LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:

Petak Family Trust dated January 20, 2003

Altamira Canyon Creek Project

Order R4-2019-0044 (Proposed)

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER; ORDER (PROPOSED)

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation or Stipulated Order) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the Petak Family Trust dated January 20, 2003 (Discharger) (collectively, 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.

Section II: RECITALS

1. The Discharger was responsible for the placement of gabion boxes, a concrete retaining wall, and a concrete bottom in a portion of Altamira Canyon Creek (Project) as it passes by Discharger's property identified as Los Angeles County APN 7572-013-017, and sometimes referred to as at 25 Sweetbay Road, Rancho Palos Verdes, California (Property). The Project began in approximately 2015 and concluded in approximately 2017.

2. Although required to do so, the Discharger failed to obtain a certification pursuant to section 401 of the Clean Water Act (33 U.S.C. § 1341) prior to starting the Project.

3. During a site inspection on January 16, 2018, Regional Water Board staff observed the completed Project. Ms. Lynn Petak, identified as a trustee of Discharger, informed Regional Water Board staff that the Project was commissioned to address erosion issues at the Property.

4. The beneficial uses listed for Altamira Canyon Creek in the Regional Water Board's Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties include municipal and domestic supply, groundwater recharge, warm freshwater habitat, wildlife habitat, and rare, threatened or endangered species habitat. The building of the concrete retaining wall, concrete slurry bottom and gabion boxes within Altamira Canyon
Creek removed wildlife habitat within the creek. Long-term sedimentation may occur and some habitat may return, but it can reasonably be expected that the majority of impacts to wildlife habitat are permanent.

5. Section 401 of the Clean Water Act (33 U.S.C. §1341) requires that dischargers engaging in activities that require a federal permit or license, which may result in a discharge of pollutants into waters of the United States, to obtain a state water quality certification from the Regional Water Board, certifying that the activity complies with all applicable water quality standards and restrictions.

6. The Prosecution Team alleges that the Discharger failed to obtain the necessary 401 Certification.

7. This constitutes a violation of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).

8. Water Code section 13385, subdivision (a)(5), authorizes the Regional Water Board to impose administrative civil liability for violating section 401 of the Clean Water Act (33 U.S.C. § 1341). Pursuant to Water Code section 13385, subdivision (c), the Regional Water Board may impose civil liability of up to ten thousand dollars ($10,000) for each day in which the violation occurs, and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, the Regional Water Board may impose additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

9. Water Code section 13385, subdivision (e), states: “In determining the amount of any liability imposed under this section, the Regional Water Board, the state board, or the superior court, as the case may be, shall take into account 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.”

11. The Parties have engaged in settlement negotiations and agree to settle the alleged violations as summarized above without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The amount of administrative civil liability imposed pursuant to this Stipulated Order, as reflected in Attachment A (incorporated by reference), comports with the Enforcement Policy methodology. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violation alleged above, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

12. Jurisdiction: The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

13. Administrative Civil Liability: The Discharger agrees to the imposition of administrative civil liability in the amount of SEVENTY THOUSAND, SEVEN HUNDRED AND SEVENTY THREE DOLLARS ($70,773.00) (CAA Amount). The Discharger agrees to pay the CAA Amount in accordance with Paragraph 14.

14. The Discharger shall pay the CAA Amount in administrative civil liability by check made payable to the "Cleanup and Abatement Account," no later than 30 days following the Regional Water Board, or its delegee, executing this Order. The check shall reference the Order number indicated on page one of this Stipulated Order. The original signed check shall be sent to:

State Water Resources Control Board
Clean Up and Abatement Account
PO Box 1888
Sacramento, California 95812-1888

Copies of the check shall be sent to Hugh Marley, Los Angeles Regional Water Quality Control Board, 320 West Fourth Street, Suite 200 Los Angeles, California 90013 and Daniel S. Kippen, Esq., State Water Resources Control Board, 801 K Street, 23rd Floor Sacramento, California 95814.

15. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability in accordance with the terms of this 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 above may subject it to further enforcement, including additional administrative civil liability.

16. **Party Contacts for Communications related to this Stipulation and Order:**

   For the Regional Water Board:
   
   Hugh Marley, Assistant Executive Officer
   Regional Water Quality Control Board,
   Los Angeles Region
   320 W. 4th Street, Suite 200
   Los Angeles, California 90013
   (213) 620-6375
   hugh.marley@waterboards.ca.gov

   For the Discharger:
   
   Thierry R. Montoya
   AlvaradoSmith APC
   1 MacArthur Place, Suite 200
   Santa Ana, CA 92707
   (714) 852-6800
   tmontoya@alvaradosmith.com

17. **Attorneys’ Fees and Costs:** Each Party shall bear its respective attorneys’ fees and costs in this matter.

18. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board, or its delegatee, as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged above or which could have been asserted based on the specific facts alleged against the Discharger. The provisions of this Paragraph are expressly conditioned on the Discharger’s full and timely payment of the amounts specified in this Stipulation.

19. **Public Notice:** The Discharger and the Regional Water Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegatee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegatee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

20. **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 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.

21. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one
Party. The Discharger is represented by counsel in this matter, and expressly acknowledges such counsel's involvement in negotiating the settlement of this matter.

22. **Modification:** This Stipulation and 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 expressly referencing this Stipulation and Order, signed by all Parties, and approved by the Regional Water Board or its delegatee.

23. **If the 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 delegate, 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 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 except as specified in this paragraph. Specifically, the Parties agree to waive the following objections based on settlement communications in this matter:

   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 violations alleged 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.

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

25. **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 Board, and further waives its rights, if any, to appeal the same, including to a California Superior Court and/or any California appellate level court.

26. **The Discharger's 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 expressly addressed by this Stipulation and Order.

27. **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.

28. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation 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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

29. **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.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board,  
Los Angeles Region Prosecution Team

Date: By:

Hugh Marley  
Assistant Executive Officer

Petak Family Trust dated January 20, 2003

Date: April 26, 2019 By: 

William M. Petak, Trustee

Order No. R4-2019-0044  
Petak Family Trust, Altamira Canyon Creek  
Settlement Agreement and Stipulated Administrative Civil Liability Order
HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS, THE REGIONAL WATER BOARD, OR ITS DELEGEE, FINDS THAT:

30. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 29 above, by this reference, as if set forth fully herein.

31. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e) (see Attachment A, incorporated herein by reference). The Regional Water Board's consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in Paragraphs 1 through 9 or otherwise provided to the Regional Water Board. This settlement recovers the costs incurred by the Prosecution Staff in investigating and pursuing enforcement of the allegations set forth in Paragraphs 1 through 9 as “other matters as justice may require”.

32. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional 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.

33. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, IT IS HEREBY ORDERED on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

____________________________________ Date: ______________________

Renee Purdy
Executive Officer

Attachment A: Enforcement Policy Methodology

Order No. R4-2019-0044
Petak Family Trust, Altamira Canyon Creek
Settlement Agreement and Stipulated Administrative Civil Liability Order
On or about August 7, 2015 The Petak Family Trust (Discharger) commissioned work on its property located at or near 25 Sweetbay Road, Rancho Palos Verdes, California (Site), and such work discharged fill material into Altamira Canyon Creek, a water of the U.S. which is adjacent to the Site, without obtaining a Clean Water Act section 401 water quality certification (Certification). The work was conducted where Altamira Canyon Creek passes by the horse corral on the Site. After an investigation commenced, the Discharger submitted an application for a Certification to the Los Angeles Regional Water Quality Control Board (Regional Board) on October 15, 2018.

The activities of the Discharger warrant the imposition of liability through an administrative civil liability complaint. Factors required to be considered in determining the amount of civil liability pursuant to California Water Code sections 13327 and 13385(e) are presented below.

The Water Quality Enforcement Policy (Enforcement Policy) promulgated by the State Water Resources Control Board (State Board) establishes a methodology for determining administrative civil liabilities. Each factor of the Enforcement Policy's approach is discussed below, as is the basis for assigning the corresponding score.

The 2017 Enforcement Policy can be found at:


The 2010 Enforcement Policy can be found at:

https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final1117_09.pdf

Guidance on the application of the 2017 Enforcement Policy, as compared to the 2010 Enforcement Policy, can be found at:


The 2010 Enforcement Policy was adopted in 2009, and approved in 2010. The terms of the 2010 Enforcement Policy direct the State Board to "review and revise" the Enforcement Policy every five years. (2010 Enforcement Policy, p. 31, §8.) Pursuant to that directive, the State Board approved the 2017 amendments, 2017 Enforcement Policy, on 4 April 2017, and the 2017 Enforcement Policy became effective on 5 October 2017. The 2010 Enforcement Policy still remains in effect for violations where the date of "the last act or event necessary to trigger application of the statute" occurred prior to the effective date of the 2017 Enforcement Policy.

The State Board and Regional Board, and the State Board's Office of Enforcement (OE), should rely on the version of the Enforcement Policy's substantive requirements in effect at the time of the violation to prosecute any violations. However, several aspects of the 2017 Enforcement Policy
Policy can be utilized when bringing enforcement actions that are related to conduct prior to the 2017 Enforcement Policy’s effective date. Additionally, changes to the prior policy that are reflected in the 2017 Enforcement Policy that are clarifications or procedural changes can also be applied immediately. Substantive changes reflected in the 2017 Enforcement Policy, in contrast, can only be applied to violations that occurred after the effective date of the 2017 Enforcement Policy. In this case, the last event triggering application of the statute occurred in early 2017, and therefore the 2010 Enforcement Policy applies.

Violation 1: Unauthorized discharge of fill material. The Discharger placed fill material into Altamira Canyon Creek, a water of the U.S., without obtaining a Certification from the Regional Board. Discharges to surface waters without a 401 Certification or site-specific waste discharge requirements are a violation of the California Water Code and the Federal Clean Water Act. The discharged fill material consisted of gabion boxes, concrete retaining walls, and a concrete slurry bottom.

Step 1. Potential for Harm for Discharge Violation

Factor 1: Harm or Potential Harm to Beneficial Uses

The evaluation of actual harm to beneficial uses factor considers the harm that results from the discharge of pollutants to a receiving water body. The beneficial uses listed for Altamira Canyon Creek in the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties include municipal and domestic supply, groundwater recharge, warm freshwater habitat, wildlife habitat, and rare, threatened or endangered species habitat. The building of the concrete retaining wall, concrete slurry bottom and gabion boxes within Altamira Canyon Creek removed wildlife habitat within the creek. Long-term sedimentation may occur and some habitat may return, but it can reasonably be expected that the majority of impacts to wildlife habitat are permanent. The State of California has a policy of no net loss regarding wetlands, meaning that wetlands lost should be mitigated by the increase of wetlands elsewhere to ensure that the total acreage of wetlands stays the same. The building of the gabion boxes, concrete retaining walls, and cement slurry bottom resulted in the loss of wetlands that have not been mitigated by the addition of wetlands elsewhere. Based on these impacts a score of 3 was assigned for moderate harm to beneficial uses.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge

The evaluation of physical, chemical, biological or thermal characteristics of discharge of material discharged considers the nature and characteristic of the material discharged in the context of potential impacts to beneficial uses. A score between 0 and 4 is assigned based upon a determination of the degree of toxicity. The discharge of concrete to the stream poses a threat to potential receptors because concrete’s physical and chemical characteristics could alter the pH and turbidity of the receiving water. Specifically, during the curing process, concrete can alter the pH of any water it contacts. Additionally, construction activities associated with the work done in the creek may have caused discharges of sediment that otherwise would not have entered the creek, and the Discharger’s alteration of the creek bed will cause permanent changes to the flow rate and sedimentation rate at the Site, and downstream of the Site. The gabion boxes contain only inert material and pose only a negligible risk to potential receptors as the chemical and physical characteristics of the fill material are consistent with the natural environment of Altamira Canyon Creek.
characteristics of the material is benign. Based on the physical and chemical characteristics of the discharge and whether the discharge poses a concern regarding receptor protection, a score of 1 was assigned, as concrete poses a minor risk to potential receptors.

Factor 3: Susceptibility to Cleanup or Abatement

The Discharger has applied for a 404 permit from the U.S. Army Corps of Engineers, and a Certification from the Regional Board. In the application the Discharger proposed keeping most of the gabion boxes in place in Altamira Canyon Creek. A score of 1 is assigned for this factor because the Discharger has failed to clean up 50 percent or more of the discharge.

Final Score: Potential for Harm: 5

Step 2. Assessments for Discharge Violation: .15

a. Potential for Harm: 5 (taken from Step 1)
   A final score of 5 was calculated by adding factors 1, 2, and 3 together.

b. Deviation from Requirement: Major

   The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement (effluent limitation, prohibition, monitoring requirement, construction deadline, etc.) that was violated. This violation is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as "The requirement was rendered ineffective in its essential functions." The Discharger did not attempt to apply for Clean Water Act Section 401 water quality certification prior to the discharge of fill material to a water of the U.S., therefore the requirement has been rendered ineffective.

   Final Score: based upon the Potential for Harm and Deviation from Requirement, the Per Gallon Factor is .15

Step 3. Per Day Assessments for Non-Discharge Violations – (not applicable; discharge violation alleged)

Step 4. Adjustment Factors

a. Culpability: the culpability multiplier ranges between 0.5 and 1.5. A reasonable and prudent person who attempts to build a structure within a stream would have ensured that their project followed all applicable regulations. The Discharger did not attempt to apply for the permits and certifications required for this project. A multiplier of 1.1 is assigned as the Discharger did not act as a reasonable and prudent person would have.

b. History of Violations: Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: the cleanup and cooperation multiplier ranges from
0.75 to 1.5. Although the Discharger did not voluntarily return to compliance, once receiving the Notice of Violation, the Discharger responded as a reasonable and prudent person would have and demonstrated sufficient cooperation by working with the Regional Board to address the violations. Due to the actions the Discharger has taken in response to the violations, a multiplier of .95 is appropriate.

**Step 5. Determination of Total Base Liability Amount: $69,017**

Violation 1: 0.15 (Per Gallon Factor) x 44,030 Gallons x $10.00 per gallon (Statutory Maximum) x 1.1 (Culpability) x 1.0 (History of Violations) x .95 (Cleanup and Cooperation) = $69,017

The volume calculation was based on the following information: 215 feet of linear length of the gabion boxes as listed in the U.S. Army Corps of Engineering's May 17, 2018, Notice of Violation, 4 feet of width of the gabion boxes as given in the report submitted with the Discharger's application for a Clean Water Act section 401 water quality certification. The height of the gabion boxes was estimated by using the standard sizes of gabion boxes conforming to ASTM-A974-97 specifications of gabion boxes mesh grid openings of 3" by 3", based upon the January 2018 inspection, and the height of the gabion boxes is estimated to be 7 feet or 28 standard mesh grid openings. Using these values, the volume of the gabion boxes was estimated to be 6,020 cubic feet which is approximately 45,030 gallons. However, the $10.00 per gallon liability only applies to the number of gallons over 1,000. Thus, the calculation of monetary liability is based on 44,030 gallons.

**Step 6. Ability to Pay: 1**

Currently available information indicates that the Discharger has sufficient assets (e.g., the Discharger owns the Site as well as 17 Sweetbay Road) to pay the proposed administrative liability amount, as the Los Angeles County Tax Assessor valued the Site at $104,558.00, and 17 Sweetbay Road at $160,736.00, in 2018. However, it is expected that the fair market value of each property is substantially higher than the assessed amounts. Therefore, an ability to pay factor of 1 has been assessed.

**Step 7. Other Factors as Justice May Require: Staff Cost of $1,756**

The Regional Board has incurred at least $1,756 in Staff costs associated with the investigation, preparation, and enforcement of the violation. This represents approximately 26 hours of Staff time devoted to inspecting the Site, meetings and communications, and drafting the enforcement documents.

**Step 8. Economic Benefit:** This amount will be calculated prior to finalization of Attachment A.

**Step 9. Maximum and Minimum Liability Amounts**

The Enforcement Policy directs the Regional Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

- Maximum Liability: $440,300
The statutory maximum for Violation 1 is $10.00 per gallon. The Regional Board calculates that 44,030 gallons of fill material were discharged to Altamira Canyon Creek. Therefore, the statutory maximum for Violation 1 is $440,300.

b. Minimum Liability: $24,750
Pursuant to the Enforcement Policy, the Economic Benefit Amount shall be estimated for every violation. The Economic Benefit is defined as any savings or monetary gain derived from the act or omission that constitutes the violation.

The Discharger's economic benefit for non-compliance is calculated from the delayed and avoided costs that would have been accrued during completion of the required actions, including avoided annual fees during mitigation efforts and delayed work. The calculation was performed using the US EPA's BEN computer program, and is equal to the present value of the avoided costs plus the "interest" on the delayed costs. This calculation reflects the fact that the Discharger has had the use of the money that should have been used to achieve compliance. The total Benefit of Noncompliance to the Discharger because of the violation described above is estimated to be $22,500.

The 2010 Enforcement Policy states (p. 21) that the total base liability shall be at least 10% higher that the economic benefit, "so that liabilities are not construed as the cost of doing business and the assessed liability provides a meaningful deterrent to future violations." Therefore, the economic benefit plus 10% is estimated to be $24,750.

Step 10. Final Liability Amount: $70,773
To determine the final liability amount, liabilities for each violation were summed together. The total summed amount for liabilities was added to total Staff cost accrued by the Regional Board while it was pursuing compliance. Therefore, the proposed final liability amount is $70,773.