

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SANTA ANA REGION

ORDER NO. R8-2024-0022 ASSESSING ADMINISTRATIVE CIVIL LIABILITY AGAINST CITY OF NORCO

In the Matter of City of Norco 3 MG Reservoir 1 Replacement Project Riverside County

The California Regional Water Quality Control Board, Santa Ana Region (Santa Ana Water Board or Board), having held a public hearing on February 2, 2024, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R8-2023-0056, and having considered and deliberated on the evidence received during the public hearing and in the record, and having considered all comments received, orders City of Norco (City) to pay administrative civil liability in the amount of \$321,643.88 and finds as follows:

BACKGROUND

1. The 3 MG Reservoir 1 Replacement Project (Project), located near the intersection of El Paso Road and Hillside Avenue in Riverside County, consisted of the removal of a 2.25-million-gallon capacity, 127 ft diameter water storage tank at the end of its 65-year service life. The Project also included the removal of 10,000 square feet of impermeable surface and the construction of a 3-million-gallon capacity, 142-ft diameter water storage tank along with 19,000-square feet of impermeable surface. The work involved repaving the existing access road (both currently paved and unpaved portions), totaling 16,000 square feet, and approximately 3,200 square feet of new paving surrounding the new reservoir.
2. The City is subject to *Waste Discharge Requirements for the Riverside County flood Control and Water Conservation District, the County of Riverside, and the Incorporated Cities of Riverside County within the Santa Ana Region, Order R8-2010-0033, National Pollutant Discharge Elimination System (NPDES) Permit No. CAS61833* (Permit). The City is responsible for ensuring that the Project complied with the provisions of the Permit.
3. The Project is in the Temescal Wash watershed in the Upper Santa Ana River Basin. The impacted waterbody is Temescal Creek Reach 1A, which has identified beneficial uses of REC2, WARM, and WILD with sensitivity to bacterial indicators.

CHRONOLOGY

4. The violations were first discovered on December 7, 2021, when the City submitted a Notice of Termination (NOT)¹ of authorization to discharge stormwater runoff associated with the construction of the 3 MG Reservoir 1 Replacement Project near the intersection of El Paso Road & Hillside Avenue (Project). The NOT was denied by Santa Ana Water Board staff based, in part, on a Water Quality Management Plan (WQMP) not being submitted.
5. The City's rationale for not requiring a WQMP for the Project is documented in a "*Checklist for Identifying Projects Requiring a Project-Specific WQMP within the Santa Ana Region.*" The City asserts erroneously that the Project, which received discretionary approval, does not require a WQMP because it is routine maintenance in the context of the programmatic operation of its water distribution system.
6. In response to a request from Santa Ana Water Board staff on November 16, 2022, the City provided a copy of its LIP, dated September 2021. The LIP specifies that the Public Works Director will be responsible for "*Identification of WQMP Projects*" in Table A.2, referencing section 6.5.2 of the LIP. Table A.2. of the City's LIP also indicates that training records are maintained by their Public Works Department. Thus, the City was required to provide training to the Public Works Director on identification of WQMP projects.
7. On March 15, 2022, Santa Ana Water Board staff requested the names and training records of persons that prepared or oversaw the preparation of the rationale for the WQMP determination for the Project. On March 17, 2022, the City's representative provided the names, but not the training records.
8. On April 4, 2022, Santa Ana Water Board staff again requested the training records. On April 6, 2022, the City's representative stated that the Deputy Director of Public Works/City Engineer and the Director of Public Works worked on the approval for the Project but did not provide training records.
9. On April 12, 2022, Santa Ana Water Board staff requested the training records for a third time. On April 19, 2022, Santa Ana Water Board staff clarified that they wanted training records pertaining to compliance with Permit section XII. On June 9, 2022, the City's representative stated that there were no known training documents for the City's staff who were involved with the Project.
10. On June 10, 2022, the Santa Ana Water Board issued a Notice of Violation (NOV), which notified the City of the WQMP requirement for the Project and of the training and record requirements. The NOV also requested that the City provide training records.

¹ In addition to the Permit, the Project was subject to the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-00009-DWQ, NPDES Permit No. CAS000002 (CGP). The NOT was submitted pursuant to the CGP.

11. The City responded in a letter on June 23, 2022, stating that staff involved with the Project had Construction General Permit Qualified Stormwater Pollution Prevention Plan (SWPPP) Practitioner (QSP) and/or Qualified SWPPP Developer (QSD) training. Carrying these certificates would not have satisfied the Permit's requirements for WQMP training. The City did not provide records that would show that the City had located or completed training records for its staff or had its staff complete training to come into compliance.
12. On August 17, 2022 and September 7, 2022, for the fourth and fifth times, Santa Ana Water Board staff requested that the City provide training records for the involved staff during a meeting. On September 13, 2022, the City provided the records for QSD/QSP training but not for WQMPs. The provided records do not show that the Deputy Director of Public Works/City Engineer or the Director of Public Works received WQMP training.

REGULATORY REQUIREMENTS

13. Permit section XII.D.1. requires, in part, that dischargers require a project-specific water quality management plan (WQMP) for certain projects for which discretionary approval is sought. Permit section XII.D.2.a. requires, in part, that each permittee ensure that an appropriate WQMP is prepared for all significant re-development projects. Permit sections XII.A.9 and XIV.G.1.e make the WQMP requirements of section XII.D applicable to permittee projects. In the alternative to these WQMP requirements, the Permit provides a conditional waiver process for Low Impact Development (LID) projects, as defined, for which the permittee anticipates best management practices (BMP) implementation would be infeasible or inappropriate. (Permit section XII.G.1.)
14. Permit section XII.D.2.a. provides that significant re-development includes projects involving the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site. Section XII.D.2.a. also provides that significant re-development does not include routine maintenance activities that are conducted to maintain the original line and grade, hydraulic capacity, original purpose of the facility, or emergency re-development activity required to protect public health and safety.
15. The Permit requires WQMP review, training, and maintenance of training records. Specifically, Permit section XII.H.4. requires training for *“those involved with WQMP reviews”*. Permit section XV.C., in part, requires formal training programs that educate permittee employees responsible for implementing requirements of the Permit on WQMP review, and requires that each permittee maintain a written and/or electronic record of training provided to its stormwater and related program staff.
16. Permit sections III.B.1. and IV.B. require each Co-permittee to complete a Local Implementation Plan (LIP). Section IV.A.8.c. requires that the LIP include *“procedures and tools to implement the WQMP.”* Section XV.A. requires the LIP to include a program to provide formal training to permittee staff that implement the

provisions of the Permit. Section IV.A.12. requires that the LIP address the Co-permittees' training program for stormwater managers, planners, engineers, inspectors, and municipal contractors. This includes identifying departments and positions requiring training. Permit section XV.C.3.e. indicates that formal training curriculum shall discuss tools, checklists, and procedures included in the Drainage Area Management Plan (DAMP). Appendix N to the DAMP, Figure 6-2a provides the checklist that was used by the City to determine when a WQMP is to be required.

17. Permit section III.B.2.c. requires each Co-permittee to *"implement management programs, monitoring and reporting programs, appropriate [best management practices] listed in the DAMP and LIP, and related plans as required by this Order."*
18. Permit section XX.F. requires compliance with all standard provisions under Title 40 of the Code of Federal Regulations (CFR) Section 122.41, which, in part, includes the duty to provide information to the Santa Ana Water Board that is requested to determine compliance with the Permit. Those provisions of the CFR require that records that must be kept by the Permit be provided upon request within a reasonable time. (40 CFR 122.41(h).)

PROCEDURAL AND EVIDENTIARY ISSUES

19. On September 6, 2023, the Santa Ana Water Board Branch Manager issued Administrative Civil Liability Complaint No. R8-2023-0056 (Complaint) to the City, which proposed the imposition of \$321,643.88 in administrative civil liabilities. Water Code section 13223, subdivision (a), permits the Santa Ana Water Board to delegate any of its powers and duties to its Executive Officer, with exceptions. Water Code section 7 authorizes a public officer to delegate their authority to a deputy or other authorized person. In Resolution R8-2019-0056, the Santa Ana Water Board delegated to the Executive Officer all of the powers and duties that it was authorized to delegate under Water Code section 13223, subdivision (a). On May 23, 2023, the Executive Officer delegated the authority to issue administrative civil liability complaints pursuant to Water Code section 13223 to Branch Managers of the Santa Ana Water Board, in the absence or unavailability of the Assistant Executive Officer.
20. An evidentiary hearing was conducted on February 2, 2024. In preparation for the hearing, Parties submitted evidence and legal argument. The only procedural objection was the City's request to increase its hearing time from 30 to 60 minutes. That request was granted. The evidence submitted by the Parties in support of or in opposition to the violations alleged in the Complaint consists largely of City records, records of correspondence, Santa Ana Water Board records and notice of violation, corresponding photographs and videos, and witness declarations. The Santa Ana Water Board staff serving as Prosecution Team and representatives of the City and Krieger & Stewart also testified at the hearing. Neither Party objected to any evidence submitted by the other Party.

PERMIT VIOLATIONS

21. **Violation 1:** The City violated Permit sections XII.D.1. and XII.D.2.a. by failing to require or prepare a WQMP for a project that involved the addition or replacement of 5,000 or more square feet of impervious surface on an already developed site—which constitutes a significant re-development project. The Project does not qualify for an exception for routine maintenance. The City did not issue a conditional waiver pursuant to Permit section XII.G. in lieu of requiring a WQMP.
22. **Violation 2:** The City violated Permit section XV.C. by failing to educate employees responsible for implementing requirements on WQMP review and Permit section XII.H.4. for failing to train those involved with WQMP reviews. The City also violated Permit section III.B.2.c. by failing to implement management programs listed in the LIP. The Santa Ana Water Board has exercised prosecutorial discretion in opting to combine these multiple Permit violations into a single violation for purposes of assessing administrative civil liability.
23. **Violation 3:** The City violated Permit section XX.F. by failing to provide training records within a reasonable time in accordance with 40 CFR 122.41(h).

ADMINISTRATIVE CIVIL LIABILITY

24. Water Code section 13385, subdivision (a) states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(2) A waste discharge requirement . . . issued pursuant to [Chapter 5.5] ...

25. Water Code section 13385, subdivision (c) states, in relevant part:

Civil Liability may be imposed administratively by the state board or a regional board 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) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

26. The City violated provisions of law for which the Santa Ana Water Board may impose civil liability pursuant to Water Code section 13385.

27. Pursuant to Water Code section 13385, subdivision (c), the maximum liability that the Santa Ana Water Board may impose pursuant to Water Code section 13385 is \$10,880,000.00 for all violations.

28. Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The Enforcement Policy further instructs the Regional Water Boards to

assess liability against a violator at least ten percent higher than the economic benefit realized from the violation, such that liabilities are not construed as the cost of doing business and provide a meaningful deterrent to future violators.

29. As detailed in the attached Technical Analysis (Attachment A), and based on a calculated economic benefit of \$280, the minimum liability amount that the Santa Ana Water Board may assess for the alleged violations is \$308.
30. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability, the Santa Ana Water Board shall consider the nature, circumstances, extent, and gravity of the 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 the violator's ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters as justice may require.
31. The Enforcement Policy establishes a penalty calculation methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code section 13385, subdivision (e). The Board has considered the required factors for the violations alleged in the Complaint using the penalty calculation methodology in the Enforcement Policy, as explained in detail in Attachment A.
32. The penalty calculation methodology analysis described in Attachment A and incorporated in full in this Order is consistent with the evidence received and the circumstances of this case, as independently evaluated by the Santa Ana Water Board, and supports the administrative civil liability in the amount of \$321,643.88 imposed against the City.

REGULATORY CONSIDERATIONS

33. Notwithstanding issuance of this Order, the Santa Ana Water Board retains the authority to assess additional penalties for violations of the requirements of the Permit for which penalties have not yet been assessed or for violations that may subsequently occur.
34. This is an action to enforce the laws and regulations administered by the Santa Ana Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative liability. The Santa Ana Water Board finds that issuance of this Order is not subject to the provisions of the California Environmental Quality Act (Pub. Res. Code, §§ 21000 et seq.) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not considered a "project." (Pub. Res. Code, §§ 21065, 21080(a); Cal. Code of Regs, tit. 14, §§ 15060 subds. (c)(2), (3), 15378, subd. (a).) The Santa Ana Water Board finds that issuance of this Order is also exempt from the provisions of CEQA because it can be seen with certainty that the project will not have a significant effect on the environment (Cal. Code of Regs., tit. 14, § 15061, subd. (b)(3)); and as an

enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption (Cal. Code of Regs., tit. 14, § 15321, subd. (a)(2)).

35. Any person aggrieved by this action may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.
36. Fulfillment of the City's obligations under this Order constitutes full and final satisfaction of Administrative Civil Liability Complaint No. R8-2023-0056.
37. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if the City fails to comply with payment of the administrative civil liability.

IT IS HEREBY ORDERED, pursuant to Water Code section 13385, that administrative civil liability be imposed upon the City in the amount of \$321,643.88 for the above violations of the Permit. The City shall pay the total administrative civil liability amount within thirty (30) days of adoption of this Order executed by the Santa Ana Water Board. Payment shall be made by check to the "State Water Board Cleanup and Abatement Account" and a copy e-mailed to Santa Ana Water Board contact Adam Fischer at adam.fischer@waterboards.ca.gov. The City shall include the number of this Order (R8-2024-0022) on the check and send it to:

State Water Resources Control Board
Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

I, Jayne Joy, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, Santa Ana Region on February 2, 2024.

Order No. R8-2024-0022
City of Norco

February 2, 2024

Jayne E. Joy, P.E.
Executive Officer

Attachment

A: Technical Analysis for Order No. R8-2024-0022

Attachment A

Technical Analysis Administrative Civil Liability Complaint R8-2023-0056 City of Norco, Riverside County

This document provides the method for calculating the penalty for Administrative Civil Liability (ACL) Complaint R8-2023-0056, which alleges violations of *Waste Discharge Requirements for the Riverside County Flood Control District, the County of Riverside, and the Incorporated Cities of Riverside County within the Santa Ana Region, Area-Wide Urban Storm Water Runoff Management Program*, Order R8-2010-0033, NPDES Permit No. CAS618033 (Permit) against the City of Norco (City). The violations occurred while the City was covered under the Permit. The City obtained coverage under the Permit on January 29, 2010.

The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for determining the ACL amount by addressing the factors that are required to be considered under California Water Code (Water Code) section 13385, subdivision (e). Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

https://waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

Violation 1: The City failed to require a Water Quality Management Plan (WQMP) for a significant re-development project, as required by Permit sections XII.D.1 and XII.D.2.a., and failed, in the alternative, to issue a conditional waiver pursuant to Permit section XII.G.

Step 1 Actual or Potential for Harm for Discharge Violations

Step 1 does not apply to this case.

Step 2 –Assessments for Discharge Violations

Step 2 is inapplicable to this case.

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 of the Enforcement Policy directs the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) to calculate a per day factor for non-discharge violations by considering the Potential for Harm and Deviation from Requirement using Table 3 in the Enforcement Policy.

Potential for Harm

The City's failure to require or prepare a project-specific WQMP for the Project has a minor Potential for Harm, and has a low potential to significantly impact beneficial uses and impair the Santa Ana Water Board's ability to perform its regulatory functions.

The WQMP is required to document post-construction Best Management Practices (BMP's) and related maintenance. When implemented, the WQMP minimizes the effects of a project on site hydrology, runoff flow rates, and pollutant loads. Without requiring the project specific WQMP, the City failed to ensure that its land use approval process will minimize pollutant loads in urban runoff. In lieu of requiring a project-specific WQMP, the City could have submitted a conditional waiver, but failed to do so. By not submitting a waiver, the City has alternately failed to participate in the in-lieu program discussed in Permit section XII.G.

The Project is in the Temescal Wash watershed in the Upper Santa Ana River Basin. The impacted waterbody is Temescal Creek Reach 1A, which has identified beneficial uses of REC2, WARM, and WILD with sensitivity to bacterial indicators. There is low concern that ongoing, normal operation of the Project site would result in adverse impacts to beneficial uses. This supports the minor determination.

The City's misinterpretation of WQMP requirements impacts the efficacy of the MS4 regulatory program. The Permit relies on the permittees' sound discretion and proper interpretation of the WQMP requirements to ensure that the regulatory program functions as intended. Additionally, construction projects like the 3 MG Reservoir 1 Replacement Project may be denied termination due to the lack of a project specific WQMP, which may result in administrative delays and increased staff workload, as was the case here.

Deviation from Requirement

A moderate Deviation from Requirement is appropriate because the intended effectiveness of the Permit's requirement to implement a WQMP for significant redevelopment was partially compromised. The City apparently began the process contemplated by the Permit, but did not carry out that process as required. The City completed a *"Checklist for Identifying Projects Requiring a Project-Specific WQMP within the Santa Ana Region"* for the Project but erroneously defined it as routine maintenance. Thus, the Permit requirement was partially compromised.

Using a minor Potential for Harm and a moderate Deviation from Requirement, the per day factor for this violation is 0.25.

Multiplying the Per Day Factor (0.25) by the days of violation (65) by the statutory maximum (\$10,000.00) yields an initial amount of **\$162,500.00**.

Step 4 – Adjustment Factors

The Enforcement Policy then requires a consideration of the discharger's conduct, specifically, the discharger's culpability, degree of cleanup and cooperation, and compliance history.

Culpability

For culpability, the Enforcement Policy prescribes an adjustment using a multiplier between 0.75 and 1.5. The lower multiplier applies to accidental incidents and the higher multiplier for intentional or negligent behavior.

The Permit states that significant redevelopment includes all projects that add or replace 5,000 square feet or more of impervious surface on an already developed site. The Project removed approximately 10,000 square feet of impermeable pavement and replaced or added approximately 19,000 square feet of impervious pavement. The Project also replaced the water reservoir at the end of its 65-year service life, constituting over 12,000 square feet of additional and replaced impermeable surface. It is reasonable to assume that a prudent person would identify this as significant redevelopment, not routine maintenance.

The justification in undated documentation provided by the City states:

"The 3.0 MG Water Reservoir No. 1 Replacement Project is a routine maintenance replacement of an existing reservoir that maintains the original grade, hydraulic capacity, and purpose as the facilities being replaced. The replacement reservoir is being constructed and operated in the same location as the original reservoir and the associated access road elevations and alignment are not being altered. Per the description hereon, the Project is not a Significant Redevelopment Project."

This justification is not an appropriate definition of routine maintenance. Maintenance is commonly understood to involve work for the upkeep of physical properties to prevent or delay unplanned failures. Maintenance of a structure excludes the replacement of the same entire structure at the end of its service life. Reservoir No. 1 was constructed in 1959. Its replacement after 65 years is not a routine event.

Furthermore, the definition for Land Disturbance in Appendix 4 of the Permit states that *"Permittees should first confirm with Regional Board staff if they believe that a particular routine maintenance activity is exempt under this definition from the General Construction Permit or other Orders issued by the Regional Board."* City staff did not provide any records or statements that they contacted Santa Ana Water Board staff prior to proceeding with the project to confirm whether the activity was exempt.

Formal training regarding WQMP applicability and review is required for all applicable staff members by Permit section XV. Therefore, City staff are reasonably expected to be aware of significant redevelopment requirements and, therefore, should be familiar with Permit requirements. By failing to either require or prepare a WQMP or submit a waiver,

and by defining the Project as routine maintenance instead of significant redevelopment without consulting Santa Ana Water Board staff, the City acted negligently.

A Culpability score of 1.2 is assigned.

History of Violations

The City has no history of adjudicated violations. Therefore, a factor of 1.0 is assigned.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier, when there is a lack of cooperation.

Santa Ana Water Board staff issued a Notice of Violation (NOV) on May 10, 2022, which explained the violation of Permit section XII.D.1. In its response on June 23, 2022, the City continued to assert that the Project was routine maintenance instead of significant redevelopment, and that the Project does not require a WQMP. The City stated that demand of the area served by the water storage tank has not changed and the larger reservoir was a matter of operational flexibility, not increased service or hydraulic capacity. In the August 17th audit with City staff, they were asked what activity would not be considered routine maintenance. City's representative explained that increasing the reservoir's size due to increased demand would not be routine maintenance. Since the adverse impacts, caused by an increase in the volume of the reservoir and the resulting increase in the impermeable surface area, are irrelevant of the intent for such significant changes, a reasonable discharger would have correctly identified the Project as significant redevelopment. To date, the City has taken no effort to acknowledge the violation or a willingness to abandon the application of its faulty rationale to future projects.

A factor of 1.3 is assigned for Cleanup and Cooperation.

The Project was approved at a City Council meeting held on January 15, 2020. This date is used as the start date of violation and, therefore, the latest date by which a WQMP should have been prepared. The end date of violation is when the Project was terminated on August 11, 2022. This results in 940 days of violation. Water Code section 13385(c) authorizes the Water Board to assess a penalty of up to \$10,000.00 for each day of violation.

The Permit requires Co-permittees to require a preliminary WQMP as early as possible during the environmental review or planning phase, that is included as a part of the project application, and to review and approve a final WQMP prior to issuance of any building or grading permitting. (Permit, Finding II.G.6.) The start date of violation could reasonably be earlier than the date of the City Council meeting. This could be a date when a preliminary WQMP should have been required by the City during environmental review prior to the City council meeting, or when a waiver could have been submitted 30

days prior to approval. The dates chosen as the start point and the end point are conservative.

The Enforcement Policy allows for an alternate approach to calculating penalties to be used for violations that last more than thirty (30) days. Where appropriate, this alternative approach shall result in a liability that cannot be less than an amount that is calculated based on an assessment of the first 30 days of the violation, plus an assessment for each 5-day period of violation, until the 60th day, plus an assessment for each 30 days of violation thereafter.

Here, the City's failure to require a project specific WQMP did not cause daily detrimental impacts to the environment, as the City is still required to implement all BMPs. The City's failure to require a project specific WQMP did cause significant impact to the regulatory program's effectiveness.

After applying the multiple day reduction, the total number of days of violation for Violation 1 is $(30 + (30/5) + (940-60)/30) = 30+6+29=65$.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 1 is determined by multiplying the Initial Liability Amount determined in Step 3 by the adjustment factors in Step 4.

$$\$162,500.00 \times 1.2 \times 1.0 \times 1.3 = \mathbf{\$253,500.00}$$

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Violation 2: The City failed to educate and train its staff responsible for implementing WQMP review as required by Permit sections XV.C, XII.H.4c, and III.B.2.c.

Step 1 Actual or Potential for Harm for Discharge Violations

Step 1 does not apply to this case.

Step 2 – Assessments for Discharge Violations

Step 2 is inapplicable to this case.

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 of the Enforcement Policy directs the Santa Ana Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and Deviation from Requirement using Table 3 in the Enforcement Policy.

Potential for Harm

This violation presents a minor Potential for Harm. A minor potential for harm exists when the characteristics of the violation have little or no potential to impair the Water Boards' ability to perform its statutory and regulatory function, presents only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm. Here, the characteristics of this violation do not pose significant threat to beneficial uses nor the Water Boards' ability to perform regulatory functions because failure to adequately train staff does not alleviate the Discharger of its underlying obligation to comply with the Permit.

Without adequate training practices, there is potential for City staff to fail to appropriately implement Permit requirements, which would adversely impact the Water Boards regulatory oversight of the program. Continued failure by the City to appropriately train its staff to implement the Permit poses a risk to the beneficial uses that the Permit is intended to protect. Further, inadequate training practices fail to support required compliance with the DAMP and LIP.

Deviation from Requirements

The Deviation from Requirement is minor. A minor deviation from requirement exists when the intended effectiveness of the requirement remained generally intact (e.g., while the requirement was not met, its intended effect was not materially compromised). The City did conduct some of the required training for a limited number of its staff.

A Potential for Harm score of minor and a Deviation from Requirement score of minor results in a Per Day Factor of "0.1" using Table 3 of the Enforcement Policy. Multiplying the Per Day Factor (0.1) by the days of violation (37) by the statutory maximum (\$10,000.00) yields an initial amount of **\$37,000.00**.

Step 4 – Adjustment Factors -

Culpability

A reasonable and prudent discharger would have conducted the required training to ensure its staff could effectively implement the Permit. Relevant training is offered virtually by the Riverside County Flood Control District. Training is available at any time and has no cost. Certificates of completion are available for those who pass the included competency exam. The City has not cited any factors that prevented them from training staff, who allowed the Project to be approved without a WQMP, nor a submitted waiver. Failure to comply with the Permit's training requirements falls below what is expected of a reasonably prudent discharger.

A culpability score of 1.1 is applied to reflect the deviation from the standard of care.

History of Violations

The Discharger has no history of adjudicated violations regarding staff training. Therefore, a factor of 1.0 is applied.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

No cleanup was required, since this is a non-discharge violation. A prudent response to this violation would be for affected City staff to attend this available training and demonstrate improvements to the training program. The City has now provided the training program to applicable staff.

A factor of 0.75 is applied.

Multiple Day Violations

Violation 2 is addressing the training specifically relevant to the Project. This results in a conservative calculation of the days of violation. However, a broader look at the City's training program and its compliance with the LIP could be considered. This alternative method would be based on the starting date of employment of the Director of Public Works and the date the Director of Public Works first received training.

City staff would be expected to implement Permit requirements during the relevant time frame for the violation. The time frame is based on a period where formal training knowledge should have been applied to this Project but was not, presumably due to lack of adequate training.

The start date for Violation 2 is October 11, 2019, which is the date the City's consultant submitted the Initial Study and Draft Mitigated Negative Declaration for the Project for review by the City. A preliminary WQMP is required to be drafted as early as possible during environmental review or planning phase according to Permit section II.G.6. Thus, a preliminary WQMP should have been drafted prior to October 11, 2019. As the preliminary WQMP should have been produced prior to this submission, the chosen date is conservative. The violation end date is January 15, 2020, which is the date on which the Project was approved at the City Council meeting. By this time, City staff could no longer make the determination to require or prepare a WQMP. An approved preliminary WQMP must be included as part of a complete application and, in this case, should have been prepared no later than the Initial Study and Draft Mitigated Negative Declaration, and the WQMP should have been evaluated by the adequately trained staff by this time. This results in 96 days of violation. Water Code section 13385, subdivision (c) authorizes the Santa Ana Water Board to assess a penalty of up to \$10,000.00 for each day of violation.

The multi-day reduction calculation is justified because the violation did not result in a daily economic benefit nor a daily impact to the environment. Using this reduction results in 37 days of violation $(30 + (30/5) + (96-60)/30) = 37$.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 2 is determined by multiplying the Initial Liability Amount determined in Step 3 by the adjustment factors in Step 4 ($\$37,000.00 \times 1.1 \times 1.0 \times 0.75 = \$30,525.00$). This results in a total base liability amount for Violation 2 of **\$30,525.00**.

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Violation 3: The City failed to produce training records within a reasonable time pursuant to Permit section XX.F.

Step 1 Actual or Potential for Harm for Discharge Violations

Step 1 does not apply to this case.

Step 2 – Assessments for Discharge Violations

Step 2 does not apply to this case.

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 of the Enforcement Policy directs the Santa Ana Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and Deviation from Requirement using Table 3 in the Enforcement Policy.

Potential for Harm

This violation presents a minor Potential for Harm. The characteristics of this violation pose only a minor threat to beneficial uses. Timely furnishing records upon request is important to the Santa Ana Water Board's regulatory function. The City's delay in providing the records impaired the Santa Ana Water Board's compliance oversight function, but the records were ultimately produced.

Deviation from Requirement

The Deviation from Requirement is minor because the City's slow response partially compromised the intended effectiveness of this requirement. The slow response does not satisfy the Permit's requirement to provide records in a reasonable timeframe, but the intended effectiveness of the requirement remained generally intact.

Using a minor Potential for Harm and a minor Deviation from Requirement, the per day factor for this violation is 0.1.

Multiplying the Per Day Factor (0.1) by the days of violation (34) by the statutory maximum (\$10,000.00) yields an initial amount of **\$34,000.00**.

Step 4 – Adjustment Factors

The Enforcement Policy then requires a consideration of the discharger's conduct, specifically, the discharger's culpability, degree of cleanup and cooperation, and compliance history.

Culpability

City staff are expected to be aware of Permit requirements and be able to provide requested records within a reasonable amount of time. The City states in its LIP that records are maintained locally with the Public Works Department. Yet, it took approximately three months for records to be produced following the initial request by Santa Ana Water Board staff via email on March 15, 2022. The lack of timely response falls below what is expected of a discharger.

A Culpability score of 1.1 is assigned.

History of Violations

The City has no history of adjudicated violations. Therefore, a factor of 1.0 is assigned.

Cleanup and Cooperation

On March 15, 2022, Santa Ana Water Board staff requested that the City provide training records. Santa Ana Water Board staff requested the training records again on April 4, 2022. On April 6, 2022, the Discharger's representative stated that the Deputy Director of Public Works, the City Engineer, and the Director of Public Works worked on the Project but did not provide the training records. On April 12, 2022, Santa Ana Water Board staff requested the training records for these individuals for a third time. A response was not received until June 6, 2022. During that time, the City continued to look for training records.

As these records are required by the Permit and the Discharger's 2021 LIP to be maintained by the Public Works Department, it is reasonable to assume a full response could be produced in a timely manner. City staff could also have completed the required training and produced the records in less than 30 days. The delay in production of records was due in part to the City's continued efforts to look for records.

A factor of 0.75 is assigned for Cleanup and Cooperation.

Multiple Day Violations

It took until June 6, 2022, for the City to report that the requested training records did not exist. The starting date selected for Violation 3 is April 15, 2022. This is one month following the date on which training records were first requested by Santa Ana Water Board staff. One month allows a reasonable time for the City to search, retrieve, and transmit the records. This start date is conservative, considering that most records are likely maintained electronically and can be simply emailed in far less than 30 days. The violation end date is June 6, 2022, which is the date on which the City indicated that training records did not exist. This results in 52 days of violation.

The multi-day reduction calculation is justified because the violation did not result in a daily economic benefit or a daily impact to the environment.

Based on the application of the multiple day reduction, the total number of days of violation for Violation 3 is $(30 + (52-30)/5) = 30+4=34$.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 3 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors.

$$\$34,000.00 \times 1.1 \times 1.0 \times 0.75 = \mathbf{\$28,050.00}$$

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Combined Base Liability Amount for All Violations

The combined Total Base Liability for Violations 1, 2, and 3 is determined by adding the base liability amount of each violation. The combined Total Base Liability is $\$253,500.00 + \$30,535.00 + \$28,050.00 = \mathbf{\$312,075.00}$

Step 6 – Ability to Pay and Ability to Continue in Business

Based on publicly available information, the City can pay the proposed liability without affecting its ability to continue its routine functions. According to the Fiscal Year 2020-2021 Annual Comprehensive Financial Report (Financial Report) that is publicly available through the City's website, states:

“The City’s long-term financial and strategic planning has achieved significant success in creating financial resiliency for the General Fund and Water and Sewer Enterprise Funds. This has resulted in substantial General Fund reserves which strengthens the City’s ability to withstand future slowdown in economic activities.”

The City's Financial Report shows that its total net position is \$286.5 million with \$54.4 million of that as unrestricted net position available for spending in Fiscal Year 2021. The City has increased its combined fund balance and decreased its long-term debts over the previous fiscal year.

Step 7 – Economic Benefit

Pursuant to California Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN) program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. For this case, BEN was determined to be the appropriate method. The economic benefit was calculated using BEN Version 2022.0.0 (June 2022). Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a responsible party's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The violation that was considered in the analysis is the failure to require or prepare a WQMP for a construction project and failing to educate and train employees responsible for implementing requirements on WQMP review.

Review of information provided by the Santa Ana Water Board revealed corrective actions that would have helped prevent or mitigate the violation.

To prevent or mitigate the violation, the City should have required or prepared a WQMP for a construction project. Cost associated with developing, implementing, and reviewing the WQMP would have been carried out by the developer, therefore, costs associated with this violation are negligible for the City and are excluded from the analysis. The City was required to educate and train employees responsible for implementing requirements on WQMP review. Based on information provided by the Santa Ana Water Board, training is available to permittees free of cost and there were two employees that were required to take the training; therefore, the City avoided the labor cost for two employees to take the trainings, resulting in an economic benefit of \$280.00.

For computational purposes, the penalty payment date was established as December 1, 2023. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be approximately \$280.00.

Step 8 – Other Factors as Justice May Require

In accordance with Step 8 of the Enforcement Policy, the Total Base Liability Amount may be adjusted under the provision for "other factors as justice may require" if express

findings are made. The cost of investigation and enforcement are considered “other factors as justice may require,” and are considered in the Total Base Liability Amount to further deterrence. The Santa Ana Water Board accrued **\$9,568.88** in staff costs associated with the investigation and preparation of this Complaint as detailed in the attached spreadsheet.

The violations discussed herein present significant risk to the regulatory program if the conduct is repeated or emulated by the City or other permittees. By failing to properly train staff and allowing a significant redevelopment project to be described as routine maintenance, the intentions of the permit are undermined. If repeated, the negative impacts to regional water quality would accumulate beyond the impacts noted in this narrow violation. Total liability is therefore appropriate to provide a deterrent effect.

Step 9 – Maximum and Minimum Liability Amounts

Minimum Liability Amount: Economic benefit plus 10% or **\$308.00**

The maximum liability is set by statute. Water Code section 13385 allows the regional boards to impose daily liability in an amount not to exceed \$10,000 per day, per violation. The calculations for the values below can be found in the Penalty Calculation Methodology Worksheet.

Maximum Liability Amount for Violation 1: \$9,400,000.00

Maximum Liability Amount for Violation 2: \$960,000.00

Maximum Liability Amount for Violation 3: \$520,000.00

Total Maximum Liability Amount is **\$ 10,880,000.00**

Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided that it is within the statutory minimum and maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final Administrative Civil Liability is **\$321,643.00**