

ENFORCEMENT SUMMARY REPORT
November 12, 2008

- ITEM: 8
- SUBJECT: Administrative Assessment of Civil Liability: San Diego County Water Authority, San Vicente Pipeline Dewatering Project: The Regional Board will consider a tentative Order that would impose a \$135,000 Mandatory Minimum Penalty recommended in Complaint R9-2007-0014 for violations of effluent limitations established by Order No. R9-2001-96, NPDES No. CAG919002, General Waste Discharge Requirements for Groundwater Extraction and Similar Waste Discharges from Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters Within the San Diego Region Except for San Diego Bay. (Tentative Order No. R9-2008-0142) (Rebecca Stewart)
- PURPOSE: The Regional Board will consider whether to adopt an Order accepting the San Diego County Water Authority's (Water Authority) payment of liability and funding of a Supplemental Environmental Project (SEP). If the Regional Board rejects the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability.
- PUBLIC NOTICE: On October 13, 2008 a notice was published in the San Diego Union Tribune and on the Regional Board website soliciting public input on payment of the proposed liability and funding of a SEP. The written comment period ends on November 5, 2008.
- DISCUSSION: On January 22, 2007, the Executive Officer issued Complaint No. R9-2007-0014 for Administrative Civil Liability with mandatory minimum penalties in the amount of \$120,000 against the Water Authority for violations of effluent limitations contained in Order No. 2001-96. The violations included thirty one violations of the total nitrogen instantaneous maximum effluent limitation and twelve violations of the total nitrogen average monthly effluent limitation that occurred between January 2006 and January 2007. The construction dewatering discharge was located

in Slaughterhouse Canyon in a tributary of the San Diego River.

All but one of the violations are classified as serious violations¹, and, therefore, are each subject to the assessment of a mandatory minimum penalty of \$3,000 in accordance with California Water Code (CWC) section 13385(h). The one remaining violation was not a serious violation and pursuant to CWC section 13385(i) is not subject to the assessment of a mandatory minimum penalty because it was the third violation within a six month period.

After the issuance of the Complaint, five additional serious total nitrogen violations were reported. As a result, on October 2, 2008 the Assistant Executive Officer issued amended Complaint No. R9-2007-0014 which added \$15,000 in mandatory minimum penalties (at \$3,000 per violation) bringing the total proposed assessment to \$135,000 (Supporting Document No. 5).

On October 6, 2008, the Water Authority submitted a proposal to settle the liability outlined in amended Complaint No. R9-2007-0014 (Supporting Document No. 3). The settlement offer includes:

- a. Payment of \$75,000 to the San Diego River Conservancy to fund the following SEPs²: River Blitz, Clean and Green Volunteers, and the San Diego River Watershed Data Collection and Restoration Program (Supporting Document 4); and
- b. Payment of \$60,000 to the State Water Resources Control Board's Cleanup and Abatement Account.

Regional Board prosecution staff supports the settlement offer for the following reasons:

¹ A serious violation means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant by 40 percent or more.

² California Water Code section 13385(l)(1) provides when an MMP exceeds \$15,000, the portion of the penalty amount that may be directed to fund a Supplemental Environmental Project may not exceed \$15,000 plus 50 percent of the penalty amount that exceeds \$15,000.

- (1) The proposed SEP is not required of the discharger by any rule or regulation of any entity;
- (2) The San Diego River Conservancy is a State Agency and a reliable project trustee;
- (3) The SEPs will not require additional staff time for oversight.

If the Regional Board does not adopt the tentative Order accepting the Water Authority's settlement, a hearing will be rescheduled for a future Regional Board meeting.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2008-0142
3. Water Authority's October 6, 2008 settlement offer
4. San Diego River Conservancy SEP Proposal
5. Amended Administrative Civil Liability Complaint No. R9-2007-0014

RECOMMENDATION: The adoption of tentative Order No. R9-2008-0142 is recommended.