Diversion Plan under Additional Condition 18 were not met. The Prosecution Team determined that the intention of the requirement was partially

compromised and the violation was a moderate deviation from the requirement.

Step 4. Adjustment Factors

a. Multiple Day Violations

The Enforcement Policy provides that, for violations lasting more than 30 days, the Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation.

The Discharger has failed to comply with Additional Condition 18. The continuance of these violations does not result in an economic benefit that can be measured on a daily basis. The economic benefit is the one-time cost of producing a report. Therefore, an adjustment can be made.

The Water Board Prosecution Team recommends applying the alternative approach to civil liability calculation provided by the Enforcement Policy. Using this approach, the calculation of days of violation will include the first day of violation, plus one additional day of violation for each five-day period up to the 30th day of violation, and thereafter, plus one additional day of violation for each 30-day period. Using this approach, the total number of days of violation is reduced from 47 days late (from September 29, 2012, the date instream activities were first conducted until November 14, 2012, the date the surface water diversion was removed), to 7 days of violation.

b. Culpability: 1.1

A reasonably prudent person in the Discharger's circumstances would have followed up to submit revisions to the Surface Water Diversion Plan after notifying the Regional Board of the need to do so. A factor of 1.1 was assessed.

c. Cleanup and Cooperation: 1.1

While there was no related environmental damage related to this violation, the Discharger did not submit revisions to the Surface Water Diversion Plan. Therefore, a higher than a neutral multiplier was assessed whether the Discharger did not take voluntary efforts to cooperate in returning to compliance.

History of Violations: 1.1 See History of Violations description above.

Step 5. Total Base Liability: \$23,292.50.
 0.25 (Per Day Factor) \times 7 days (collapsed) \times \$10,000 per day (statutory max) \times 1.1 (culpability) \times 1.1 (cleanup and cooperation) \times 1.1 (history of violations) = \$23,292.50.

Step 6. Ability to Pay

Regional Water Board staff have no information to indicate that the proposed administrative liability would jeopardize the Dischargers' ability to remain in business, or that it would be unable to pay the proposed administrative civil liability. Additionally, counties have the ability to levy taxes or raise funds to provide the necessary funds to cover the proposed administrative civil liability.

Step 7. Other Factors as Justice May Require

The Enforcement Policy provides that if the Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. Additionally, the staff costs for investigating the violation and preparing the Complaint should be added to the liability amount.

The Water Board Prosecution Team did not apply staff costs to this matter.

- Step 8. **Economic Benefit**
Regional Water Board staff assume that the Dischargers received at a minimum of \$10,000 to \$20,000 for the cost of best management practices, personnel time, and a surface water diversion plan.
- Step 9. **Maximum and Minimum Liability Amounts**
Statutory Maximum
The Enforcement Policy directs the Regional Water Board to consider maximum and minimum liability amounts set forth in the applicable statutes.
The maximum potential liability for the alleged violations is \$310,000.
Statutory Minimum
The Enforcement Policy requires the Regional Water Board to recover, at a minimum, ten percent more than the economic benefit. In this case, the administrative civil liability is expected to capture the economic benefit amount plus ten percent.
- Step 10. **Final Liability Amount**
The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount was performed as follows:

(Combined Total Base Liability Amount) + (Staff Costs) + (Adjustment for Other Factors as Justice May Require) = (Final Liability Amount)
Final Liability Amount = \$127,154.50

OUTLINE

WATER QUALITY MONITORING PLAN

CHANNEL MAINTENANCE ACTIVITIES

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

Purpose

The Water Quality Monitoring Plan will be developed to establish a consistent monitoring approach for channel maintenance activities. During maintenance activities, appropriate Best Management Practices (BMPs) shall be implemented in order to avoid impacts to water quality that would result in exceedances of WQ standards. The Water Quality Monitoring Plan will help to ensure that the maintenance activities shall not result in indirect impacts to WQ or beneficial uses of downstream water bodies or changes in the quality of storm water downstream during maintenance or subsequent to the maintenance activities. The Water Quality monitoring plan will be reviewed and updated every two years as needed.

Objective

The objective of the Water Quality Monitoring Plan is to assess BMP effectiveness and to ensure that water quality is not impacted as a result of the proposed maintenance activities, or surface water diversion.

Water Quality Testing Parameters

Water quality testing parameters will be developed per the Regional Board's water quality monitoring requirements for maintenance activities, including turbidity, other constituents to be monitored, frequency of sampling, and sampling location. The Los Angeles County Flood Control District has a Quality Assurance Program, which will be described in the plan.

Water Quality Monitoring Process

Procedures for water quality testing/monitoring will determine and compare baseline/pre-project, during project, and post-project water quality conditions. The Water Quality Monitoring Plan will also identify effective communication procedures between DPW staff and water quality sampling/monitoring staff.

Best Management Plan

The Water Quality Monitoring Plan will outline appropriate BMPs for sample maintenance sites, including additional BMPs to implement if any exceedances are encountered. This will be used to guide future maintenance activities.

Water Quality Data Analysis Submittal

The Water Quality Monitoring Plan will provide model procedures for preparing summary tables to report water quality sampling results. Summary tables will be submitted to the Regional Board as part of the Annual Reporting requirements.

OUTLINE

WATER DIVERSION PLAN FOR CHANNEL MAINTENANCE ACTIVITIES LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

BACKGROUND

Routine maintenance and repair of Los Angeles County Flood Control District (LACFCD) facilities are necessary to ensure they function as designed and protect lives and properties. As part of the maintenance activities, LACFCD implements an appropriate water diversion plan for each of the type of facilities, with consideration to modifying the water diversion plan as required to meet field conditions.

PURPOSE

During routine maintenance and repair operations, flowing or ponded water may be present at a LACFCD channel. Water flowing through maintenance areas can potentially impact downstream water quality through the discharge of sediment, debris, construction materials, and other pollutants.

Temporary water diversion BMPs are implemented when water needs to be re-directed away from maintenance areas. BMPs must be installed, operated, maintained, and removed so as to minimize impacts. Water quality monitoring is also recommended and may be required during the operation and removal of a water diversion. The results of water quality monitoring can be used to assess the performance of BMPs and implement necessary modifications in order to comply with permit requirements.

OBJECTIVE

The Water Diversion Plan will provide LACFCD with a consistent approach to water diversions at maintenance activities so as to ensure attainment of permit requirements and the avoidance of water quality impairment.

The Water Diversion Plan for channel maintenance will be reviewed and updated every two years as needed.

FACILITY TYPES AND WATER DIVERSION PLANS

A. Soft-Bottom Channels

Outline the different types of maintenance or repair activities at LACFCD's soft-bottom channel (SBC) activities, field conditions that may or may not trigger the

need for a water diversion plan, and provide examples of typical water diversion plans. In addition, a contingency plan for storm events will be provided in the plan.

B. Concrete-lined Channels

Outline the different types of maintenance or repair activities at LACFCD's concrete-lined channel facilities, field conditions that may or may not trigger the need for a water diversion plan, and provide examples of typical water diversion plans. In addition, a contingency plan for storm events will be provided in the plan.