

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

TENTATIVE

**ORDER NO. R9-2008-0020
IN SETTLEMENT OF
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2007-0101
ISSUED TO FALLBROOK PUBLIC UTILITY DISTRICT**

On January 14, 2008, the San Diego Regional Water Quality Control Board (hereafter Regional Board), received settlement offer from the Fallbrook Public Utility District (hereafter FPUD) to waive their right to a hearing regarding violations alleged in Complaint No. R9-2007-0101 (Complaint). The FPUD has offered to settle its potential administrative civil liability for the alleged violations by accepting imposition of Civil Liability in the amount of \$29,300. The Regional Board has provided public notice of the proposed settlement and not less than thirty (30) days for public comment on the settlement offer, and having considered the settlement offer, finds as follows:

1. As of June 2006, the FPUD sewage collection system has been regulated by Regional Board Order No. 96-04, *General Waste Discharge Requirements Prohibiting Sanitary Sewer Overflows by Sewage Collection Agencies*. Prohibition A.1 of Order No. 96-04 specifies that the discharge of sewage from any point upstream of a wastewater treatment plant is prohibited.
2. The FPUD owns, operates, and maintains approximately 76.6 miles of sewage collection pipelines, including a 6-inch diameter sewer pipeline located near 526 Aviation Road, Fallbrook.
3. From 10:00 p.m. on June 17, 2006 to 10:20 a.m. on June 20, 2006, the FPUD discharged a total of 146,625 gallons of untreated sewage from the 6-inch diameter sewer pipeline into Fallbrook Creek in violation of Prohibition A.1 of Order No. 96-04. Fallbrook Creek is tributary to Lake O'Neil and the Santa Margarita River.
4. The liability in the amount of \$29,300 is based on application of the factors prescribed in Water Code Section 13327. The terms of the offered settlement are in the public interest and are consistent with the State Water Resources Control Board Enforcement Policy guidance for violations of this nature, and with liability imposed for similar violations by the Regional Board in other cases that have been settled.
5. By accepting the settlement offered by the FPUD, the Regional Board will conserve staff resources that would have been spent to prepare for hearing and responding to any administrative or judicial review requested by the FPUD.

6. The terms of this settlement are sufficient to deter the FPUD from future non-compliance and act as a deterrent to non-compliance by others.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
8. Regarding the enforcement action, the Regional Board incurred costs totaling \$13,186 which includes investigation, preparation of enforcement documents, and communication with the FPUD and interested parties.
9. The FPUD and the Board do not fully agree on all the factual circumstances regarding the discharge nor do they agree that the allegations in the Complaint constitute all of the facts relevant to the discharge or the liability to be assessed. Nonetheless, the FPUD and the Board have agreed to settle the Complaint as provided in this Order.
10. In any further judicial or administrative hearing or proceeding, this Order or any portion of it, or any compliance with this Order, shall not be construed in any manner as an admission of liability or wrongdoing by the FPUD, or any of their district council members, officers, agents or employees.

IT IS HEREBY ORDERED that:

1. Civil liability assessment is imposed upon the Fallbrook Public Utility District (hereafter FPUD) in the amount of \$29,300. The assessment shall include the following:
 - a. FPUD shall submit a cashier's check in the amount of \$20,000 to the State Water Resources Control Board (State Board) for deposit into the Waste Discharge Permit Fund Abatement Account within 30 days from adoption of this Order by the Regional Board.
 - b. Payment of the remaining \$9,300 is suspended based upon the FPUD's purchase and installation of three "SmartCover" monitoring units. Within 30 days of adoption of this Order, the FPUD shall submit a certification confirming the completion of implementation of the SmartCover upgrade. The certification shall be executed by a qualified, licensed professional. Upon acceptance of the certification by the Regional Board Assistant Executive Officer, the \$9,300 portion of the assessed liability will be rescinded.

If, however, the implementation of the SmartCover upgrade is not completed and certification is not submitted within 30 days from adoption of this Order by the Regional Board, the suspended liability shall become due and payable. In that case, FPUD shall pay the sum of \$9,300 to the State Water Resources Control Board for deposit into the Waste Discharge Permit Fund Abatement within 30 days following notification by the Regional Board Assistant Executive Officer that the FPUD failed to comply with this portion of the Order.

2. This Order entirely disposes, resolves and settles all liability for violations alleged in Complaint No. R9-2007-0101 related to compliance with requirements in Order No. 96-04 and is not subject to being reopened for any reason.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on March 12, 2008.

Tentative

JOHN H. ROBERTUS
Executive Officer