

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

In the matter of:)	
)	
Eastern Municipal Water District)	Order No. R9-2015-0048
)	
Sanitary Sewer Overflow From Temecula Valley;)	Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order
)	
District Manhole #77)	
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Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “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 and State Water Resources Control Board Office of Enforcement Prosecution Team (Prosecution Team), and Eastern Municipal Water District (District) (collectively known as the Parties) and is presented to the San Diego Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The District owns and operates two sanitary sewer collection systems (“Eastern Municipal Water District Collection System [CS]” and “Temecula Valley CS”), and is regulated by State Water Board Order Nos. 2006-0003-DWQ and 2008-0002-EXEC, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*. The Temecula Valley collection system is also regulated by San Diego Water Board Order R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Systems in the San Diego Region*, which prohibits any discharge of sewage upstream of the wastewater treatment plant.

2. On January 3, 2013, the District became aware of a sanitary sewer overflow (SSO) from a manhole on the west side of Winchester Road, just south of Jean Nichols Road in Murrieta, California.¹ The District arrived on-site and discovered the manhole seeping sewage out of the rim of the manhole at the approximate rate of 1-2 gallons per minute. During a period from September 29, 2012² through January 3, 2013, the District discharged raw sewage from a manhole adjacent to Winchester Road into a vegetated sidewalk median, into the gutter, and eventually into a storm drain inlet which discharges to French Valley Creek, a water of the United States.

3. The Prosecution Team alleges the District caused the SSO due to its failure to properly inventory, inspect, and remove an existing sewer bulkhead installed during pipeline construction approximately 20 years prior to the use of the sewer line section brought online in September 2012 when a new housing development was opened. The District removed one bulkhead but was unaware of the second bulkhead downgradient of the first. Complete blockage in the sewer main line caused incoming raw sewage from new homes upstream of the sewer bulkhead to accumulate inside the sewer pipeline assets and eventually resulted in the SSO from District Manhole #77, located in a landscaped median between Winchester Road and an adjacent pedestrian sidewalk. As a result of this SSO, the District upgraded its August 2012 "Pre-Partial Release" procedures for sewers to ensure that sewers are more thoroughly checked and inspected prior to placing newly constructed sewers in use.

4. The District conducted engineering studies (including a geotechnical field investigation/soils testing by an outside contractor and a water balance analysis) to assist with determination of the SSO volume estimate. The District's estimate for total gallons discharged is 259,300 gallons, with 3,829 gallons allegedly reaching surface waters (~1.5 percent) through storm floodway structures, which discharge into French Valley Creek. However, the Prosecution Team also conducted its own discharge volume calculation based on the manhole discharge flow rate and other planter inputs (precipitation, irrigation, etc.) assumed by the District and the infiltration rate determined appropriate by the Prosecution Team, and estimated the total discharge to French Valley Creek via the gutter and storm drain to be 132,663 gallons.

¹ The District states the SSO was first discovered by landscapers who indicated they noticed the spill on the morning of December 28, 2012.

² The District estimates the SSO began on September 29, 2012.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulation to the San Diego Water Board for adoption as an Order pursuant to Government Code section 11415.60. To resolve by consent and without further administrative proceedings the alleged violation of Water Code Section 13385 as set forth herein and in Attachment A, the Parties have agreed to the imposition of ONE HUNDRED TEN THOUSAND SIX HUNDRED TWENTY FOUR DOLLARS AND TWENTY THREE CENTS (\$110,624.23) in administrative civil liability against the District. The District shall pay this amount to the State Water Resources Control Board Cleanup and Abatement Account (Cleanup and Abatement Account) no later than 30 days following the San Diego Water Board's adoption of this Order.

6. In the course of settlement discussions between the Parties, the Parties discussed adjustments to three specific factors in the State Water Board's Water Quality Enforcement Policy (Enforcement Policy) regarding the Discharger's history of violation, economic benefit of noncompliance, and discharge volume calculation. Pursuant to the Enforcement Policy, the Prosecution Team drafted a technical report to support a proposed administrative civil liability amount. After further discussion with the District, and in consideration of hearing and litigation risks, the Parties agreed to a history of violation factor of 1.2. In addition, the District provided more detailed information for the Prosecution Team to estimate the economic benefit of noncompliance. Finally, the Parties each presented their technical arguments and analysis with respect to the volume calculation. Though each Party believes its calculation is appropriate, in the interest of settling this matter and in consideration of hearing and litigation risks, the Parties agreed to establish an estimated volume amount of 68,246 gallons, which represents a compromised volume amount between each Party's position. These adjustments result in an agreed upon administrative civil liability amount of \$110,624.23 (including staff costs).

7. The Prosecution Team believes that the resolution of the alleged violation is fair, reasonable, and fulfills its enforcement objectives, that no further action is warranted concerning the alleged violation described above and in Attachment A, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulated to the following:

8. **Incorporation of Terms:** The Parties incorporate Paragraphs 1 through 7 by this reference as if set forth fully herein, stipulate to the entry of this Order as set forth below, and recommend that the San Diego Water Board issue this Order to effectuate the settlement.

9. **Administrative Civil Liability:** The District hereby agrees to pay the administrative civil liability totaling \$110,624.23 as set forth in Paragraph 5 of Section II herein. Within thirty (30) days of the effective date of this Order, the District agrees to remit, by check, ONE HUNDRED TEN THOUSAND SIX HUNDRED TWENTY FOUR DOLLARS AND TWENTY THREE CENTS (\$110,624.23), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The District shall send the original signed check referencing Order number R9-2015-0048 to the Division of Administrative Services ATTN: Accounting, State Water Resources Control Board, 1001 I Street 18th Floor, Sacramento, California 95814 and shall send a copy to the Prosecution Team at the address listed below.

10. **Compliance with Applicable Laws:** The District understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

11. **Party Contacts for Communications related to Stipulated Order:**

For the Prosecution Team:

Ms. Chiara Clemente
Enforcement Coordinator
Regional Water Quality Control Board, San Diego
2375 Northside Drive, Suite 100
San Diego, California 92108
Chiara.Clemente@waterboards.ca.gov

For the District:

Ms. Jayne Joy
Director of Environmental & Regulatory Compliance
Eastern Municipal Water District
PO Box 8300
Perris, California 92570
JoyJ@emwd.org

12. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

13. **Matters Addressed by Stipulation:** Upon the San Diego Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violation alleged herein and in Attachment A, and all claims, violations or causes of action that could have been asserted against the District as of the effective date of this Stipulated Order based on the specific facts alleged in this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the payment of the administrative civil liability in accordance with this agreement.

14. **Public Notice:** The District understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the San Diego Water Board. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Diego Water Board for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the San Diego Water Board. The District agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

15. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the San Diego Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated 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.

16. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or San Diego Water Board to enforce any provision of this Stipulated 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 Stipulated Order.

17. **Procedural Objections:** The Parties agree that the procedure contemplated for adopting the Order by the San Diego Water 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.

18. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

19. **Modification:** This Stipulated 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.

20. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the San Diego Water Board 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 San Diego Water Board, on a future date after reasonable notice and opportunity for preparation, 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 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 the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on a Complaint for 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.

21. **Waiver of Hearing:** The District has been informed of the rights provided by California Water Code section 13323 subdivision (b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of the Stipulated Order.

22. **Waiver of Right to Petition:** The District hereby waives its right to petition the San Diego Water Board's adoption of the Stipulated Order as written 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.

23. **Covenant Not to Sue:** The District 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 Covered Matter.

24. **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 acts or omissions by the District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

25. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

26. **No Third Party Beneficiaries:** This Stipulated 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 Stipulated Order for any cause whatsoever.

27. **Effective Date of Execution:** This Stipulated Order shall be effective and binding on the Parties upon the date the San Diego Water Board enters the Order.

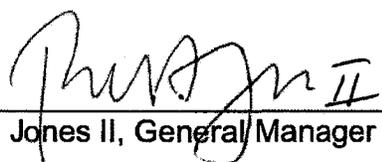
28. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED

California Regional Water Quality Control Board Prosecution Team
San Diego Region

By: 
James G. Smith, Assistant Executive Officer

Date: 25 April 2015

By: 
Paul D. Jones II, General Manager

Date: 4.20.15

Section IV: Findings of the San Diego Water Board

29. The San Diego Water Board incorporates Paragraphs 1 through 28 by this reference as if set forth fully herein.

30. The settlement of this matter is in the best interest of the People of the State. Therefore, to settle this matter, the District hereby agrees to comply with the terms and conditions of this Order.

31. The San Diego Water Board finds that the Recitals set forth herein in Section II are true.

32. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

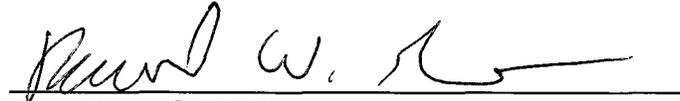
33. In accepting this settlement, the San Diego Water Board has considered, where applicable, each of the factors prescribed in California Water Code sections 13327 and 13385. The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the allegations herein and in Attachment A or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers the costs incurred by the Prosecution Team for this matter.

34. 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 (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

35. The San Diego Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the District fails to perform any of its obligations under the Order.

36. Fulfillment of the District's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim alleged herein in accordance with the terms of the Order.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by delegated authority granted to me from the California Regional Water Quality Control Board, San Diego Region.



DAVID W. GIBSON
Executive Officer

Date: 3 JUNE 2015

Attachment A: Enforcement Policy Methodology for administrative civil liability

ATTACHMENT A

EASTERN MUNICIPAL WATER DISTRICT

This document provides details to support recommendations for enforcement in response to an illegal Sanitary Sewer Overflow (SSO) discharge that occurred within the Eastern Municipal Water District's (District) sanitary sewer collection system located in Winchester, California and reflects information submitted by the District pursuant to an initial California Water Code (CWC) Section 13267 request and subsequent discussions between the District and the Prosecution Team.

1.0 Discharger Information

The District both owns and operates two sanitary sewer collection systems ("Eastern Municipal Water District Collection System [CS]" and "Temecula Valley CS"), and is regulated by Water Quality Order Nos. 2006-0003-DWQ and 2008-0002-EXEC (SSS WDR). The Temecula Valley collection system is also regulated by San Diego Water Board Order R9-2007-0005¹ which prohibits any discharge of sewage upstream of the wastewater treatment plant.

The District is divided into four sewer service areas (Hemet-San Jacinto, Moreno Valley, Temecula Valley, and Perris Valley), for collection, transmission, treatment, and disposal of wastewater. The District currently treats approximately 46 million gallons per day of wastewater at its four active regional water reclamation facilities.

2.0 Application of Water Board's Enforcement Policy²

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. Use of the methodology addresses the factors in CWC section 13385(e), which requires the Regional Water Board to consider several factors when determining the amount of civil liability to impose, including "...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."

The following recommendations have been developed based on the procedures included in the Water Quality Enforcement Policy methodology:

SSO Violation #1

Illegal discharge from Temecula Valley CS reported on 1/3/2013

Alleged Cause of SSO: Failure of District to properly inventory, inspect, and remove an existing sewer bulkhead (hereafter, sewer plug) installed during pipeline construction ~20 years prior to use of sewer section brought online in September 2012.

¹ http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/2007_0005.pdf and http://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/2007_0005.pdf

² Water Board's Adopted Enforcement Policy available at: http://www.swrcb.ca.gov/water_issues/programs/enforcement/policy.shtml

SSO Event Description: *On January 3, 2013, the District became aware of a sanitary sewer overflow (SSO) from a manhole on the west side of Winchester Road, just south of Jean Nichols Road in Murrieta, California.³ The District arrived on-site and discovered the manhole seeping sewage out of the rim of the manhole at the approximate rate of 1-2 gallons per minute. During a period from September 29, 2012⁴ through January 3, 2013, the District discharged raw sewage from a manhole adjacent to Winchester Road into a vegetated sidewalk median, into the gutter, and eventually into a storm drain inlet which discharges to French Valley Creek, a water of the United States.*

District alleges contributing factors to SSO include turnover of internal District sewer construction inspectors along with large geographic distances between the sewer plug and the new sewer lines brought online. District alleges that because of complete blockage in the sewer main line, incoming raw sewage from new homes upstream of sewer plug was unable to be conveyed out of the immediate area, accumulated inside these sewer pipeline assets, and eventually spilled from District Manhole (MH) #77

As a result of this SSO, the District upgraded its August 2012 "Pre-Partial Release" procedures for sewers to ensure that sewers are more thoroughly checked/inspected and any installed sewer plugs are discovered and removed prior to placing newly constructed sewers in use.

SSO VIOLATION #1 (STEP 1): POTENTIAL FOR HARM

FACTOR 1: HARM OR POTENTIAL HARM TO BENEFICIAL USES

- **SCORE = 3 [MODERATE THREAT]**

1. The existing beneficial uses for the receiving water (French Valley Creek) are: municipal and domestic supply, agricultural supply, industrial service supply, industrial process supply, non-contact water recreation, warm freshwater habitat, and wild habitat. The potential beneficial use is contact water recreation.⁵
2. Water quality monitoring by the District to assess this SSO did not begin until ~7-10 days following discovery of SSO, after the District completed its initial investigation.
3. Impacts to water quality are unknown. There were no health warning signs posted by the District.
4. There is potential public exposure to sewage from this overflow due to the spill location (adjacent to housing, a sidewalk, grass, and curb/gutter along major street) over extended period (total of 96 days of discharge).

FACTOR 2: PHYSICAL, CHEMICAL, BIOLOGICAL OR THERMAL CHARACTERISTICS

- **SCORE = 3 [ABOVE-MODERATE THREAT]**

Above-moderate risk or direct threat to potential receptors due high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease, etc. that are found in sewage.

FACTOR 3: SUSCEPTIBILITY TO CLEANUP OR ABATEMENT

- **SCORE = 1 [<50% SUSCEPTIBLE TO CLEANUP OR ABATEMENT]**

Due to the low-flow nature of the SSO, the release went unnoticed for 96 days, during which time, no volume of the spill was recovered. Following discovery of the SSO, the District estimates approximately 100 gallons were recovered of the 259,300 gallons estimated to have been released.

FINAL SCORE = 7 [3 + 3 + 1]

³ The District states the SSO was first discovered by landscapers who indicated they noticed the spill on the morning of December 28, 2012.

⁴ The District estimates the SSO began on September 29, 2012.

⁵ http://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/docs/update082812/Chpt_2_2012.pdf

SSO VIOLATION #1 (STEP 2): ASSESSMENTS FOR DISCHARGE VIOLATIONS**VOLUME AND TOTAL NUMBER OF DAYS DETERMINATION**

- **68,246 GALLONS**

The District conducted engineering studies (including a geotechnical field investigation/soils testing by an outside contractor and a water balance analysis) to assist with determination of the SSO volume estimate. The District's estimate for total gallons discharged is 259,300 gallons over 96 days, with 3,829 gallons allegedly reaching surface waters (~1.5%) through storm floodway structures, which discharge into French Valley Creek. However, the Prosecution Team also conducted its own discharge volume calculation based on the manhole discharge flow rate and other planter inputs (precipitation, irrigation, etc.) assumed by the District and the infiltration rate determined appropriate by the Prosecution Team, and estimated the total discharge to French Valley Creek via the gutter and storm drain to be 132,663 gallons.

Each Party presented its technical argument and analysis with respect to the volume calculation. Though each Party believes its calculation is appropriate, in the interest of settling this matter and in consideration of hearing and litigation risks, the Parties agreed to establishing an estimated volume amount of **68,246 gallons** which represents a compromised volume amount between each Party's respective position.

- **DAYS OF VIOLATION**

This violation occurred for a period of 84 days from October 12, 2012 (when the Prosecution Team estimates the spill reached receiving waters) to January 3, 2013 (the day the Discharger became aware of the SSO and responded). Pursuant to the Enforcement Policy, for violations that are assessed a civil liability on a per day basis, the initial liability should be assessed for each day up to thirty (30) days. For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation. In this case, an alternate approach to the penalty calculation for multiday violations may be used because the violation occurred without the knowledge of the District, who therefore did not take action to mitigate or eliminate the violation until its discovery. The District became aware of the SSO on January 3, 2013 and the SSO was terminated on the same day. Therefore, the alternate approach for calculating multiday violations shall not be less than an amount calculated based on the initial Total Base Liability Amount for the first day of the violation, plus an assessment for each five day period of violation until the 30th day, plus an assessment for each thirty (30) days of violation. In this case, the days of violation are calculated as follows:

84 days of violation: Day 1, 5, 10, 15, 20, 25, 30, 60. Therefore, the penalty is calculated based on eight (8) days of violation.

DEVIATION FROM REQUIREMENT

- **SCORE = MAJOR**

The deviation from requirements is scored as major because this SSO rendered two prohibitions set forth in Order No. 2006-0003-DWQ ineffective.

- District failed to comply with SSS WDRs, Prohibition C.1 (SSO was discharged to waters of U.S.).
- District failed to comply with SSS WDRs, Prohibition C.2 (SSO created a nuisance).

- Also, the District failed to comply with SSS WDRs, Provision D.6 (failed to prevent SSO by the exercise of reasonable control described in a certified SSMP for proper management, operation, and maintenance of the sanitary sewer system).

VOLUME ASSESSMENT

- SCORE = \$2.00 per gallon
 1. Pursuant to CWC section 13385(a), the District is subject to administrative civil liability for violating any waste discharge requirement. The Regional Water Board may impose administrative civil liability pursuant to Article 2.5 (commencing with section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following; (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons.
 2. The Water Quality Enforcement Policy requires application of the per gallon factor to the maximum per gallon amounts allowed under statute for the violations involved, but allows for a \$2.00 per gallon maximum penalty for high volume discharges.

SSO VIOLATION #1 (STEP 4): ADJUSTMENT FACTORS**CULPABILITY****• SCORE = 1.2**

1. District failed to implement adequate control measures to comply with Provision D.13v(a) and D.13v(b) of the SSS WDRs by failing to properly inspect and test the new sewer system before placing in service, which was the root cause of the SSO.
2. Water quality monitoring by District to assess the nature and impact of the release did not occur until seven days following the initial notification and subsequent stoppage of release.

CLEANUP AND COOPERATION**• SCORE = 1.0 (neutral)**

The District has provided several technical reports detailing the SSO, field assessment data, and laboratory testing results, however the District's estimates for raw sewage released to the storm channel are not substantiated based on site-specific data it has collected and provided.

HISTORY OF VIOLATIONS**• SCORE = 1.2**

1. Previous to September 29, 2012, the estimated start date of the SSO, the District has reported 52 SSOs (from both collection systems) in the California Integrated Water Quality System (CIWQS) database:
 - a. Over 1,000,000 gallons spilled
 - b. Over 60,000 gallons reportedly reached surface waters
2. District performance metrics for spill recovery rates are very low (<10%), according to current CIWQS data available.

SSO VIOLATION #1 (STEP 5): DETERMINATION OF BASE LIABILITY

- Initial liability of $\$66,492.52 * 1.2 * 1.0 * 1.2 = \$95,749.23$

For All Violations**ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS (STEP 6):****• SCORE = 1.0 (neutral)**

The ability to pay is used as a consideration when assessing administrative civil liabilities. The ability to pay was calculated using the MUNIPAY financial calculator provided by the US EPA. The model takes into account the municipality's revenues, assets, liabilities, and local demographic information. Financial data used in MUNIPAY was extracted from the District's financial and budget information for 2013 available on its website. Demographic information is available from the 2000 and 2010 US census. Based on the analysis performed, the Prosecution Team determined that the District can afford to pay the final liability amount and the estimated continued recurring costs of compliance.

OTHER FACTORS AS JUSTICE MAY REQUIRE (STEP 7):**• STAFF COSTS = \$14,875**

Costs were calculated based on the following summary of work:

EASTERN MUNICIPAL WATER DISTRICT SSO CASE

Staff Position	TASK	Estimated Hours	Hourly Rate	Cost (\$)
WRCE1	Review RB9 case files (NOV, inspection report, discharger CIWQS data, etc)	20	\$125	2500
WRCE2	Review RB9 case files (NOV, inspection report, discharger CIWQS data, etc)	10	\$125	1250
WRCE1	Development of Investigative NOV/13267 Order	15	\$125	1875
WRCE2	Development of Investigative NOV/13267 Order	5	\$125	625
Senior WRCE	Review/Approve Investigative NOV/13267 Order	5	\$125	625
WRCE1	Onsite technical meeting to follow-up on clarification of initial NOV/13267 response	15	\$125	1875
WRCE2	Onsite technical meeting to follow-up on clarification of initial NOV/13267 response	15	\$125	1875
WRCE1	Develop Draft Attachment A+penalty matrix	5	\$125	625
WRCE1	Present Draft Attachment A+penalty matrix (in settlement negotiations)	10	\$125	1250
WRCE2	Present Draft Attachment A+penalty matrix (in settlement negotiations)	10	\$125	1250
Senior WRCE	Discuss Draft Attachment A+penalty matrix (in settlement negotiations)	9	\$125	1125
			TOTAL	14875

ECONOMIC BENEFIT (STEP 8):

- Pursuant to CWC section 13385(e), civil liability must be assessed at a minimum to recover the economic benefits, if any, derived from noncompliance with the order. The SSO in question was the result of inadequate training and written procedures related to activating new or existing sewer lines for use.

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations."

The Prosecution Team's original economic benefit calculation estimated the District's economic benefit of noncompliance as \$103,343 based partly on an annual recurring training expense for a 4-hour refresher course on the District's Standard Operating Procedures (SOP) for 61 employees. The District provided additional information to the Prosecution Team resulting in a revised economic benefit calculation including 29 employees for a 2-hour training. Using this information, the revised economic benefit of noncompliance totaled \$33,199.

MAXIMUM AND MINIMUM LIABILITY (STEP 9):

- Minimum Liability Amount: \$36,518.90
Pursuant to the Enforcement Policy, the total proposed liability amount is at least 10% higher than the economic benefit. Therefore, the proposed minimum liability for economic benefit is calculated to be \$36,518.90.
- Maximum Liability Amount: \$1,512,469.
Maximum liability amount is determined based on the statutory maximums of \$10,000 per day and \$10 per gallon. Based on the originally alleged 84 days of violation and 67,246 gallons (68,246 – the first 1,000), the maximum liability amount is \$1,512,469.

FINAL LIABILITY AMOUNT (STEP 10):

Based on the above penalty factor analysis and consistent with the Enforcement Policy, the final liability amount proposed for the SSO violation is \$110,624.23.

Base Liability amount of \$95,749.23 + staff costs of \$14,875 = \$110,624.23