

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION



In the matter of:)
)
Irvine Ranch Water District)
15600 San Canyon Avenue)
Irvine, CA 92618-3102)
Attn: Paul D. Jones)

ORDER R8-2010-0073
SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER;
ORDER

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Division Chief of the Santa Ana Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Staff ("Prosecution Staff") and Irvine Ranch Water District (Discharger) (the Regional Water Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order is in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R8-2010-0059, dated November 9, 2010 (the "Complaint") (See Exhibit A attached hereto).

Section II: Recitals

1. The Discharger owns and operates a sanitary sewer system that consists of 800 miles of pipelines and several lift (pump) stations, which is regulated under the State Water Resources Control Board's General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-003-DWQ (SSO Order).
2. The Discharger's sanitary sewer system was and continues to be subject to the requirements set forth in the SSO Order, as of the date of this Stipulated Order. Provision C.1 of the SSO Order prohibits the discharge of sanitary sewer overflows to waters of the United States. Similarly, Section 13376 of the California Water Code (CWC) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit. The Discharger is alleged to have violated CWC §13350 by discharging untreated wastewater to waters of the United States in violation of the prohibition against such discharges contained in the SSO Order. The Discharger also violated Section 13376 of the CWC by discharging pollutants to waters of the United States without filing a report of waste discharge. On November 9, 2010, the Division Chief issued Complaint No. R8-2010-0059 for these violations.
3. The Complaint recommends imposing an administrative civil liability totaling \$43,099, which includes \$34,099 in discretionary civil liability for violation of California Water Code Section 13376 incurred by the Discharger discharging 26,725 gallons of untreated sewage to Buck Gully Creek without an NPDES permit, and staff costs of \$9,000.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board or its delegee for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the violations alleged in the Complaint is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning those except as provided in this Stipulated Order and that this Order is in the best interest of the public.
5. To resolve the violations alleged in the Complaint by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$43,099 in civil liability against the Discharger. The Discharger shall pay a total of \$26,049.50 to the State Water Pollution Cleanup and Abatement Account, \$9,000 of which is for staff costs. The remaining \$17,049.50 shall be suspended upon completion of the Supplemental Environmental Project ("SEP") as set forth in this Stipulated Order.

Section III: Stipulations

The Parties stipulate to the following.

6. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$43,099, as set forth in Paragraph 5 of Section II herein. Within 30 days of the issuance this Order, the Discharger agrees to pay a total of \$26,049.50 to the State Water Pollution Cleanup and Abatement Account. Further, the Parties agree that \$17,049.50 of the imposed administrative liability shall be suspended ("Suspended Liability") pending completion of the SEP, as set forth in Paragraphs 7 through 19 of Section III herein and Exhibit B attached hereto and incorporated by this reference.
7. **SEP Description:** The Parties agree that this resolution includes the performance of a SEP as provided for as follows:

The goals of the SEP are to reduce polluted runoff, conserve water, and educate the public on environmentally friendly landscapes. The Orange County Coastkeeper (the "Implementing Party") proposes to plan, construct and maintain an eco-friendly model garden on approximately 2.5 acres of land at the Santiago Canyon College in Orange, CA. The garden will be open to the public, including developers. Details of the SEP project are included in Exhibit B.

8. **SEP Completion Date:** The SEP shall be implemented in its entirety and a final report shall be submitted as per the schedules specified in Exhibit B.
9. **Agreement of Discharger to Fund the SEP:** The Discharger represents that: (1) it will fund the SEP in the amount as described in Paragraph 6 of this Stipulated Order; (2) it will remain liable for the Suspended Liability until the SEP is completed and accepted by the Regional Water Board or its delegee in accordance with the terms of this Stipulated Order; (3) the Regional Water Board has the right to require an audit of the funds expended by the Implementing Party to implement the SEP at the Implementing Party's expense; (4) it shall provide a check to the Water Board made payable to Orange County Coastkeeper for \$17,049.50 within 30 days of execution of this Order; (5) if it fails to fund the SEP or if the SEP is not completed as per the schedule specified in Exhibit B, the full Suspended Liability

amount becomes immediately due and payable to the State Water Resources Control Board for deposit into the Water Pollution Cleanup and Abatement Account.

10. **Agreement of Orange County Coastkeeper to Accept SEP Funds and Implement the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Implementing Party represents that: (1) it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule set forth in Exhibit B; (2) it understands that its promise to implement the SEP in accordance with the schedule is a material condition of this settlement of liability between the Discharger and the Water Board; (3) it agrees that the Regional Water Board has the right to require the Implementing Party to implement the SEP in accordance with the terms of this Stipulated Order if it has received funds for that purpose from the Discharger; (4) it agrees to submit to the jurisdiction of the Regional Water Board to enforce the terms of this Stipulated Order and the implementation of the SEP; (5) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulated Order that detail the implementation and completion of the SEP; (6) it will guarantee implementation of the SEP identified in Exhibit B; (7) the Regional Water Board has the right to require an audit of the funds expended by the Implementing Party to implement the SEP at the Implementing Party's expense.
11. **SEP Oversight:** The Discharger shall reimburse the Regional Water Board for its costs in overseeing the implementation of the SEPs. The Discharger shall pay the Cleanup and Abatement Account the amount for these costs within thirty (30) days of receipt of a statement from the Regional Water Board indicating the amount of oversight costs it has incurred. The oversight costs will be billed at the rate of \$150 per hour. Further, the Discharger and the Implementing Party shall allow Regional Water Board staff to enter and/or inspect the SEP during normal business hours (i.e., 8 a.m. through 5 p.m.).
12. **Final Report and Certification of Completion of SEP:** The Implementing Party shall provide a final report and a Certificate of Completion¹ as per the schedule provided in Exhibit B.
13. **Third Party Financial Audit of SEP:** At the written request of Regional Water Board staff, the Implementing Party, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies)' professional opinion that the Implementing Party has expended money in the amounts claimed by it. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger/Implementing Party of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
14. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent stay of the Suspended Liability.

¹ Certificate of Completion shall be on Exhibit C, which is hereby incorporated into this Order.

15. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire Suspended Liability has been spent to complete the components of the SEP for which the Discharger is financially responsible, the Discharger shall pay the difference between the Suspended Liability and the amount the Discharger/Implementing Party can demonstrate was actually spent on the SEP. The Discharger shall pay this amount within 30 days of its receipt of notice of the Regional Water Board's determination that the Discharger/Implementing Party has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.
16. **Failure to Complete the SEP:** If the SEP is not fully implemented by the dates specified in Exhibit B, Regional Water Board staff shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof, or the Discharger and/or the Implementing Party may be compelled to complete the SEP.
17. **Publicity:** Should the Discharger, the Implementing Party, or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the project is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
18. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated 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 in the Complaint may subject them to further enforcement, including additional administrative civil liability.
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 Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 6 and the Discharger's and/or Implementing Party's full satisfaction of the SEP obligations described herein.
21. **Public Notice:** Federal law mandates that any settlement will not become final until after a 30-day public notice and comment period expires. (40 CFR 123.27.) The Complaint, the SEP proposal and this Stipulated Order were publicly noticed at least for 30 days. All public comments received during that public notice period have been considered and responded to.
22. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

23. **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.
24. **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 Regional Water Board or its delegee.
25. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water 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 Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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 the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and has waived its right to a hearing before the Regional Water Board prior to the adoption of the Order.
27. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control 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. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State 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 Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
29. **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 covered by this Order.

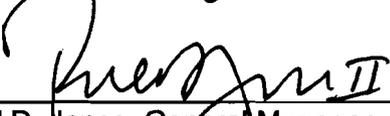
30. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
31. **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.
32. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.
33. **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. ²



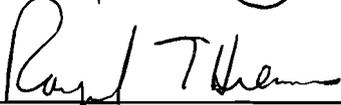
Michael J. Adackapara, Division Chief
On Behalf of the Regional Water Board Prosecution Staff

1/21/11
Date



Paul D. Jones, General Manager
For the Irvine Ranch Water District

1/14/11
Date



Ray Hjemstra, Project Manager
For the Orange County Coastkeeper

1/20/11
Date

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² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

EXHIBIT B (ORDER NO. R8-2010-0073)
PROPOSAL FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT
ECO-FRIENDLY GARDEN

1. Project Title: Eco-Friendly Coastkeeper Garden

2. Organization Proposing the Project: Orange County Coastkeeper
Raymond Hiemstra, Associate Director ray@coastkeeper.org 714-850-1965 x 304
Orange County Coastkeeper, 3151 Airway Ave, Suite F-110, Costa Mesa, CA 92626
Phone 714-850-1965 Fax 714-850-1592; www.coastkeeper.org

3. Project Description: Orange County Coastkeeper has developed an eco-friendly Coastkeeper Garden as a hands-on, stroll-through, public education facility. It is designed to inspire and motivate people of all ages to create beautiful, sustainable, drought tolerant gardens for Southern California homes and businesses.

Located at Santiago Canyon College in Orange, California, the 2.5 acre Garden provides a one-of-a-kind setting. Here, all County residents, including students attending on-campus and off-campus natural science programs, can learn firsthand about our unique Mediterranean climate and ecology, principles of environmental science and stewardship, and the latest technologies in irrigation and water conservation.

Six primary native plant habitats found within Southern California serve as the Garden's backdrop, and each habitat is highlighted by a themed private garden (Spanish, Traditional, Bungalow, Ranch, California, and Italian). These features will demonstrate the use of California Friendly® native and drought-tolerant plants, ones that homeowners can successfully grow in their own gardens. In addition, the features will demonstrate state-of-the-art drainage, irrigation, and hardscape applications that promote water conservation and reduce runoff.

Connecting the themed gardens is the common botanical area, a feature containing 70-80% native plants. Travel through the Garden will be by way of gravel paths with solar lighting. Within the botanical area there will be extensive interactive educational signage, a kiosk, a greenhouse, and an office/storage building. Displays and exhibits will help facilitate the study of the natural sciences and help integrate those studies with a deeper appreciation of the local ecology.

Orange County Coastkeeper is dedicated to the successful completion of the Coastkeeper Garden project. Many of the initial steps have already been completed, and we are continuously working on the Garden with our many volunteers and partners who donate time, labor, and materials. We also have regular "Volunteer Days" advertised on our website that have brought dozens of hard-working teens, adults, and seniors out to the Garden to plant, compost, and water.

As of November 2010 we have completed the first four stages of the garden, planning and grading, installation of the primary irrigation and electrical systems, preliminary construction of pathways, the entranceway, and all six vignette exhibits, and preliminary planting in the botanical common area. We have also completed the construction of two sheds and the installation of a wind powered lighting system. Our goal is the completion of phases five and six of the garden by the fall of 2011 so it can be opened to the public at that time.

The SEP funds will be used for the installation of irrigation in our coastal sage scrub habitat area and installation of signs, plants, and irrigation at the California, Ranch, and Bungalow vignettes. We will also complete the main walkway through the garden. Our goal will be to complete these tasks within sixty days of receiving the SEP funds. The completion of these tasks will represent a major milestone in the progress of Coastkeeper garden and will allow us to focus on completing the final three vignettes for stage five. We look forward to the completion of Coastkeeper Garden and opening it to the public in 2011.

4. Total Project Cost: \$700,000 of which \$17,049.50 is requested from the SEP funds (see attached task budget for the SEP portion of the project costs)

5. Project schedule: Start Date: February 1, 2011. End Date March 31, 2011

	Feb '11	Mar '11
Task 1: Vignette Signs	x	
Task 2: Walkway Completion	x	
Task 3: Irrigation installation	x	x
Task 4: Plant installation	x	x

6. Expected Results: The results of the project will be installation of irrigation in our coastal sage scrub habitat area and installation of signage, plants, and irrigation at the California, Ranch, and Bungalow vignettes. We will also complete the main walkway through the garden. Deliverables will include a final report with pictures of the garden and receipts or invoices from contractors and/or suppliers.

Task Budget

Task	Description	Cost
1	Sign creation and installation	\$3,600
2	Walkway completion	\$6,200
3	Irrigation installation	\$3,880
4	Plant installation	\$1852.50
5	Project Management and Administration	\$1,517
	Total Project Costs	\$17,049.50

EXHIBIT C (ORDER NO. R8-2010-0073)
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION
(Region 8)

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)
Certificate of Completion

The following information is provided as proof of completion of the SEP project described below.

Project Proponent: Orange County Coastkeeper

Contact Person: Ray Hiemstra

Phone: (714) 850-1965

E-Mail: ray@coastkeeper.org

Name of Project: Coastkeeper Garden

Project Summary: (you may attach a final project report or additional sheets for project summary)

Date Project Started: _____

Date of Completion: _____

SEP Money Allocated for the Project: \$17,049.50

Enforcement Order No. and Name of Discharger: *R8-2010-0059/R8-2010-0073, Irvine Ranch Water District*

Date the Amount Was Sent to Project Proponent: _____

Total Project Cost (including funds from other sources): \$ _____

How was the SEP Fund Used for This Project?¹

Overhead/Management	\$ _____
Design/Consultation	\$ _____
Construction/Implementation	\$ _____

¹ This may include external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon the Implementing Party's normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. To substantiate the expenses, the Implementing Party may provide copies of invoices, receipts, etc. The certification need not address any costs incurred by the Regional Water Board for oversight.

Lab and analytical costs	\$ _____
Other expenses (explain)	\$ _____
Total Project Cost (SEP \$ only)	\$ _____

Under penalty of perjury under the laws of the State of California, I certify that: (1) the entire amount of the SEP funding received has been used for the project as indicated above; (2) the portion of the project for which this SEP funding was earmarked has been completed in accordance with Order No. R8-2010-0073; (3) the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including, but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.

SIGNATURE: _____ ***Date:*** _____

Name: _____ ***Title:*** _____