



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

December 13, 2012

Certified Mail - Return Receipt Requested
7011 0470 0002 8961 5308

Mr. David Witt
City Manager
City of La Mesa
8130 Allison Avenue
La Mesa, CA 91942

In reply refer to / attn:
631922:rstewart

Dear Mr. Witt:

NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2012-0014 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST THE CITY OF LA MESA FOR VIOLATIONS OF STATE WATER BOARD ORDER NO. 2006-0003-DWQ AND SAN DIEGO WATER BOARD ORDER NO. R9-2007-0005

Enclosed find Complaint No. R9-2012-0014 (Complaint) for Administrative Civil Liability against the City of La Mesa (City) for \$948,816 for alleged violations of State Water Resource Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, and California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*. The alleged violations are described in the attached Technical Analysis to the Complaint. Pursuant to Water Code section 13323, the San Diego Water Board shall hold a hearing on the Complaint no later than ninety (90) days after it is issued.

Waiver of Hearing

The City may elect to waive its right to a hearing before the San Diego Water Board. Waiver of the hearing constitutes admission of the violations alleged in the Complaint and acceptance of the assessment of civil liability in the amount of \$948,816 as set forth in the Complaint. For the San Diego Water Board to accept the waiver of the right to a public hearing, the City must submit the following to the San Diego Water Board by 5 p.m., on **January 11, 2013**:

1. The enclosed waiver form signed by an authorized agent of the City with Option 1 selected; and
2. A check for the full amount of civil liability of \$948,816 made out to the "State Water Resources Control Board Cleanup and Abatement Account."

GARY STRAWN, ACTING CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

9174 Sky Park Court, Suite 100, San Diego, CA 92123-4353 | (858) 467-2952 | www.waterboards.ca.gov/sandiego



Settlement Discussions

The City may also waive its right to have a hearing conducted within ninety (90) days of issuance of the Complaint in order to engage in settlement discussions. For the San Diego Water Board to accept the City's request to enter into settlement discussions, the City must submit the following to the San Diego Water Board no later than 5 p.m., on **January 11, 2013**:

1. The enclosed waiver form signed by an authorized agent of the City with Option 2 selected; and
2. The City's proposed settlement offer.

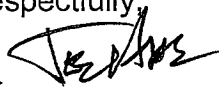
Public Hearing

Alternatively, if the City elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the San Diego Water Board meeting on **March 13, 2013**. The meeting is scheduled to convene at the San Diego Water Board, 9174 Sky Park Court, San Diego, California at 9 a.m. At that time, the San Diego Water Board will accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed are recommended procedures for the San Diego Water Board to follow in conducting the hearing. Please note that comments on the proposed procedures are due by **December 24, 2012** to the San Diego Water Board's advisory attorney, Catherine Hagan, at the address indicated in the hearing procedures.

In the subject line of any response, please include the reference number **631922:rstewart** in order to assist us in the processing of your correspondence to the San Diego Water Board pertaining to this matter. For questions or comments, please contact Rebecca Stewart by email at rstewart@waterboards.ca.gov or by phone at 858-467-2966.

Respectfully,

for 

JAMES G. SMITH
Assistant Executive Officer

JGS:cmc:rls

Enclosures:

1. Complaint No. R9-2012-0014
2. Technical Analysis
3. Administrative Civil Liability Complaint Fact Sheet
4. Waiver of Public Hearing Form
5. Proposed Hearing Procedures

cc: via email, with enclosures

Mr. Greg Humora, City of La Mesa, Director of Public Works/City Engineer, 8130 Allison Avenue, La Mesa, CA 91942, ghumora@ci.la-mesa.ca.us

Mr. Rod Hamilton, City of La Mesa, Public Works Superintendent, 8130 Allison Avenue, La Mesa, CA 91942, rhamilton@ci.la-mesa.ca.gov

Mr. Joe Kuhn, City of La Mesa, Storm Water Program Manager, 8130 Allison Avenue, La Mesa, CA 91942, jkuhn@ci.la-mesa.ca.us

Mr. Hamed Hashemian, City of La Mesa, Engineering Project Manager, 8130 Allison Avenue, La Mesa, CA 91942, hhashemian@ci.la-meas.ca.us

Dr. Michael Welch, Consulting Engineer, 2735 San Clemente Terrace, San Diego, CA 92122-4030, mwelch1@san.rr.com

Mr. David Gibson, Executive Officer, San Diego Water Board, 9174 Sky Park Court, Suite 100, CA 92123-4340, dgibson@waterboards.ca.gov

Ms. Catherine Hagan, Esq., Senior Staff Counsel, State Water Resources Control Board, 9174 Sky Park Court, Suite 100, San Diego, CA 92123-4340, chagan@waterboards.ca.gov

Ms. Mayumi Okamoto, Staff Counsel, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95814, mokamoto@waterboards.ca.gov

Mr. Jim Fischer, Office of Enforcement, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95814, jfischer@waterboards.ca.gov

| chg. Staff Info & Use | |
|-----------------------|-----------------------------------|
| Order No. | R9-2012-0014 |
| Party ID | 284906 |
| WDID | 9 SSO10652 |
| Reg. Measure ID | 383895 |
| Place ID | 631922 |
| Violation ID | 887799, 887803, 887804, 887805 |

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

In the matter of:

**City of La Mesa
Sanitary Sewer Overflows to
Chollas Creek and San Diego Bay; and
Alvarado Creek, the San Diego River,
and the Pacific Ocean**

**COMPLAINT NO. R9-2012-0014
FOR
ADMINISTRATIVE CIVIL LIABILITY**

**Violations of Order Nos.
2006-0003-DWQ and
R9-2007-0005, Waste Discharge
Requirements for Sanitary Sewer
Systems and Sewage Collection
Agencies in the San Diego Region,
collectively.**

Place ID: 631922

December 13, 2012

THE CITY OF LA MESA IS HEREBY GIVEN NOTICE THAT:

1. The City of La Mesa (City) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) may impose civil liability pursuant to section 13385 of the California Water Code (Water Code).
2. This Administrative Civil Liability Complaint is issued under authority of Water Code section 13323.
3. The City owns and operates 165 miles of sewer pipes in San Diego County, California. The City is required to operate and maintain its sewage collection system in compliance with requirements of State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.
4. Prohibition C.1 of Order No. 2006-0003-DWQ states, "[a]ny SSO that results in the discharge of untreated or partially treated wastewater to waters of the United States is prohibited."
5. Prohibition C.2 of Order No. 2006-0003-DWQ states, "[a]ny SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited."
6. Prohibition B.1 of Order No. R9-2007-0005 states, "[t]he discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited."

7. California Regional Water Quality Control Plan, San Diego Region (Basin Plan) Waste Discharge Prohibition No. 9 states, "[t]he discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited."
8. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Order No 2006-0003-DWQ and Order No. R9-2007-0005 are not NPDES permits.

ALLEGED VIOLATIONS

9. The City violated Prohibitions C.1 and C.2 of Order No. 2006-0003-DWQ, Prohibition B.1 of Order No. R9-2007-0005, Basin Plan Waste Discharge Prohibition No. 9, section 301 of the Clean Water Act, and Water Code section 13376 by discharging 1,008,000 gallons of untreated sewage to Chollas Creek and ultimately San Diego Bay and by discharging 306,700 gallons of untreated sewage to Alvarado Creek, the San Diego River, and ultimately the Pacific Ocean on December 21, 2010 and December 22, 2010. Chollas Creek, San Diego Bay, Alvarado Creek, the San Diego River, and the Pacific Ocean are all waters of the State of California and waters of the United States.
10. The details of these violations are set forth in full in the accompanying Technical Analysis, which is incorporated herein by this reference as if set forth in full.

MAXIMUM LIABILITY

11. Pursuant to Water Code section 13385, subdivision (a), any person who violates Water Code section 13376 and/or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c), 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 and (2) 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, an 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.
12. The alleged violations, set forth in full in the accompanying Technical Analysis, constitute violations subject to Water Code section 13385. Therefore, the maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385, subdivision (c) is \$13,157,000.

MINIMUM LIABILITY

Water Code section 13385, subdivision (e) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) further instructs the Regional Water Boards to assess liability against a violator at least 10 percent higher than the economic benefit realized from the violation so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violators.

13. As detailed in the incorporated Technical Analysis, and based on an economic benefit amount of \$130,932, the minimum liability amount the San Diego Water Board should assess is \$144,025.

PROPOSED LIABILITY

14. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability, the San Diego Water Board shall consider the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges; and with respect to the City, the ability to pay, the effect on the City's ability to continue in business, any prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
15. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e). The required factors have been considered for the violations alleged herein using the methodology in the Enforcement Policy, as explained in detail in the Technical Analysis and summarized in Attachment 1.
16. Based on consideration of the above facts, the applicable law, and after applying the penalty calculation methodology in section VI of the Enforcement Policy, it is recommended that the San Diego Water Board impose civil liability against the City of La Mesa in the amount of **\$948,816** for the violations alleged herein and set forth in full in the accompanying Technical Analysis.

Complaint No. R9-2012-0040 4
City of La Mesa
December 21-22, 2010 Sanitary Sewer Overflows

Dated this 13th day of December, 2012.


for

JAMES G. SMITH

Assistant Executive Officer

Signed pursuant to the authority delegated
by the Executive Officer to the Assistant
Executive Officer.

Attachment 1: Summary of Enforcement Policy Penalty Methodology Decisions

CIWQS: Reg Measure ID: 383895
Place ID: 631922
Party ID: 284906
Violation IDs: 887799, 887803, 887804, 887805

Attachment No. 1
 Discharger: City of La Mesa

Penalty Methodology Decisions
 ACL Complaint No. R9-2012-0014

| Step 1: Potential Harm Factor | | | | |
|-------------------------------|---|--|--|--------------------------------------|
| Violations | Harm/Potential Harm to Beneficial Uses [0 - 5] | Physical, Chemical, Biological or Thermal Characteristics [0 - 4] | Susceptibility to Cleanup or Abatement [0 or 1] | Total Potential for Harm [0 - 10] |
| Sewage Spills | 2 | 3 | 1 | 6 |

| Step 2a: Assessments for Discharge Violations | | | | | |
|---|--------------------------------|--|------------------------|-------------------------|---|
| Violations | Per Gallon Factor | | | | Statutory/Adjusted Max per Gallon [\$] |
| | Potential for Harm [0 - 10] | Deviation from Requirement [minor, moderate, major] | High Volume Discharges | Total Per Gallon Factor | |
| Sewage Spills | 6 | major | yes | 0.022 | \$2.00 |

| Step 2b: Per Day Assessments for Discharge Violations | | | | |
|---|--|--|----------------------|-----------------------|
| Violations | Per Day Factor | | | Statutory/Max [\$] |
| | Potential for Harm minor, moderate, major | Deviation from Requirement [minor, moderate, major] | Total Per Day Factor | |
| Sewage Spills | 6 | major | 0.22 | \$10,000 |

| Step 4: Adjustments | | | | | |
|---------------------|----------------------------|---|----------------------|--|-------------------------|
| Violations | Culpability [0.5 - 1.5] | Cleanup and Cooperation [0.75 - 1.5] | History of Violation | Multiple Violations (Same Incident) | Multiple Day Violations |
| sewage spills | 1.2 | 1.2 | 1.1 | yes | na |

| Step 5: Total Base Liability Amount |
|-------------------------------------|
| Sum of Steps 1- 4 |
| \$845,558 |

| Step 8: Economic Benefit |
|--------------------------|
| \$130,932 |

| Step 6: Ability to Pay/Continue in Business |
|---|
| [Yes, No, Partly, Unknown] |
| Yes |

| Step 9 | |
|--------------------------|--------------------------|
| Minimum Liability Amount | Maximum Liability Amount |
| \$144,025 | \$13,157,000 |

| Step 7: Other Factors as Justice May Require | |
|---|-------|
| Costs of Investigation and Enforcement Adjustment | Other |
| \$26,250 | na |

| Step 10: Final Liability Amount |
|---------------------------------|
| \$948,816 |

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

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability
Contained in Complaint No. R9-2012-0014
City of La Mesa Collection System**

**Noncompliance with
State Water Resources Control Board Order No. 2006-0003-DWQ,
*Statewide General Waste Discharge Requirements for Sanitary Sewer
Systems***

**San Diego Water Board Order No. R9-2007-0005,
*Waste Discharge Requirements for Sewage Collection Agencies in the
San Diego Region***

**Water Quality Control Plan, San Diego Basin, Region 9
Waste Discharge Prohibition No. 9**

Clean Water Act Section 301

And

California Water Code Section 13376

December 13, 2012

By

**Rebecca Stewart, Sanitary Engineering Associate
Compliance Assurance Unit**

A. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence that support the findings in Administrative Civil Liability (ACL) Complaint No. R9-2012-0014 (Complaint) and the recommended administrative assessment of civil liability in the amount of **\$948,816** against the City of La Mesa (City) for violations of State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Systems in the San Diego Region*, Water Quality Control Plan, San Diego Basin, Region 9 (Basin Plan) Waste Discharge Prohibition 9, section 301 of the Clean Water Act and section 13376 of the California Water Code (Water Code).

The Complaint was issued to the City because it reported discharges of 1,008,000 gallons of untreated sewage to San Diego Bay via Chollas Creek and 306,700 gallons of untreated sewage to the Pacific Ocean via Alvarado Creek and the San Diego River on December 21 and 22, 2010. The discharges occurred because storm water inflow and infiltration (I&I) exceeded the capacity of the sewage collection system. None of the discharged sewage was recovered.

The City encompasses nearly nine square miles, with 165 miles of sewer pipe servicing roughly 13,000 service lateral connections and a population of 64,500 people. The City's wastewater ultimately flows into the City of San Diego's Metropolitan Wastewater System for treatment and disposal. The City's sewage collection system is relatively old with 70 percent constructed between 1920 and 1960.

In 1998 the San Diego Water Board issued Cleanup and Abatement Order No. 98-70 to the City following four sanitary sewer overflows (SSOs) that occurred during significant rain events. Those SSOs occurred in the same geographic area as the largest SSO addressed in the Complaint. The Cleanup and Abatement Order required the City to initiate the necessary remedial and preventative actions to cease the threat of rain-related SSOs. The number and magnitude of the SSOs reported during this current storm event indicates that the City failed to maintain a proactive program to protect its sewage collection system from rain-related SSOs.

On February 22, 2012, the San Diego Water Board, State Water Board and the United States Environmental Protection Agency's contractor (USEPA), PG Environmental, inspected the City's sewage collection system and concluded that the City's compliance with State Board Order No. 2006-0003-DWQ was unsatisfactory with regards to SSO history, SSO reporting and documentation, and overflow emergency response plan and marginal with regards to operations and maintenance. The City indicated in its response to the inspection that its poor rating was due to significant personnel changes and equipment and computer software upgrades during the past 24-36 months.

1. Discharge Events

The City reported four SSOs, all of which began between 7:30 am and 11:30 am on December 21, 2010. Each reported SSO contained multiple discharge locations as indicated in Figure 1 below:

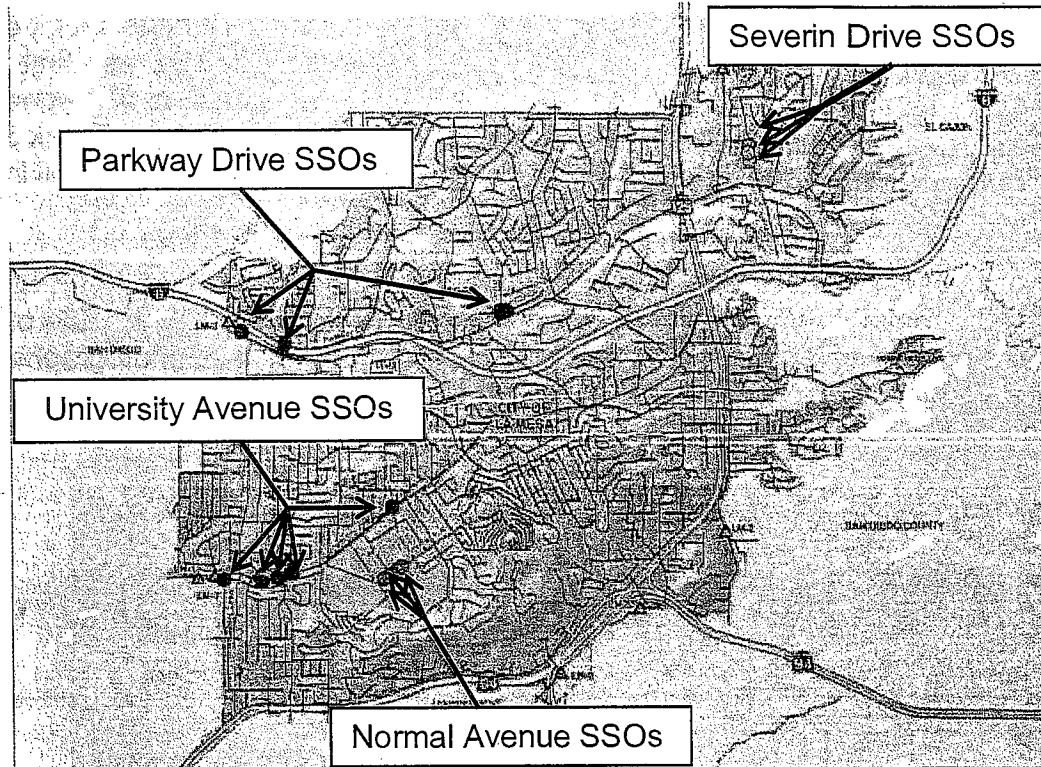


Figure 1: City of La Mesa Collection System Map, December 21-22, 2010 SSO Locations.

The City reported that the last SSO stopped at 9:30 pm on December 22, 2010 and that all SSOs were rain-related.

According to the City's rainfall data, summarized in Table 1, the storm began on December 19 and concluded on December 25, 2010.

| Date | Rainfall (inches) |
|-----------------------------|-------------------|
| December 19, 2010 | 0.18 |
| December 20, 2010 | 1.75 |
| December 21, 2010 | 3.26 |
| December 22, 2010 | 2.88 |
| December 23, 2010 | 0.02 |
| December 25, 2010 | 0.03 |
| Storm Rainfall Total | 8.12 |

Table 1: City of La Mesa Rainfall Totals

The City reported that the storm was categorized as a 40-year storm event; however, the first SSO began after only 2.48 inches of rain. The remaining SSOs began after 3.09, 3.53 and 3.81 total inches of rain, well below the storm total of 8.12 inches.

1.a 7100 Block University Avenue, CIWQS¹ ID 759733

The largest SSO, 990,000 gallons, occurred along the University Avenue Trunk Sewer near the City's western boundary with the City of San Diego. The SSO was first reported at approximately 7:30 am on December 21, 2010 as a backup of a sewer lateral into a restaurant in the immediate vicinity of the University Avenue Trunk Sewer. According to the City's rainfall data, the SSO began after 2.48 inches of rainfall in a 43-hour period.

The City reported that storm water entered a manhole (UXO81.01) when the University Drainage Channel overflowed prior to entering a box culvert owned by the City of San Diego near the intersection of 69th Street and Boulevard Drive. The photographs below depict the flooding along Boulevard Drive at the University Drainage Channel undercrossing (Figure 2) and the location of manhole UXO81.01 (Figure 3).

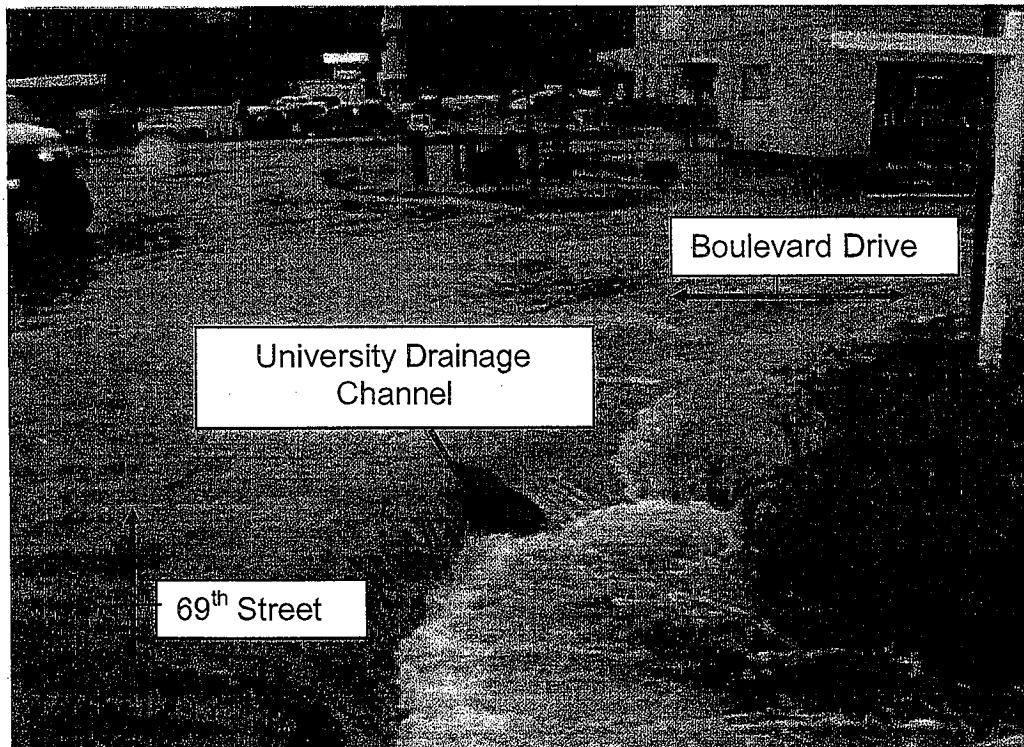


Figure 2: University Channel undercrossing at Boulevard Dr. and 69th St. 12/21/2010

¹ California Integrated Water Quality System (CIWQS) is a computer system used by the State and Regional Water Quality Control Boards to track information about places of environmental interest, manage permits and other orders, track inspections, and manage violations and enforcement activities. CIWQS also allows online submittal of information by Permittees within certain programs and makes data available to the public through reports.

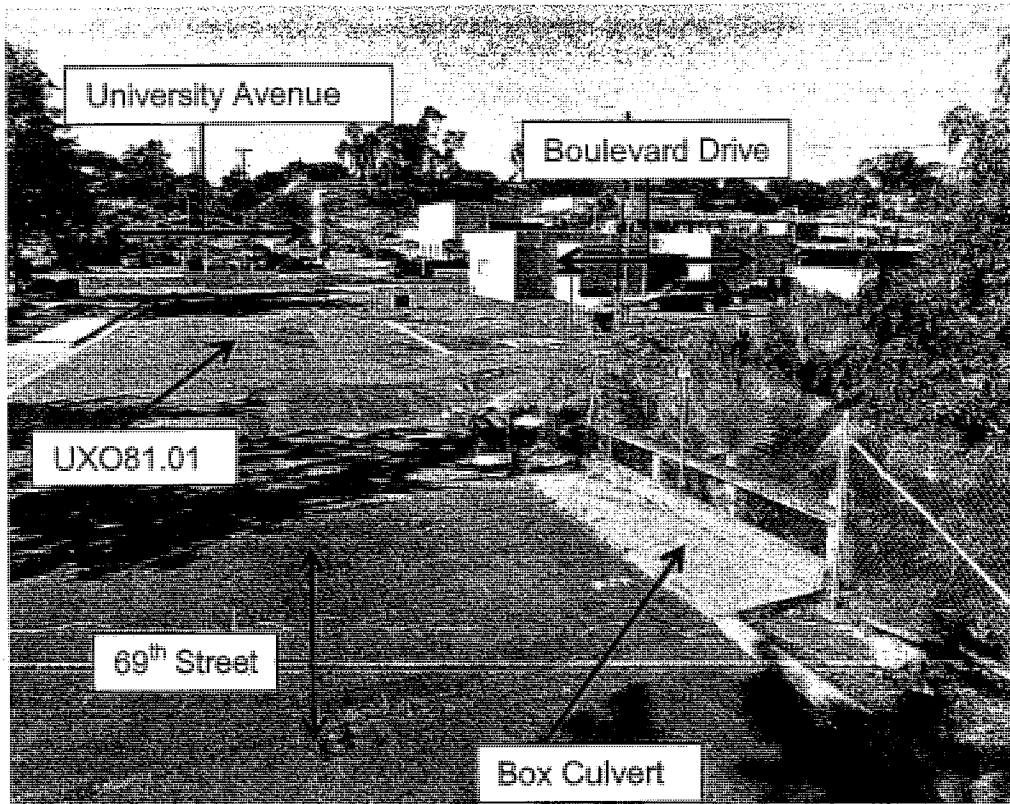


Figure 3: Manhole UX081.01 at intersection of Boulevard Dr. and 69th St.

As storm flows entered manhole UX081.01, the old University Trunk Sewer under Boulevard Drive began filling the new University Trunk Sewer under University Avenue. As the new University Trunk Sewer began to fill, additional SSOs occurred at manholes (U0004, U0005, U0006) upstream. An additional SSO along this line occurred at manhole UL001, approximately two miles upstream. This SSO resulted from backwater effects further up the University Avenue sewer line.²

² Backwater effects in a sewage collection system result from the filling of a segment of pipe upstream of a pipe or pipes of a smaller diameter downstream.

Figure 4, below, shows the SSO locations along the University Avenue Trunk Sewer.

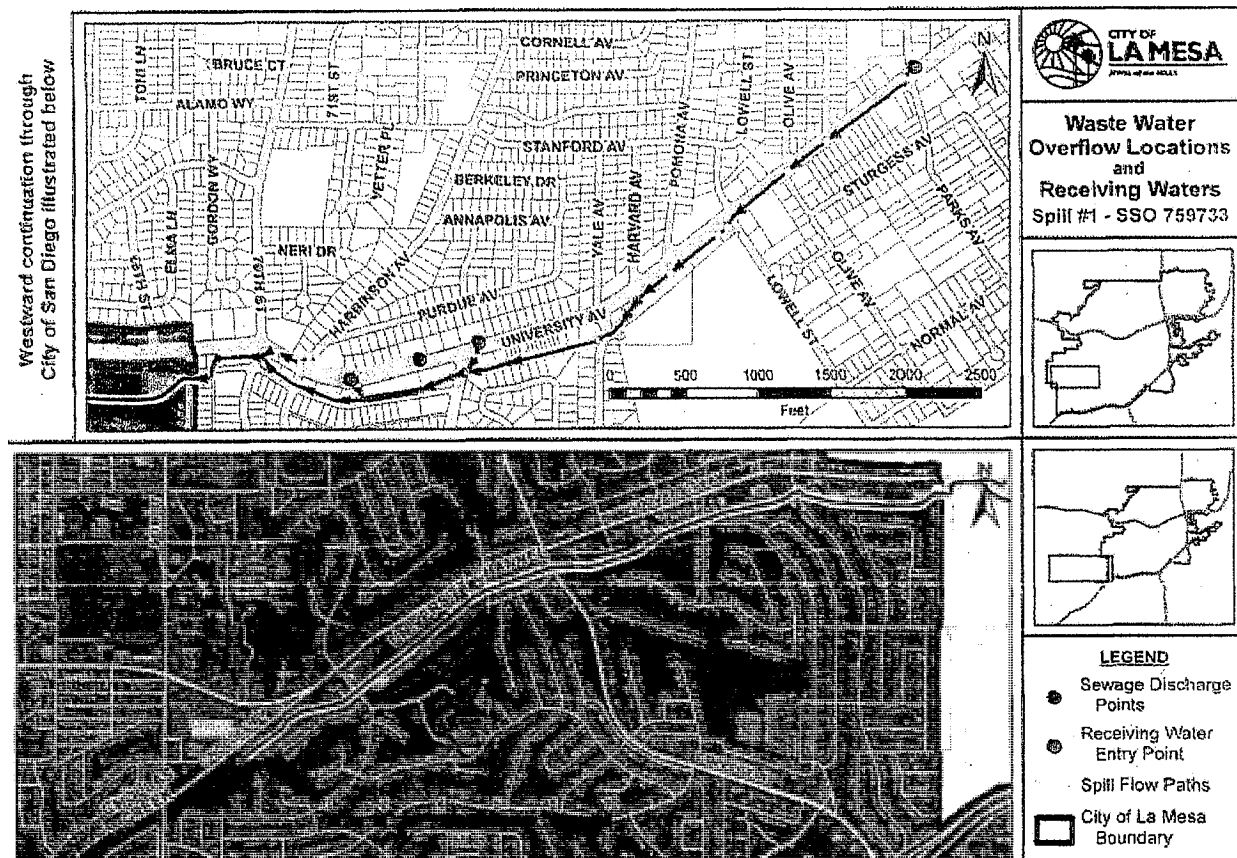


Figure 4: Map of University Trunk Sewer Line and SSO Locations.

The SSOs that occurred along the University Avenue Trunk Sewer discharged from the City's municipal separate storm sewer system (MS4) to Chollas Creek and traveled approximately 8 miles before discharging into San Diego Bay.

1.b Parkway Drive at Guessman Avenue, CIWQS ID 759737

The second largest SSO, 293,200 gallons, occurred along the Alvarado Trunk Sewer, the Parkway Trunk Sewer, and Marengo Avenue. The City was notified of an overflowing manhole at approximately 10:15 am on December 21, 2010. According to the City's rainfall data, the SSO began after a total of 3.53 inches of rainfall in a 46-hour period.

In the afternoon on December 21, 2010, additional SSO locations along the same wastewater line were observed by City staff.

Figure 5 below shows the locations of the SSOs along the Alvarado Trunk Sewer, the Parkway Trunk Sewer, and Marengo Avenue.

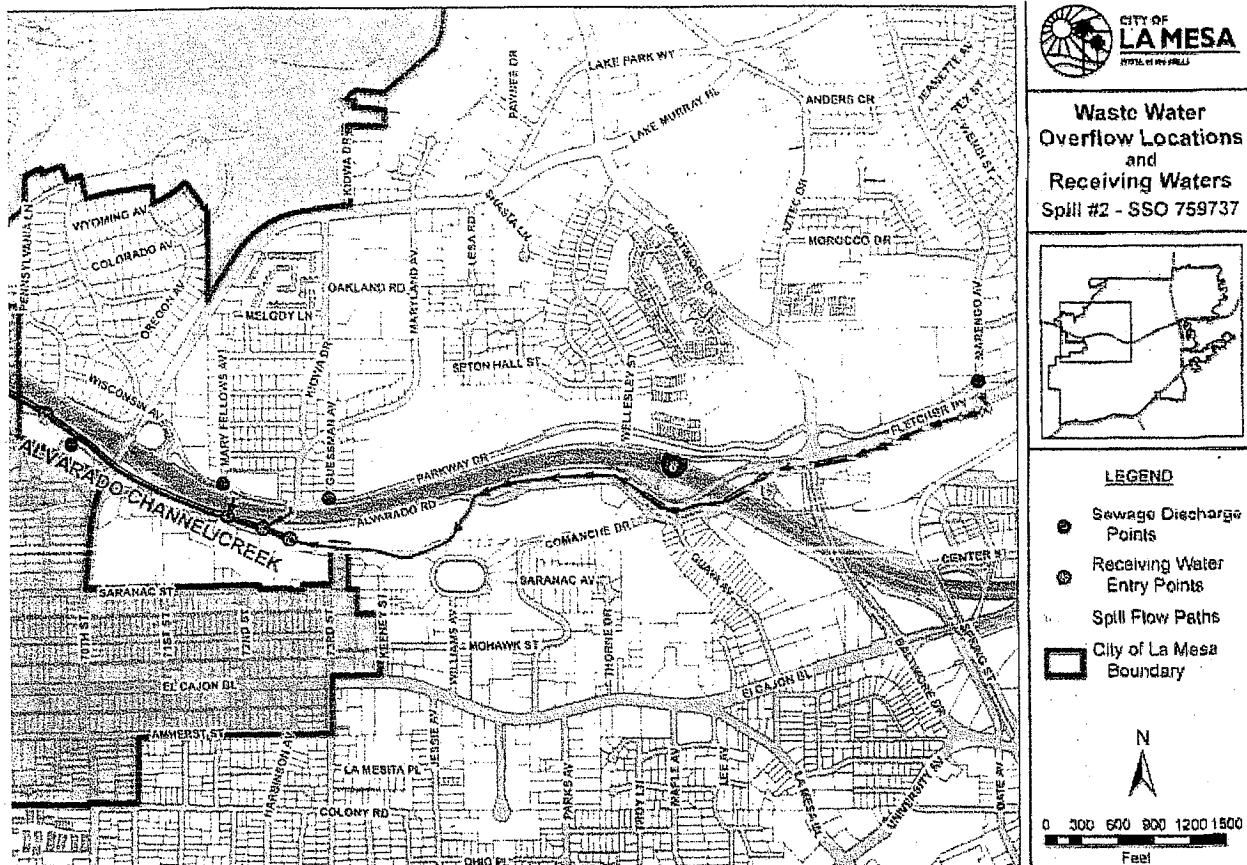


Figure 5. Alvarado Truck Sewer and Parkway Trunk Sewer.

The SSOs in this area discharged to Alvarado Creek and entered the San Diego River before finally discharging to the Pacific Ocean.

The SSO at downstream manhole A0004 likely resulted from a combination of I&I and backwater effects. The City reported that the surcharging manhole was shallow and located downstream of a pipeline transition from a 30-inch diameter to a 21-inch diameter pipe.

The SSO in the alignment at manhole AB0001 was due to I&I and the hydrologic conditions of the manhole location. This section of the Parkway Trunk Sewer was previously identified as needing upsizing to a 15-inch diameter pipe in the City's 2008 Wastewater Collection System Master Plan (2008 Master Plan).

Further up the pipeline at the intersection of Parkway Drive and Marengo Avenue, two additional SSOs at manholes AG001 and AG006 resulted from backwater effects from high flows in the downstream Alvarado Trunk Sewer.

1.c Normal Avenue at Parks Avenue, CIWQS ID 759739

The City reported that 18,000 gallons of raw sewage discharged from four adjacent manholes along Normal Avenue. The SSOs in this area were originally reported to the City as a private lateral discharge at approximately 10:00 am on December 21, 2010. According to the City's rainfall data, this SSO began after 3.09 inches of rainfall in a 46-hour period.

Later in the day the City received a report that a manhole was overflowing at the intersection of Normal Avenue and Parks Avenue. Throughout December 21, 2010, reports of private lateral overflows into residences were received in this area. All of these SSOs are located upstream of the large University Trunk Sewer SSOs as noted in Figure 6 and discharged into Chollas Creek and San Diego Bay.



Figure 6. Normal Avenue SSO Locations.

The City concluded that these SSOs were resulted from storm water I&I into the collection system.

1.d Severin Drive at Gregory Street, CIWQS ID 759740

The City reported that 13,500 gallons of sewage discharged from three adjacent manholes along Severin Drive. The first SSO was reported to the City at approximately 11:30 a.m. on December 21, 2010. According to the City's rainfall data, the first SSO in this area began after 3.81 inches of rainfall in a 48-hour period.

In the afternoon of December 21, 2010, additional discharge locations along the same wastewater line were discovered. City staff determined that the SSOs in this location were a result of surcharging due to storm water I&I. These SSOs, noted in Figure 7, are upstream of the Parkway Drive SSO locations and discharged into Alvarado Creek, the San Diego River, and ultimately the Pacific Ocean.

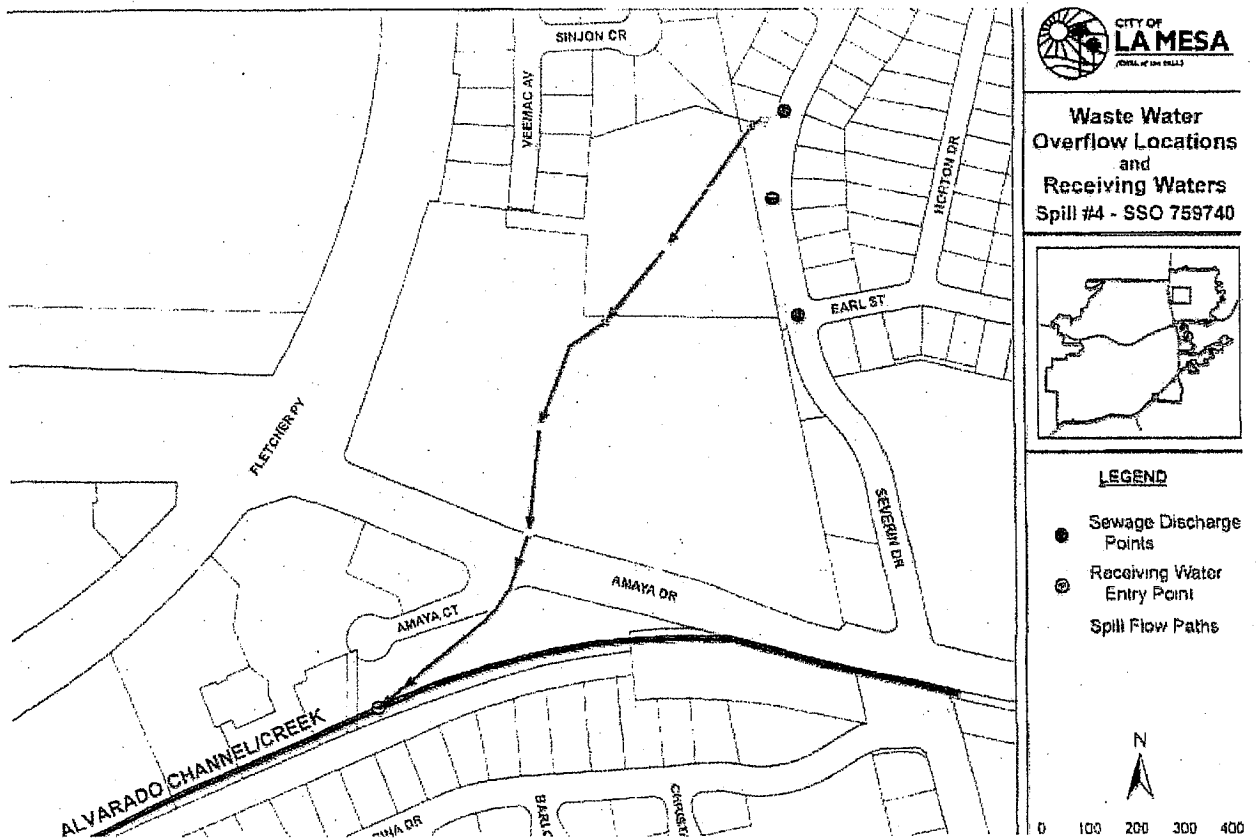


Figure 7. Severin Drive SSO Locations.

2. Wastewater Collection System Hydraulic Analysis

In 2008 the City's consultant, Atkins Global, analyzed the sewage collection system to determine wet weather capacity using a hydraulic model for an industry standard 10-year storm event. The hydraulic model predicted SSOs in the vicinities of three of the 2010 SSO locations (Parkway Drive, Severin Drive and Normal Avenue), but not in the University Avenue SSO location. From this analysis, the City identified a priority capital improvement project to upsize the Parkway Drive Sewer Main. In its 2008 Master Plan, this capital improvement project had a recommended completion date of Fiscal Year 2009/2010. However, to date, the City has not completed this project. In response to Investigative Order No. R9-2011-0040, the City reported it intended to require the future developer of the former Coleman College site along Parkway Drive to replace this pipeline.

The 2008 hydraulic analysis indicates that the City was aware that several areas of its sewage collection system had the potential for rain related SSOs, during much smaller storm events than the December 2010 storm, and it failed to implement adequate preventative controls including relatively inexpensive measures such as protecting manholes from inflow.

3. Water Quality Monitoring of SSOs

Although the City's Emergency Overflow Response Plan specifies the need for collection of water quality samples in receiving waters impacted by SSOs, the City failed to collect any water quality samples during or after the SSOs. The City cited its need for all available personnel to respond to the SSOs due to the widespread nature of the events. It also indicated that due to the high flows in receiving waters, collecting samples was not safe.

4. Beneficial Uses of Affected Waters

The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) designates beneficial uses for all surface and ground waters in the San Diego Region. These beneficial uses "form the cornerstone of water quality protection under the Basin Plan" (Basin Plan; Chapter 2). Beneficial uses are defined in the Basin Plan as "the uses of water necessary for the survival or well-being of man, plants and wildlife."

The Basin Plan also designates water quality objectives to protect the designated beneficial uses. Water Code section 13050(h) defines "water quality objectives" as "the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area."

Technical Analysis
 ACL Complaint R9-2012-0014
 City of La Mesa Collection System

Water quality objectives are numerical values for water quality constituents or narrative descriptions based on sound water quality criteria needed to protect the most sensitive beneficial uses designated for a water body.

Table 2 depicts the existing and potential beneficial uses identified in the Basin Plan for surface waters affected by the discharge of 1,008,000 gallons of fecal matter, metals, nutrients and other contaminants present in raw sewage from the SSOs along University and Normal Avenues:

| Beneficial Use | Chollas Creek | San Diego Bay |
|--|----------------------|----------------------|
| Industrial Service Supply (IND) | | X |
| Navigation (NAV) | | X |
| Contact Recreation (REC-1) | O | X |
| Non-Contact Recreation (REC-2) | X | X |
| Commercial and Sport Fishing (COMM) | | X |
| Preservation of Biological Habitats of Special Significance (BIOL) | | X |
| Estuarine Habitat (EST) | | X |
| Marine Habitat (MAR) | | X |
| Migration of Aquatic Organisms (MIGR) | | X |
| Warm Freshwater Habitat (WARM) | X | |
| Shellfish Harvesting (SHELL) | | X |

Table 2: Beneficial Uses of Affected Waters for University and Normal Avenues SSOs

X = Existing Beneficial Use
 O = Potential Beneficial Use

Technical Analysis
 ACL Complaint R9-2012-0014
 City of La Mesa Collection System

Table 3 depicts the existing and potential beneficial uses identified in the Basin Plan for surface waters affected by the discharge of 306,700 gallons of raw sewage from the Alvarado and Parkway Trunk Sewers, Marengo Avenue and Severin Drive:

| Beneficial Use | Alvarado Creek | San Diego River | Mouth of San Diego River | Pacific Ocean |
|--|----------------|-----------------|--------------------------|---------------|
| Agricultural Supply (AGR) | X | X | | |
| Industrial Service Supply (IND) | X | X | | X |
| Navigation (NAV) | | | | X |
| Contact Recreation (REC-1) | X | X | X | X |
| Non-Contact Recreation (REC-2) | X | X | X | X |
| Commercial and Sport Fishing (COMM) | | | X | X |
| Preservation of Biological Habitats of Special Significance (BIOL) | | | | X |
| Warm Freshwater Habitat (WARM) | X | X | | |
| Cold Freshwater Habitat (COLD) | X | X | | |
| Estuarine Habitat (EST) | | | X | |
| Wildlife Habitat (WILD) | X | X | X | X |
| Rare, Threatened, or Endangered Species (RARE) | X | X | X | X |
| Marine Habitat (MAR) | | | X | X |
| Aquaculture (AQUA) | | | | X |
| Migration of Aquatic Organisms (MIGR) | | | X | X |
| Spawning, Reproduction, and/or Early Development (SPWN) | | | | X |
| Shellfish Harvesting (SHELL) | | | X | X |

Table 3: Beneficial Uses of Affected Waters, Alvarado Basin
 X = Existing Beneficial Uses

5. Impaired Water Bodies

Section 303(d) of the Clean Water Act requires Regional Water Boards to identify waters that do not meet or are not expected to meet applicable water quality standards, after the application of certain technology based controls, and schedule them for development of Total Maximum Daily Loads (TMDL). A TMDL determines the amount of pollutants that can be discharged to a receiving water without causing the water quality objectives to be exceeded. The raw sewage discharged by the City entered several impaired water bodies as summarized in Table 4 below:

| Water Body | Impairments Identified in Clean Water Act Section 303(d) List |
|---|--|
| Chollas Creek | Phosphorus, total nitrogen, trash, copper, indicator bacteria, lead, zinc and diazanon |
| Mouth of Chollas Creek in San Diego Bay | Benthic community effects, and sediment toxicity |
| Alvarado Creek | Selenium |
| Lower San Diego River | Enterococcus, fecal coliform, low dissolved oxygen, manganese, nitrogen, phosphorus, total dissolved solids and toxicity |
| Pacific Ocean at the Mouth of the San Diego River | Enterococcus and total coliform |

Table 4: Impaired water bodies affected by SSOs

Raw sewage contains many of the constituents identified as causing impairments to the receiving waters. The addition of raw sewage from these SSOs further degrades the quality of the waters and adds to the existing impacts to beneficial uses.

6. Impacts on Beneficial Uses

Investigative Order No. R9-2011-0040 required the City to characterize the quality of its sewage for the following chemical constituents: total nitrogen, total dissolved solids, chloride, sulfate, iron, manganese and biological oxygen demand. This information is necessary to assess the impacts of the SSOs on receiving waters and aquatic life. The City failed to provide any of the required data and instead supplied data only for chemical oxygen demand and total suspended solids that is collected by the City of San Diego. The limited information submitted is insufficient to precisely assess the amount of harmful pollutants discharged to receiving waters.

Technical Analysis
 ACL Complaint R9-2012-0014
 City of La Mesa Collection System

Due to the City's failure to provide the necessary water quality data from its raw sewage discharges, the Prosecution Team obtained data from a sewerage agency with similar waste discharge characteristics to examine the possible waste load discharged to receiving waters. This data, with regards to the chemical constituents requested from the City, is summarized in Table 5:

| Constituent | Units | Grab Sample | 1-hour Composite Sample |
|---------------------------|-------|-------------|-------------------------|
| Total Nitrogen | mg/L | 14.3 | 47.7 |
| Total Dissolved Solids | mg/L | 879 | 898 |
| Sulfate | mg/L | 185 | 166 |
| Chloride | mg/L | 210 | 220 |
| Iron | mg/L | 0.490 | 0.412 |
| Manganese | mg/L | 0.062 | 0.076 |
| Biochemical Oxygen Demand | mg/L | 262 | 208 |

Table 5: Raw sewage sampling results submitted by City of Oceanside, March 22, 2011

Based on the volume of raw sewage discharged by the City, the SSOs introduced an estimated 14,554 pounds of these pollutants alone to already impaired waters of the State and waters of the United States.

Bacteriological data of raw sewage submitted by a sewerage agency representative of primarily domestic sewage are summarized in Table 6 below:

| Constituent | Unit | Grab Sample |
|----------------|------------|-------------|
| Total Coliform | MPN/100 mL | 30,000,000 |
| Fecal Coliform | MPN/100 mL | 11,000,000 |
| Enterococci | MPN/100 mL | 2,909,300 |

Table 6: Bacteriological sampling of raw sewage submitted by the City of Oceanside, March 22, 2011

Untreated sewage contains a mixture of contaminants including a variety of bacteria, parasites, viruses, toxic chemicals and high concentrations of nitrogen and phosphorous. Viruses, parasites and bacteria are a potential vehicle for disease transmission to human and ecological receptors. Wildlife exposure to untreated sewage can result in suppression of the immune response system, alterations in defense mechanisms, and the depression of essential biological activity that can lead to susceptibility to disease and latent infections. Amphibians are especially sensitive to a number of bacteria found in raw sewage. Furthermore, many of these contaminants do not necessarily break down over time and are left to accumulate in the environment.

The City's finalized SSO reports in CIWQS indicate that there was no posting notifying the public of the likelihood of contamination from the sewage discharges at any of the affected receiving waters. According to the San Diego County Department of Environmental Health (County), the City's initial report of the SSOs indicated that an unknown quantity of sewage was discharged to storm drains. Mr. Ewan Moffat with the County indicated that if the County had been made aware of the quantity of the discharges and had known that the discharges entered storm drains, inland surface waters, and ultimately San Diego Bay, San Diego River and the Pacific Ocean, posting would have been required.

In its response to Investigative Order No. R9-2011-0040, the City indicated that during the SSOs it deployed traffic control and flooding signs to indicate to vehicles and pedestrians of hazards within the roadway or sidewalks. The City did not indicate that it posted signs in areas near the SSOs warning the public of the hazards associated with coming into contact with sewage contaminated storm water.

7. City's Assessment of Spill Impacts

In response to Investigative Order R9-2011-0040 the City hired D-Max Engineering, Inc. to assess the potential short and long term impacts of the SSOs on public health, animal and plant communities, and the overall ecosystem downstream of the discharges. Their investigation concluded that the sewage was highly diluted by storm water flows and, based on previous biological surveys of the receiving waters within the City limits and surveys conducted for the City of San Diego in Chollas Creek and Alvarado Creek, few sensitive plants or animal species reside in the receiving waters. Their report also indicated that City staff found no evidence of sewage related materials in the receiving waters after the SSOs concluded.

The City's assessment of the impacts to receiving waters from the SSOs was incomplete. The City failed to determine the chemical composition of its own sewage, failed to take any receiving water samples during or after the SSOs, failed to take sediment samples after the SSOs, and failed to assess any potential impacts to San Diego Bay, the San Diego River and the Pacific Ocean.

B. ALLEGED VIOLATIONS

The City is required to operate and maintain its collection system in compliance with requirements contained in State Water Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Systems in the San Diego Region*.

The Complaint alleges that the City's discharge of 1,008,000 gallons of raw sewage to Chollas Creek and San Diego Bay and 306,700 gallons of raw sewage to Alvarado Creek, San Diego River and the Pacific Ocean violated the following:

1. The City Discharged Untreated Sewage to Waters of the State and the United States

The City violated Prohibition C.1 of Order No. 2006-0003-DWQ, which states, "[a]ny SSO (sanitary sewer overflow) that results in the discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

2. The City Created a Condition of Nuisance

The City violated Prohibition C.2 of Order No. 2006-0003-DWQ, which states, "[a]ny SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in Water Code section 13050(m)³ is prohibited.

3. The City Discharged Untreated Sewage Upstream of a Sewage Treatment Plant

The City violated Prohibition B.1 of Order No. R9-2007-0005 which states "The discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited."

4. The City Discharged Untreated Sewage to Waters of the State and to a Storm Water Conveyance System

The City violated Basin Plan Waste Discharge Prohibition 9 which states "The unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited."

5. The City Discharged Pollutants to Surface Waters Without an NPDES Permit

The City violated section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376, which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The City is not regulated by a NPDES permit that authorizes the discharge of untreated sewage to Chollas Creek, Alvarado Creek, the San Diego River and/or San Diego Bay.

³ Water Code section 13050, subdivision (m) defines nuisance as anything that meets all of the following requirements: (1) Injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes.

C. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Administrative civil liability may be imposed pursuant to the procedures described in Water Code section 13323. The Complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing civil liability to be imposed, and the proposed civil liability.

Pursuant to Water Code section 13385, subdivision (a)(1) and (4), any person who violates Water Code section 13376 or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385, subdivision (c)(1) and (2) 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 and (2) 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, an 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.

Water Code section 13385, subdivision (e) requires the San Diego Water Board to consider several factors when determining the amount of civil liability to impose. These factors include: "... the nature, circumstance, 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 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 violation, and other matters that justice may require."

The 2009 State Water Resources Control Board Water Quality Enforcement Policy⁴ (Enforcement Policy), Section VI, provides a methodology to use in calculating administrative civil liability. The methodology enables the Regional Water Boards to fairly and consistently implement liability provisions of the Water Code for maximum enforcement impacts to address, correct, and deter water quality violations. The methodology provides a consistent approach and analysis of factors to determine liability based on the applicable Water Code section.

The violations alleged in the Complaint and described in this technical analysis are all "discharge violations" for purposes of considering Water Code section 13385, subdivision (c) and the Enforcement Policy's civil liability calculation methodology. Therefore, this analysis skips step three of the methodology, which applies only to "non-discharge violations."

⁴ The Enforcement Policy may be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

While the discharges were to different receiving waters, because each receiving water is identified as an impaired water body, penalty calculation is based on the total volume discharged and the combined potential for harm to all receiving waters.

Step 1 – Potential for Harm for Discharge Violations

Pursuant to the Enforcement Policy, Regional Water Boards shall calculate actual or threatened impacts to beneficial uses using a three-factor scoring system to determine a final score for Potential for Harm. The three factors utilized in the determination of the Potential for Harm score include; (a) the potential for harm to beneficial uses; (b) the degree of toxicity of the discharge; and (c) the discharges' susceptibility to cleanup or abatement for any violation or group of violations. The scores for these factors are then added to give a final Potential for Harm score.

Based on the recommended range of scores for harm to the environment, risk to potential receptors, and susceptibility to cleanup, and as further detailed below, a score of 6 (six) is assigned to Step 1 of the administrative civil liability calculation.

Factor 1: Harm or Potential Harm to Beneficial Uses

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 (negligible) and 5 (major) is assigned in accordance with the statutory factors of the nature, circumstances, extent and gravity of the violation.

The discharges of 1,008,000 gallons of raw sewage to Chollas Creek and San Diego Bay and 306,700 gallons of raw sewage to Alvarado Creek, the San Diego River, and the Pacific Ocean resulted in a below moderate harm to the receiving waters beneficial uses. Accordingly a score of 2 (two) is assigned to Factor 1 of the penalty calculator. The Enforcement Policy defines **below moderate** for discharge violations as follows:

Below Moderate –less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor).

Raw sewage is toxic, contains human pathogens, and contains numerous chemical constituents in excess of water quality objectives for inland and coastal receiving waters. Although the City conducted no water or sediment quality monitoring during or after the SSOs, it can reasonably be assumed that there were some impacts to the receiving waters.

While there is no evidence available indicating the lack or presence of short term impacts to the ecosystems of the receiving waters, it is reasonably expected that discharges of this magnitude had the potential for localized short term impacts to the biota that came in contact with sewage.

All of the receiving waters are identified as impaired water bodies for constituents known to be present in raw sewage. In addition, a discharge of more than a million gallons of raw sewage has the potential to exacerbate the benthic community effects and sediment toxicity impairments currently existing at the mouth of Chollas Creek in San Diego Bay. Although the SSOs occurred during a large storm event, tidal circulation in the bay is poor increasing the potential for metals and other toxic chemicals to adhere to sediment and remain in the environment long term.

The discharge of 306,700 gallons of raw sewage to Alvarado Creek, the San Diego River and the Pacific Ocean has the potential to increase the nitrogen, phosphorous, total dissolved solids and toxicity impairments and has an increased opportunity for human contact due to the urban setting of these waters. While stream flows were high in these areas, street flooding and easy access to the mouth of the San Diego River at the Pacific Ocean increased the potential for public contact and adverse health effects, especially since the areas were not posted warning of the sewage discharges.

Although there is no definitive evidence of long term impacts resulting from the discharges, any increase in the existing impairments to receiving waters has the potential to negatively affect the beneficial uses of those waters. As a result, the score of 2, representing below moderate impacts to beneficial uses is appropriate.

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

Raw sewage poses an **above-moderate** risk or threat to potential receptors. Accordingly, a score of **3** (three) is assigned to Factor 2. The Enforcement Policy defines above-moderate as follows:

“Discharged material poses an above-moderate risk or direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection).”

Although the City failed to characterize the quality of its untreated sewage, in general, untreated sewage contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease and other pollutants. These pollutants exert varying levels of impacts to beneficial uses of receiving waters. The high degree of toxicity in untreated sewage poses a direct threat to human and ecological receptors which supports a score of **3** in Factor 2.

While the City's untreated sewage was diluted by rainwater when discharged into private property and receiving waters, this factor addresses the characteristics of the untreated sewage and does not take into account dilution. Dilution is not a permitted pollutant reduction measure, and the City's failure to adequately control I&I into its sewage collection system does not affect the characteristics of raw sewage. In short, dilution is not the appropriate solution to wastewater treatment.

Factor 3: Susceptibility to Cleanup and Abatement

Pursuant to the Enforcement Policy a score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned to this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement.

Less than 50 percent of the discharge was susceptible to cleanup or abatement due to the high volumes and multiple discharge points. Accordingly, a score of 1 (one) is assigned to the penalty calculation.

Final Score – “Potential for Harm”

Based on the above determinations, the Potential for Harm final score for these violations is 6 (six).

Step 2 – Assessments for Discharge Violations

Water Code section 13385, subdivision (c) states that a Regional Water Board may impose civil liability pursuant to section 13323 in an amount up to ten thousand dollars (\$10,000) for each day in which the violation occurs. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up and exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons discharged but not cleaned up exceeds 1,000 gallons.

In the case of a high volume discharge, the Enforcement Policy provides that the water boards shall determine an initial liability amount on a per gallon basis using the Potential for Harm score (step 1) and the Extent of Deviation from Requirement of the violation(s). The Enforcement Policy also provides that for high volume discharges both a per gallon and per day amount be considered under Water Code section 13385.

a. Extent of Deviation from Requirement

The discharge of 1,314,700 gallons of untreated sewage is a major deviation from required standards (Discharge Prohibitions) and is expressly prohibited under the Clean Water Act and Water Code. The Enforcement Policy defines a **major** deviation as follows:

“The requirement has been rendered ineffective (e.g. discharger disregarded the requirement, and/or the requirement is rendered ineffective in its essential functions.”)

Technical Analysis
ACL Complaint R9-2012-0014
City of La Mesa Collection System

Section 301 of the Clean Water Act and Water Code section 13376 prohibits the discharge of pollutants to waters of the United States except in compliance with an NPDES permit. The City does not have an NPDES permit authorizing the discharge of pollutants from its sanitary sewer system to waters of the United States.

Basin Plan Prohibition No. 9 prohibits the discharge of treated or untreated sewage to waters of the State or to a storm water conveyance system. The City SSOs entered both storm water conveyance systems and waters of the State in route to waters of the United States.

San Diego Water Board Order No. R9-2007-0005 prohibits the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant. The City's SSOs from its sanitary sewer system were all upstream of the Point Loma Wastewater Treatment Plant.

State Water Board Order No. 2006-0003-DWQ prohibits SSOs that result in a discharge of untreated or partially treated wastewater to waters of the United States and any discharge of untreated or partially treated wastewater that creates a nuisance as defined in Water Code section 13050(m). The City's SSOs created nuisance conditions by not only discharging waste to waters of the United States but also by causing the discharge of raw sewage into private businesses and residences, and along public streets.

Both Orders require sewerage agencies to take all necessary steps to ensure proper operation and maintenance of sewage collection facilities. The Orders do not lessen the severity of the violations because of significant rain events. The City's failure to take the proper actions to reduce I&I into its collection system rendered the requirements ineffective in its essential functions, which is to prohibit sewage spills.

Per Gallon Factor and Per Gallon Assessment

Using a "Potential for Harm" factor of **6** and "Deviation from Requirement" factor of "**Major**", the "Per Gallon Factor" is determined to be **0.22** in "Table 1- Per Gallon Factor for Discharges" of the Enforcement Policy.

Initial Per Gallon Amount of the ACL

The maximum per gallon liability amount allowed under Water Code section 13385, subdivision (c)(2) is ten dollars (\$10) per gallon discharged exceeding 1,000 gallons of the discharge not susceptible to cleanup, or not cleaned up. Since the volume of sewage discharges can be very large, as in this instance, the Enforcement Policy suggests limiting the maximum initial liability for high volume discharges to two dollars (\$2.00) per gallon in this step of the civil liability calculation, unless it results in an inappropriately small penalty based on the unique facts of the case.

Technical Analysis
ACL Complaint R9-2012-0014
City of La Mesa Collection System

Calculating the initial per gallon base amount of the ACL for the discharge is achieved by multiplying:

$$\begin{aligned} & (\text{Per Gallon Factor}) \times (\text{Gallons}) \times (\text{Adjusted Maximum per Gallon}) = \\ & \quad (\text{Initial Per Gallon ACL Amount}) \end{aligned}$$

$$(0.22) \times (1,313,700) \times (\$2.00) = \$578,028$$

Per Day Factor and Per Day Assessment

Using a "Potential for Harm" factor of **6** and "Deviation from Requirement" factor of "**Major**", the "Per Day Factor" is determined to be **0.22** in "Table 2- Per Day Factor for Discharges" of the Enforcement Policy.

Initial Per Day Amount of the ACL

The maximum per day liability amount allowed under water Code section 13385, subdivision (c)(1) is ten thousand dollars (\$10,000) per day of violation.

Calculating the initial per day base amount of the ACL for the discharge is achieved by multiplying:

$$\begin{aligned} & (\text{Per Day Factor}) \times (\text{Days of Violation}) \times (\text{Statutory Maximum per Day}) = \\ & \quad (\text{Initial Per Day ACL Amount}) \end{aligned}$$

$$(0.22) \times (2) \times (\$10,000) = \$4,400$$

Initial Liability Amount

Calculating the Total Initial Liability Amount is achieved by adding:

$$\begin{aligned} & (\text{Initial Per Gallon ACL Amount}) + (\text{Initial Per Day ACL Amount}) = \\ & \quad (\text{Total Initial Liability Amount}) \end{aligned}$$

$$(\$578,028) + (\$4,400) = \$582,428$$

Step 3 – Per Day Assessment for Non-Discharge Violations

This step does not apply. Administrative civil liability for non-discharge violations is not proposed in the Complaint.

Step 4 – Adjustment Factors

The Enforcement Policy identifies three factors related to the violator's conduct that should be considered for modification of the initial liability amount: (1) the violator's culpability, (2) efforts to clean up or cooperate with regulatory authorities after the violation, and (3) the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 and 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of **1.2** has been selected as detailed below.

The San Diego Water Board first issued waste discharge requirements to sewage collection agencies prohibiting the discharge of sewage to waters of the state in 1996. In 1998 the San Diego Water Board issued the City a Cleanup and Abatement Order in response to large SSOs during wet weather. In response to that Order, the City conducted an I&I study which revealed it had a significant I&I problem. In 2008 the City conducted another I&I study which anticipated SSOs from three of the areas that discharged in December 2010 during a much smaller 10-year storm event. The City knew it had an I&I problem as early as 1998 and had ample time to address its I&I problem before the December 2010 storm event and neglected to do so.

The City claims that the University Drainage Channel flooding was exacerbated by the undersized box culvert located at the intersection of Boulevard Drive and 69th Street owned by the City of San Diego. The City reported that when a large construction project was initiated in the City of San Diego in 2000, just west of 69th Street, the old open channel drainage was eliminated causing a restriction. The City's 1996 General Plan, however, indicates that the City was aware of flooding problems in the University Avenue area prior to the construction project and failed to take the necessary steps to protect its sewage collection system from the known flooding hazard.

The City's 2008 Master Plan identified many areas where protection of manholes from storm water could reduce I&I. In 2010 the City purchased 200 inflow dishes which are designed to prohibit the flow of storm water into manholes prone to flooding. The City reported that by May of 2011 it had only installed 50 of the 200 dishes. Installation of these dishes in a timely manner, in areas known to be prone to flooding, could have significantly reduced the amount of I&I entering the sewage collection system and reduced the volume of or eliminated some of the SSOs.

Technical Analysis
ACL Complaint R9-2012-0014
City of La Mesa Collection System

The SSOs that occurred along Severin Drive resulted from insufficient surface drainage facilities which resulted in ponded water over a manhole, and an inadequately protected sewage collection system. Unlike the SSO that occurred at the University Trunk Sewer, the MS4 in this area is owned and operated solely by the City. The City therefore is responsible for being aware of drainage problems in this area and bears the sole responsibility of ensuring that storm water flows do not impact the sanitary sewer system.

In May 2011, the City issued a press release indicating that its sewer rates were lower than the average monthly rate for all of the 13 agencies that share the sewage treatment facilities operated by the City of San Diego. The City stated that the average monthly rate for all of the member agencies was \$41.97 while the City's was \$37.44. The City also indicated that it last increased its sewer rates in 2008 and did not plan on raising rates for the next year. Because the City is nearly built out, it cannot rely on large amounts of revenue from new connection fees and must rely on sewer rates to fund operation, maintenance, and improvements to its collection system. The City's admission that it has the lowest rates of any member agency indicates that it may have underestimated the necessary funds to maintain proper operation and maintenance activities.

Based on this information, the City is culpable for failing to address the potential for I&I related SSOs along these portions of its sewage collection system prior to the large storm event in December 2010.

Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 and 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation. In this case a Cleanup and Cooperation multiplier of **1.2** has been selected.

Due to the number of SSOs simultaneously occurring throughout the City, and the I&I problems causing the collection system to be running at near capacity, the City did not have the personnel, equipment or infrastructure available to collect or reroute any of the SSOs resulting in high volume discharges of raw sewage to receiving waters.

The City failed to follow its Emergency Overflow Response Plan and did not collect any water quality samples during or after the SSOs. The failure to collect water quality samples during and after the SSOs directly affects the City's ability to determine the impacts to receiving waters from its SSOs.

The City did not adequately respond to a request contained in Investigative Order R9-2011-0040 to provide concentrations of pollutants in its raw sewage to adequately calculate the pollutant loading in receiving waters as required pursuant to Water Code section 13267.

Based on this information, the City failed to exhibit a high degree of cleanup and cooperation resulting in a score of **1.2** for this adjustment factor.

History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.1** was selected because the City has a history of rain-related SSOs.

Multiple Violations Resulting from the Same Incident

The Enforcement Policy provides that for situations not addressed by statute, a single base liability amount can also be assessed for multiple violations resulting from the same incident at the discretion of the Regional Water Boards under certain, specific circumstances. Except where statutorily required, however, multiple violations shall not be grouped and considered as a single base liability amount when those multiple violations each result in a distinguishable economic benefit to the violator.

Although the Complaint alleges multiple violations of waste discharge requirements and the Clean Water Act, these violations stem from a single incident and therefore are being assessed with a single liability amount. Further, the magnitude of the violations is captured in the recommended per gallon assessment.

Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the San Diego Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The discharge of 1,314,700 gallons of untreated sewage did not last more than 30 days, therefore, this adjustment factor does not apply.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount of **\$922,566** is determined by adding the initial liability amounts for the violations and applying the adjustment factors in section 4.2.

Accordingly, the Total Base Liability amount is calculated as follows:

$$\frac{(\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup}) \times (\text{History of Violation})}{(\text{Total Base Liability Amount})} =$$

$$(\$582,428) \times (1.2) \times (1.2) \times (1.1) = \$922,566$$

Step 6 – Ability to Pay and Ability to Continue Business

The Enforcement Policy provides that if the San Diego Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward. Similarly, if a violator's ability to pay is greater than similarly situated discharges, it may justify an increase in the amount to provide a sufficient deterrent effect.

The City is able to pay the recommended liability. According to the City's Fiscal Year 2011/2012 budget, the City maintains a Liability Risk Financing Fund, which is used for unexpected expenditures that other revenue sources do not cover. The City is projecting a reserve of \$1,750,180 in this fund at the end of fiscal year 2011/2012. In addition, the City's General Fund budget for Fiscal Year 2011/2012 projects a reserve of \$9,835,310 at the end of the fiscal year.

Accordingly, this penalty factor in this step is neutral and does not weigh either for or against adjustment of the Total Base Liability. The City may provide additional financial information in response to the Complaint to demonstrate that an adjustment is warranted.

Step 7 – Other Factors as Justice May Require

The Enforcement Policy provides that if the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express, evidence-supported findings are made. In addition, the staff costs for investigating the violation should be added to the liability amount.

The San Diego Water Board staff costs for the investigation of the alleged violation, to date, are \$26,250. As a result the liability amount recommended is adjusted upward by \$26,250, bringing the total proposed liability to **\$948,816**.

No other factors are being considered in determining the proposed liability amount.

Step 8 – Economic Benefit

The Enforcement Policy directs the San Diego Water Board to determine any economic benefit derived from the violations based on the best available information, and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

The City has an old sewage collection system. The SSOs addressed in the Complaint were the results of storm water I&I that exceeded the capacity of the collection system. The City's 2008 Master Plan identified the Parkway Drive Sewer Main as a priority capital improvement project. This project is considered a priority because hydraulic modeling of this sewer main identified capacity constraints during existing dry weather conditions. The project is located where the Parkway Drive SSOs occurred.

The 2008 Master Plan recommended that this capital improvement project be completed in Fiscal Year 2009/2010 and the estimated cost to be \$1,432,201. According to the City, the design contract for this project was not awarded and approved by the City Council until September 2011. Using the U.S. EPA Ben Model the City derived an economic benefit of \$127,663 in delayed costs for this capital improvement project.

In addition, the City derived economic benefit from not paying the City of San Diego for the treatment of 1.3 million gallons of sewage that was discharged to surface waters. According to the City of San Diego, the system wide average cost of sewage treatment for participating agencies in 2009 was \$2,487.23 per million gallons. Based on this information the City derived an economic benefit of \$3,269 from not paying the treatment costs for the sewage discharged into receiving waters.

Based on this economic benefit analysis, the City derived **\$130,932** in economic benefit related to the violations addressed in the Complaint.

Step 9 – Maximum and Minimum Liability Amounts

The maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385, subdivision (c)(1) is ten thousand dollars (\$10,000) per day of violation. The maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385, subdivision (c)(2) is ten dollars (\$10) per gallon discharged and not cleaned up that exceeds 1,000 gallons. Therefore, the maximum liability that may be assessed is **\$13,157,000**.

Water Code section 13385, subdivision (e) requires that, at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The Enforcement Policy requires that:

“The adjusted Total Base Liability shall be at least 10 percent higher than the Economic Benefit Amount so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.”

Therefore, the minimum liability amount the San Diego Water Board may assess is **\$144,025**. The recommended liability falls within the allowable statutory range for minimum and maximum amounts.

Step 10 – Final Liability Amount

The total proposed civil liability in this matter is **\$948,816** which corresponds to \$0.72 per gallon of untreated sewage discharged to waters of the United States.

The proposed amount of civil liability attributed to the discharge of 1,314,700 million gallons of untreated sewage in violation of Waste Discharge Prohibitions contained in State Water Board Order No. 2006-0003-DWQ and San Diego Water Board Order No. R9-2007-0005, and section 301 of the Clean Water Act was determined by taking into consideration the factors in Water Code section 13385, subdivision (e), and the administrative civil liability calculation methodology in the Enforcement Policy.

The proposed civil liability is appropriate for these untreated sewage discharges because:

- a. The City has a history of rain-related SSOs including areas addressed in the Complaint.
- b. Although the SSOs occurred during a 40-year storm event the SSOs began well below the rainfall totals of the entire storm event.
- c. The City was aware it had an I&I problem in 1998 and has failed to adequately address it throughout its entire sewage collection system.
- d. All of the SSOs discharged to impaired water bodies.
- e. The high degree of toxicity in untreated sewage, even if diluted by rain water, has the potential to impact beneficial uses.

The proposed civil liability assessment is sufficient to recover costs incurred by staff of the San Diego and State Water Boards, and serves as deterrent for future violations.

Administrative Civil Liability Complaint

Fact Sheet

The State Water Resources Control Board and the nine Regional Boards are authorized to issue complaints for civil liabilities under Water Code section 13323 for violations of the Water Code. This document describes generally the process that follows the issuance of a complaint.

The issuance of a complaint is the first step in the possible imposition of an order requiring payment of penalties. The complaint details the alleged violations including the appropriate Water Code citations, and it summarizes the evidence that supports the allegations. **If you receive a complaint, you must respond timely as directed. If you fail to do so, a default order may be issued against you.** The complaint is accompanied by a letter of transmittal, a waiver options form, and a Hearing Procedure. Each document contains important information and deadlines. You should read each document carefully. A person issued a complaint is allowed to represent him or herself. However, legal advice may be desirable to assist in responding to the complaint.

Parties

The parties to a complaint proceeding are the Regional Board or State Board Prosecution Team and the person named in the complaint, referred to as the "Discharger." The Prosecution Team is comprised of Regional Board staff and management. Other interested persons may become involved and may become "designated parties." Only designated parties are allowed to submit evidence and participate fully in the proceeding. Other interested persons may play a more limited role in the proceeding and are allowed to submit comments. If the matter proceeds to hearing, the hearing will be held before the full membership of the Regional Board (seven Governor appointed members) or before a panel. The board members who will hear the evidence and rule on the matter act as judges. They are assisted by advisory staff, who provide advice on technical and legal issues. Both the Prosecution Team and the Advisory Team have their own attorney. Neither the prosecution team nor the discharger or his/her representatives are permitted to communicate with the board members or the advisory team about the complaint without the presence or knowledge of the other. This is explained in more detail in the Hearing Notice.

Complaint Resolution Options

Once issued, a complaint can lead to (1) withdrawal of the complaint; (2) withdrawal and reissuance; (3) payment and waiver; (4) settlement; or (5) hearing.

Withdrawal may result if the discharger provides information to the Prosecution Staff that clearly and unmistakably demonstrates that a fundamental error exists in the information set forth in the complaint.

ACL Complaint Fact Sheet

Withdrawal and Reissuance may result if the Prosecution Team becomes aware of information contained in the complaint that can be corrected.

Payment and waiver may result when the Discharger elects to pay the amount of the complaint rather than to contest it. The Discharger makes a payment for the full amount and the matter is ended, subject to public comment.

Settlement results when the Parties negotiate a resolution of the complaint. The settlement can be payment of an amount less than the proposed penalty or partial payment and suspension of the remainder pending implementation by the discharger of identified activities, such as making improvements that will reduce the likelihood of a further violation or the implementation or funding of a Supplemental Environmental Project (SEP) or a Compliance Project (CP). Qualifying criteria for CPs and SEPs are contained in the State Board's Enforcement Policy, which is available at the State Board's website at: www.swrcb.ca.gov/plans_policies/docs/wqcp.doc.

Hearing: If the matter proceeds to hearing, the parties will be allowed time to present evidence and testimony in support of their respective positions. The hearing must be held within 90 days of the issuance of the Complaint, unless the Discharger waives that requirement by signing and submitting the Waiver Options Form included in this package. The hearing will be conducted under rules set forth in the Hearing Notice. The Prosecution Team has the burden of proving the allegations and must present competent evidence to the Board regarding the allegations. Following the Prosecution Team's presentation, the Discharger and other parties are given an opportunity to present evidence, testimony and argument challenging the allegations. The parties may cross-examine each others' witnesses. Interested persons may provide comments, but may generally not submit evidence or testimony. At the end of the presentations by the Designated Parties, the Board Members will deliberate to decide the outcome. The Board may issue an order requiring payment of the full amount recommended in the complaint, it may issue an order requiring payment of a reduced amount, it may order the payment of a higher amount, decide not to impose an assessment or it may refer the matter to the Attorney General's Office.

Factors That Must Be Considered By the Board

Except for Mandatory Minimum Penalties under Water Code Section 13385 (i) and (h), the Board is required to consider several factors specified in the Water Code, including nature, circumstance, 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 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 (Water Code Section 13327, 13385(e) and 13399). During the period provided to submit evidence (set forth in the Hearing Notice) and at the hearing, the discharger may submit information that it believes supports its position regarding the complaint. If the Discharger intends to present arguments about its ability to pay it must provide reliable documentation to

ACL Complaint Fact Sheet

establish that ability or inability. The kinds of information that may be used for this purpose include:

For an individual:

1. Last three years of signed federal income tax returns (IRS Form 1040) including schedules;
2. Members of household, including relationship, age, employment and income;
3. Current living expenses;
4. Bank account statements;
5. Investment statements;
6. Retirement account statements;
7. Life insurance policies;
8. Vehicle ownership documentation;
9. Real property ownership documentation;
10. Credit card and line of credit statements;
11. Mortgage loan statements;
12. Other debt documentation.

For a business:

1. Copies of last three years of company IRS tax returns, signed and dated,
2. Copies of last three years of company financial audits
3. Copies of last three years of IRS tax returns of business principals, signed and dated.
4. Any documentation that explains special circumstances regarding past, current, or future financial conditions.

For larger firms:

1. Federal income tax returns for the last three years, specifically:
 - a. IRS Form 1120 for C Corporations
 - b. IRS Form 1120 S for S Corporations
 - c. IRS Form 1065 for partnerships
2. A completed and signed IRS Form 8821. This allows IRS to provide the SWRCB with a summary of the firm's tax returns that will be compared to the submitted income tax returns. This prevents the submission of fraudulent tax returns;
1. The following information can be substituted if income tax returns cannot be made available:
 - a. Audited Financial Statements for last three years;
 - b. A list of major accounts receivable with names and amounts;
 - c. A list of major accounts payable with names and amounts;
 - d. A list of equipment acquisition cost and year purchased;
 - e. Ownership in other companies and percent of ownership for the last three years;
 - f. Income from other companies and amounts for the last three years.

ACL Complaint Fact Sheet

For a municipality, county, or district:

1. Type of entity:
 - a. City/Town/Village;
 - b. County;
 - c. Municipality with enterprise fund;
 - d. Independent or publicly owned utility;
2. The following 1990 and 2000 US Census data:
 - a. Population;
 - b. Number of persons age 18 and above;
 - c. Number of persons age 65 and above;
 - d. Number of Individual below 125% of poverty level;
 - e. Median home value;
 - f. Median household income.
3. Current or most recent estimates of:
 - a. Population;
 - b. Median home value;
 - c. Median household income;
 - d. Market value of taxable property;
 - e. Property tax collection rate.
4. Unreserved general fund ending balance;
5. Total principal and interest payments for all governmental funds;
6. Total revenues for all governmental funds;
7. Direct net debt;
8. Overall net debt;
9. General obligation debt rating;
10. General obligation debt level.
11. Next year's budgeted/anticipated general fund expenditures plus net transfers out.

This list is provided for information only. The Discharger remains responsible for providing all relevant and reliable information regarding your financial situation, which may include items in the above lists, but could include other documents not listed. Please note that all evidence regarding this case, including financial information, will be made public.

Petitions

If the Regional Board issues an order requiring payment, the discharger may challenge that order by filing a petition for review with the State Board pursuant to Water Code section 13320. More information on the petition process is available at www.swrcb.ca.gov/public_notices/petitions. An order of the State Board, including its ruling on a petition from a Regional Board order, can be challenged by filing a petition for writ of mandate in Superior Court pursuant to Water Code section 13330.

Once an order for payment of penalties becomes final, the Regional or State Board may seek an order of the Superior Court under Water Code Section 13328, if necessary, in order to collect payment of the penalty amount.

**WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of La Mesa (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2012-0014 (hereinafter the "Complaint"). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served [with the complaint]. The person who has been issued a complaint may waive the right to a hearing."

(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability.)

- a. I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board.
- b. I certify that the Discharger will remit payment for the civil liability imposed in the amount of nine **hundred forty eight thousand eight hundred sixteen dollars (\$948,816)** by check that references "ACL Complaint No. R9-2012-0014." made payable to the "State Water Resources Control Board". Payment must be received by the San Diego Water Board by **January 11, 2013** or this matter will be placed on the San Diego Water Board's agenda for a hearing as initially proposed in the Complaint.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the San Diego Water Board receive significant new information or comments from any source (excluding the San Diego Water Board's Prosecution Team) during this comment period, the San Diego Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the San Diego Water Board, and that the San Diego Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.) I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the San Diego Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the San Diego Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the San Diego Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.) I hereby waive any right the Discharger may have to a hearing before the San Diego Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the San Diego Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the San Diego Water Board to approve the extension.

(Print Name and Title)

(Signature)

(Date)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PROPOSED DRAFT

HEARING PROCEDURE FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R9-2012-0014
ISSUED TO

CITY OF LA MESA
SEWAGE COLLECTION SYSTEM

SCHEDULED FOR MARCH 13, 2013

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (San Diego Water Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) Section 13385 against the City of La Mesa (Discharger) alleging that it has violated Prohibitions C.1 and C.2 of Order No. 2006-0003-DWQ, Prohibition B.1 of Order No. R9-2007-0005, Waste Discharge Prohibition No. 9 of the California Regional Water Quality Control Plan, San Diego Region 9 (Basin Plan), section 301 of the federal Clean Water Act, and section 13376 of the California Water Code by discharging 1,008,000 gallons of untreated sewage into San Diego Bay via Chollas Creek and 306,700 gallons of untreated sewage into the Pacific Ocean via Alvarado Creek and the San Diego River, waters of the United States. The Complaint proposes that administrative civil liability in the amount of \$948,816 be imposed as authorized by CWC section 13385. Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of March 13, 2013, in San Diego.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on March 13, 2013, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board Office at 9174 Sky Park Court, Suite 100, in San Diego. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN DECEMBER 24, 2012 OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Water Board Prosecution Staff
- (2) City of La Mesa Staff

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party, and not already be listed above, shall request party status by submitting a request in writing (with copies to the existing designated parties) no later than 5 p.m. on **January 2, 2013**, to Catherine

Hagan, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **January 11, 2013**. The parties will be notified by 5 p.m. on **January 22, 2013**, as to whether the request has been granted or denied.

Contacts

Advisory Staff:

Catherine Hagan (George), Esq.
Senior Staff Counsel
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353
CHagan@Waterboards.ca.gov

David Gibson
Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Prosecution Staff:

Maymumi Okamoto
Staff Counsel
State Water Resources Control Board
Office of Enforcement
P.O. Box 100
Sacramento, CA 95812

James Smith
Assistant Executive Officer
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Chiara Clemente
Senior Environmental Scientist of the Compliance Assurance Unit
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Rebecca Stewart
Sanitary Engineering Associate
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Christopher Means
Environmental Scientist
Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4353

Discharger:

Mr. David Witt
City Manager
City of La Mesa
8130 Allison Avenue
La Mesa, CA 91942

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff). Members of the Advisory Staff are: Catherine Hagan, Senior Staff Counsel, and David Gibson, Executive Officer. Members of the Prosecution Staff are: Mayumi Okamoto, Staff Counsel, James Smith, Assistant Executive Officer, Chiara Clemente, Senior Environmental Scientist of the Compliance Assurance Unit, Rebecca Stewart, Sanitary Engineering Associate and Christopher Means, Environmental Scientist.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than ten days after all of the evidence has been received (February 11, 2013). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Discharger only) If the Discharger would like to propose a Supplemental Environmental Project (SEP) or Compliance Project (CP) in lieu of paying some or all of the civil liability in accordance with the State Water Board's Water Quality Enforcement Policy, the Discharger shall submit a detailed SEP OR CP proposal including a specific implementation timetable.

The Prosecution Team shall submit two hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **February 1, 2013**.

The remaining designated parties shall submit 20 hard copies and one electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **February 1, 2013**.

In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **February 18, 2013** prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing¹ for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **February 11, 2013**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **February 18, 2013** to the Advisory Team with a copy to all other designated parties.

¹ Each Regional Board may choose to require earlier submission of all visual aids by all parties. OE prefers early submission of visual aids, so that they have time to confirm that the aids do not go beyond the scope of previously-submitted evidence.

The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

IMPORTANT DEADLINES

December 13, 2012 Prosecution Team issues ACL Complaint to Discharger and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice

December 24, 2012 Objections due on proposed Hearing Procedure

December 18, 2012 Advisory Team issues Hearing Procedure

January 2, 2013 Deadline for submission of request for designated party status.

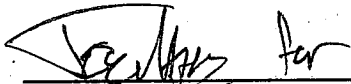
January 11, 2013 Deadline for opposition to request for designated party status.

January 11, 2013 Discharger's deadline for waiving right to hearing.

February 1, 2013 Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.

January 22, 2013 Advisory Team issues decision on requests for designated party status, if any.

- February 1, 2013 Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.
- February 11, 2013 All Designated Parties' deadline for submission of request for pre-hearing conference.
- February 18, 2013 All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
- March 13, 2013 Hearing



James G. Smith
Assistant Executive Officer

12/13/2012
DATE