

San Diego Regional Water Quality Control Board

September 20, 2018

Ms. Kim Kawada
Chief Deputy Executive Director
SANDAG
401 B Street, Suite 800
San Diego, CA 92101

CERTIFIED MAIL
7015 0640 0006 1569 9715
In reply refer to:
SM-836109:clemente

SUBJECT: OFFER R9-2018-0065 TO SETTLE ADMINISTRATIVE CIVIL LIABILITY FOR ALLEGED VIOLATIONS OF THE CONSTRUCTION GENERAL STORM WATER PERMIT, FOR RAIL PROJECTS WITHIN THE LOSSAN AND MID COAST CORRIDOR, WDDID 9 37C373277

Ms. Kawada:

This letter (hereafter, "Settlement Offer") contains an offer from the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of alleged violations of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, (Order No. 2009-0009-DWQ, as amended; herein referred to as the General Permit). SANDAG allegedly violated multiple provisions of the General Permit at the LOSSAN-Mid Coast Corridor project in the vicinity of Anna Avenue and Pacific Highway in the City San Diego. On July 16, 2015, a Notice of Intent to begin construction of the LOSSAN-Mid Coast Corridor project was certified by the State Water Resources Control Board. On November 19, 2015 the San Diego Water Board issued Administrative Civil Liability Complaint No. R9-2015-0166 alleging violations of the General Permit from the project. SANDAG waived its right to a hearing on April 12, 2016 and paid the liability amount of \$50,000.

This Settlement Offer provides SANDAG with an opportunity to resolve additional alleged violations through payment of thirty-six thousand three hundred and seventy-one dollars (\$36,371). Please read this letter carefully and respond no later than October 18, 2018.

Description of Alleged Violations

The San Diego Water Board Prosecution Team (Prosecution Team) alleges the following violations of the General Permit. The alleged violations are described below; the evidence for these allegations are described in the attached documents.

1. SANDAG violated Water Code section 13376; General Permit Discharge Prohibitions III.A and III.B, Section V.A.2 and Attachment D section A.1.b; Basin Plan Waste Discharge Prohibition No. 8; and Federal Water Pollution Control Act (Clean Water Act) (22 U.S.C. § 1251 et seq.) section 301 (33 U.S.C. § 1311) by pumping sediment laden storm water from the project to Waters of the United States on January 9, 2018.

2. SANDAG violated section B.1.b of Attachment D to the General Permit by failing to berm stockpiled material on site on January 9, 2018.
3. SANDAG violated section E.1 of Attachment D to the General Permit by failing to maintain effective perimeter control at the site and failing to stabilize the construction entrance/exit in a manner that would control sediment discharges from the site on January 9, 2018.
4. SANDAG violated section F of Attachment D to the General Permit by failing to effectively manage all run-on and run-off from the site on January 9, 2018.

Statutory Liability

Pursuant to section 13385 of the California Water Code, SANDAG is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy¹) states that the minimum penalty is to be the economic benefit plus 10 percent. For the violations described in the attachments, the maximum potential liability is **\$96,000** and the minimum liability is **\$5,009**.

Proposed Settlement Offer

The Prosecution Team proposes to resolve the alleged violations with this Settlement Offer of \$36,371. This Settlement Offer was determined based on an assessment of the factors set forth in California Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated (Exhibit 2). The Prosecution Team believes that the proposed resolution of the alleged violations is fair and reasonable, fulfills the San Diego Water Board's enforcement objectives, and is in the best interest of the public.

Should SANDAG choose *not* to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Prosecution Team also reserves the right to conduct additional investigations, including issuance of investigation orders and/or subpoenas to determine if additional violations occurred. Any additional violations subjecting SANDAG to liability may be included in a formal enforcement action. SANDAG can avoid the risks inherent in a formal enforcement action and settle the alleged violations by accepting this Settlement Offer. The Prosecution Team reserves the right to take further enforcement actions

¹ The 2017 Water Quality Enforcement Policy is available on-line at:
https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf

against SANDAG for all past violations not identified in this Settlement Offer and future violations against the General Permit or subsequently adopted orders.

Options for Responding to the Settlement Offer

Option A: Accept the Offer

If SANDAG chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted, via email, no later than **October 18, 2018** to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: SM-836109:cclemente; R9-2018-0065
Email: SanDiego@waterboards.ca.gov

Important! Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the San Diego Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an Order of the San Diego Water Board. An invoice will then be mailed to SANDAG requiring payment of the **\$36,371** administrative civil liability within 30 days from when the Settlement offer is signed by the Executive Officer.

If, however, substantive comments are received in opposition to this settlement or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, SANDAG will be notified and SANDAG's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

Option B: Contest the Alleged Violations

If SANDAG wishes to contest the violations or the methodology used to calculate the proposed liability, SANDAG must submit a written response identifying the basis for the challenge, including any evidence to support its claims. SANDAG's response must be received by the San Diego Water Board no later than **October 18, 2018**. The Prosecution Team will evaluate SANDAG's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform SANDAG whether a reduction in the settlement amount is warranted, or whether the original settlement amount is appropriate. SANDAG will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

Option C: Reject Offer

If SANDAG chooses to reject this Settlement Offer or does not complete and return the *Acceptance and Waiver*, SANDAG should expect that the Prosecution Team would conduct further investigation of the violations, issue an assessment of civil liabilities complaint, and schedule a hearing. SANDAG will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this settlement offer, please contact Ms. Chiara Clemente at (619) 521-3371 or at chiara.clemente@waterboards.ca.gov.

Respectfully,


JAMES G. SMITH
Assistant Executive Officer

cc (via email): Sharon Humphries, SANDAG, Sharon.Humphreys@sandag.org
Ruth Kolb, City of San Diego RKolb@sandiego.gov
Erica Ryan, San Diego Water Board, Erica.Ryan@waterboards.ca.gov
Laurie Walsh, San Diego Water Board, Laurie.Walsh@waterboards.ca.gov
Catherine Hawe, State Water Resources Control Board Office of Enforcement, Catherine.Hawe@waterboards.ca.gov
David Boyers, State Water Resources Control Board Office of Enforcement, David.Boyers@waterboards.ca.gov

- Enclosures: Acceptance of Settlement Offer and Waiver of Right to a Hearing
Exhibit 1 – San Diego Water Board Inspection Report – January 9, 2017
Exhibit 2 – Settlement Offer Calculation Summary
Exhibit 3 – Staff Cost Breakdown
Exhibit 4 – Economic Benefit Documentation

| Tech Staff Info & Use | |
|-----------------------|---------------|
| Enforcement ID | |
| Violation ID | 865396,865397 |
| WDID | 9 37C373277 |
| NPDES No. | CAS000002 |
| Inspection ID | 2036131 |

ORDER NO. R9-2018-0065

ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR

SAN DIEGO ASSOCIATION OF GOVERNMENTS

SAN DIEGO COUNTY

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), SANDAG hereby accepts the Settlement Offer described in the letter dated September 20, 2018 and titled *Offer to Settle Administrative Civil Liability for Alleged Violations of the Construction General Storm Water Permit, for Rail Projects Within the LOSSAN and Mid Coast Corridor, WDID 9 37C373277*. SANDAG also hereby waives the right to a hearing before the San Diego Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

SANDAG agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code (Water Code) and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violations. SANDAG agrees to perform the following:

- Pay an administrative civil liability in the sum of **thirty-six thousand three hundred and seventy-one dollars (\$36,371)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account." This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ, as amended (General Permit)* at the LOSSAN and Mid-Corridor project.

SANDAG understands that by signing this *Acceptance and Waiver*, SANDAG has waived its rights to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violations. SANDAG understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by SANDAG, the *Acceptance and Waiver* shall be returned to the following address:

California Regional Water Quality Control Board, San Diego Region
Attention: SM-836109:cclemente; R9-2018-0065
Email: SanDiego@waterboards.ca.gov

SANDAG understands that federal regulations require the San Diego Water Board Prosecution Team (Prosecution Team) to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action for violations of an NPDES permit.

Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the San Diego Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the San Diego Water Board's Executive Officer for formal endorsement on behalf of the San Diego Water Board.

SANDAG understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then SANDAG will be notified and SANDAG's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

SANDAG understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind SANDAG in the making and giving of this *Acceptance and Waiver*.

By: 
Title Chief Deputy Executive Director
Date: 10-7-2018

IT IS SO ORDERED, pursuant to Water Code section 13385.

By: 
David W. Gibson, Executive Officer, San Diego Water Board
Date: 20 November 2018

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD - SAN DIEGO REGION
STORM WATER MANAGEMENT PROGRAM**

FACILITY INSPECTION REPORT

FACILITY: LOSSAN-Mid Coast Corridor Project **INSPECTION DATE/TIME:** 1/9/2018; 12:45 to 1:40 PM

WDID/FILE NO.: 937C373277

REPRESENTATIVE(S) PRESENT DURING INSPECTION:

NAME: Erica Ryan, CPSWQ/QSD/P/ToR/CISEC AFFILIATION: San Diego Water Board

NAME: Mr. John Smith Earthworks, Inc AFFILIATION: owner of 5216 Anna Ave

NAME: Mr. Scott Marquardt AFFILIATION: Jacobs - SWPPP Manager, MCC

San Diego Association of Governments (SANDAG)
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

San Diego Association of Governments
FACILITY OR DEVELOPER NAME (if different from owner)

401 B St
San Diego, CA 92101
OWNER MAILING ADDRESS

5066 Santa Fe Street (Anna Avenue)
San Diego, CA 92109
FACILITY ADDRESS

Brad Helgason 619-699-1900 bhe@sandag.org
OWNER CONTACT NAME AND PHONE #

Brad Helgason 619-699-1900 bhe@sandag.org
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS:

- | | |
|---|---|
| <input type="checkbox"/> MS4 URBAN RUNOFF REQUIREMENTS | <input type="checkbox"/> GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS OR NPDES |
| <input checked="" type="checkbox"/> CONSTRUCTION GENERAL PERMIT | <input type="checkbox"/> GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS |
| <input type="checkbox"/> CALTRANS GENERAL PERMIT | <input type="checkbox"/> SECTION 401 WATER QUALITY CERTIFICATION |
| <input type="checkbox"/> INDUSTRIAL GENERAL PERMIT | <input type="checkbox"/> CWC SECTION 13264 |

INSPECTION TYPE (Check One):

- "A" TYPE COMPLIANCE--COMPREHENSIVE INSPECTION IN WHICH SAMPLES ARE TAKEN. (EPA TYPE S)
- "B" TYPE COMPLIANCE--A ROUTINE NONSAMPLING INSPECTION. (EPA TYPE C)
- NONCOMPLIANCE FOLLOW-UP--INSPECTION MADE TO VERIFY CORRECTION OF A PREVIOUSLY IDENTIFIED VIOLATION.
- ENFORCEMENT FOLLOW-UP--INSPECTION MADE TO VERIFY THAT CONDITIONS OF AN ENFORCEMENT ACTION ARE BEING MET.
- COMPLAINT-INSPECTION MADE IN RESPONSE TO A COMPLAINT.
- PRE-REQUIREMENT--INSPECTION MADE TO GATHER INFO. RELATIVE TO PREPARING, MODIFYING, OR RESCINDING REQUIREMENTS.
- NO EXPOSURE CERTIFICATION (NEC) - VERIFICATION THAT THERE IS NO EXPOSURE OF INDUSTRIAL ACTIVITIES TO STORM WATER.
- NOTICE OF TERMINATION REQUEST FOR INDUSTRIAL FACILITIES OR CONSTRUCTION SITES - VERIFICATION THAT THE FACILITY OR CONSTRUCTION SITE IS NOT SUBJECT TO PERMIT REQUIREMENTS.
- COMPLIANCE ASSISTANCE INSPECTION - OUTREACH INSPECTION DUE TO DISCHARGER'S REQUEST FOR COMPLIANCE ASSISTANCE.

INSPECTION FINDINGS:

YES WERE VIOLATIONS NOTED DURING THIS INSPECTION? (YES/NO/PENDING SAMPLE RESULTS)

I. COMPLIANCE HISTORY/PURPOSE OF INSPECTION

On January 9, 2018, at 9:38 AM, the San Diego Water Board received a complaint from a representative of the Reader (Dorian Hargrove, staff writer) alleging reports that "...SANDAG crews were pumping sediment laden storm water runoff from their trolley extension project onto the Pacific Coast Highway from a property near Anna Avenue..." (the site) in the City of San Diego.

In response to Mr. Hargrove's complaint, San Diego Water Board staff, Ms. Erica Ryan visited the site on January 9, 2018, to confirm if the sediment laden storm water discharge to Anna Avenue and Pacific Coast Highway (PCH) was still occurring. While walking along the public street on PCH and Anna Avenue north west of the site, Ms. Ryan observed a steady flow of sediment laden water on PCH and downstream on Anna Avenue discharging to an un-identified storm drain inlet on Anna Avenue. Ms. Ryan further observed, at a location above the site, a blue hose along PCH which traveled down an embankment to an impoundment of sediment laden storm water on the site. There was a pump connected to the blue hose actively pumping sediment laden storm water from the site to the storm drain.

At the site, I met a project representative for construction company (name unknown) and I stated the San Diego Water Board's intent to conduct an inspection. I explained that our inspection was being conducted based on a complaint received and the evidence of the sediment laden storm water currently being discharged to the City of San Diego MS4 conveyance system along PCH and Anna Avenue. It was confirmed by the site representative that the active pumping of the sediment laden storm water impounded on the site was the source of the discharge observed downstream on Anna Avenue and PCH. The contractor was discharging from a low spot at the construction entrance to the City of San Diego streets via a high line and flooding the area in front of multiple businesses. Ms. Ryan asked the site representative if they had a dewatering permit and the construction representative confirmed they did not have a dewatering permit. The site representative contacted the QSP, Mr. Bowling via phone. The QSP stated that they had the discharge "running through a sock." However, this pretreatment was not evident along either Anna Avenue, Pacific Coast Highway or at the discharge point. In addition, the "sock", if it was installed, was not an effective best management practice (BMP) as the discharge in Anna Avenue was the same color as what was impoundment on the site. Ms. Ryan explained to the QSD they could not discharge if BMPs were not in place and that the project was not in compliance with the statewide Construction General Permit (CGP) due to a lack of BMPs such as erosion and sediment controls.

At the site, Ms. Ryan also spoke with Mr. John Smith, the property owner of 5216 Anna Avenue. Mr. Smith granted permission to access his property. Mr. Smith's property is adjacent to the SANDAG construction site. Mr. Scott Marquardt, SWPPP manager (SANDAG contract staff) arrived during Ms. Ryan's inspection. Mr. Marquardt granted access to the remainder of the site. It was determined that the discharge had been ongoing from about 7:00 a.m. until roughly 1:00 p.m. After the inspection, Ms. Ryan explained her findings to Mr. Marquardt and other site representatives, explaining that the CGP was a waste discharge permit and that BMPs were required to be implemented in accordance with the CGP. SANDAG ceased the discharge at the time Ms. Ryan left the site at 1:40 p.m.

The National Weather Service predicted a greater than 50% chance of rain that would begin the afternoon of January 8, 2018. There was no precipitation during the January 9, 2018 inspection. All photos were taken by the San Diego Water Board from the public right of way. In addition to the verified discharge of sediment laden stormwater from the site to the City of San Diego MS4 on Anna Avenue, the following violations were observed:

- Missing and/or ineffective perimeter controls;
- Inadequate stockpile BMPs;
- Inadequate run-on/run-off controls;
- Missing and/or ineffective erosion control BMPs;
- Missing and/or ineffective sediment control BMPs;
- Failure to control run-on and run-off from the site; and
- Unauthorized discharges of sediment and sediment laden stormwater to the San Diego River via City of San Diego storm drain system due to missing or ineffective BMPs.

After Ms. Ryan inspected the site on January 9, 2018, additional documentation of the alleged violations and site conditions on January 8, 2018, and January 9, 2018, were submitted to San Diego Water Board staff via email dated January 29, 2018, by Mr. Pallamary. Documentation included links to an NBC News 8 video segment conducted the afternoon of January 8, 2018, and a U-Tube video link of video taken by Mr. Pallamary of the site during the rain event at approximately 2:00 a.m. on January 9, 2018. The video footage provided illustrates site conditions prior to, and during the rain event. Based on the video links provided, very little site preparation or BMP implementation was conducted prior to the storm event. In addition, there is evidence of sediment laden storm water being discharged from the site during the rain event beginning at 2:00 a.m. on January 9, 2018.

According to the SMARTS database, the Notice of Intent (NOI) was certified June 16, 2015, and construction commenced on or about July 15, 2015. The project is a Risk Level 2, disturbing a total of 126 acres. Construction is scheduled for completion on April 30, 2020. The location of the project is above Friars Road and immediately adjacent to the San Diego River.

There is a record of prior compliance inspections for this discharger on this project. The inspections were conducted September 15, 2015, and September 22, 2017. Inspections were conducted by the San Diego Water Board in response to complaints for similar discharges to adjacent receiving waters (i.e. Rose Canyon Creek). An ACL was issued on September 29, 2015 (R9-2015-0154). Additionally, the Anna Avenue location has been the subject of numerous complaints to the City of San Diego and SANDAG for failure to control run-on and runoff from the site and implement BMPs. The site has also been the subject of media attention (NBC News, The Reader).

II. FINDINGS

1. Construction stockpiles on the site were observed without adequate cover or containment. See Photos 8 and 10. All construction sites are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
2. Several areas were observed without effective soil cover to control potential erosion. These areas appeared to be inactive, or could be scheduled to be inactive. See Photos 8 and 10. All construction sites are required to provide effective soil cover for inactive areas (i.e. areas that have been disturbed and not scheduled to be re-disturbed for at least 14 days) and all finished slopes, open space, utility backfill, and completed lots.
3. Lack of effective perimeter sediment controls were observed in several locations of the site. See Photos 8 and 10. Project boundaries were observed to have missing and/or ineffective perimeter control. Part of the Project boundary was observed to have construction fencing.

Construction fencing alone is an ineffective form of perimeter control because it does not provide any form of erosion control.

4. The construction entrance/exit was not adequately controlled or stabilized which resulted in sediment discharges from the site. See Photo 8. All construction sites are required to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
5. Lack of effective run-on controls were observed which resulted in sediment discharges to the site, and contributed to sediment discharges from the site. See Photos 1 through 10. Evidence of run-on without BMPs was noted throughout the site. See Photos 8 and 10. All construction sites are required to effectively manage run-on, all run-off within the site, and all runoff that discharges off the site. Run-on from offsite must be directed away from all disturbed areas or collectively be in compliance with the effluent limitations of the CGP.
6. Unauthorized discharges of sediment and sediment laden stormwater to the storm drain conveyance system were observed by San Diego Water Board inspector, Ms. Erica Ryan, and documented via citizen provided videos. Unauthorized discharges were the result of missing or ineffective BMPs. See Photos 1 through 10. The San Diego Water Board inspector confirmed that the discharges were on-going at the time of the inspection. The unauthorized discharge originated from dewatering an impoundment that was not designed as a sediment trap/basin located at the center of the site. No risers or spillways, inlets or outlets were observed in the area of the impoundment. Erosion controls were not implemented to reduce the potential for sediment to be transported from the site impoundment. See Photos 8 and 10.

III. COMMENTS AND RECOMMENDATIONS

Comments

1. It was observed during the inspection that the site had not implemented BMPs to meet BCT Technology Based Effluent Limitations (TBELs) under Section V.A.2 of the CGP, as required for all construction sites. The failure to implement BMPs that meet BCT resulted in the unauthorized discharge of sediment and sediment-laden storm water from the site on January 9, 2018.
2. There is evidence that good site management "housekeeping" BMPs were not being adequately implemented (See Finding 1).
3. There is evidence that erosion controls were not adequately implemented prior to the rain event of January 8, 2017, that contributed to discharges of sediment and sediment-laden storm water from the site (See Findings 2 through 4).
4. There is evidence that perimeter sediment controls, as well as run-on and runoff controls, were not adequately implemented which contributed to discharges of sediment from the site (See Findings 2 through 6).
5. There is evidence that erosion and sediment control BMPs were not adequately implemented to minimize or prevent the discharge of sediment in storm water from the site to the City of San Diego MS4 Conveyance System and San Diego River (See Findings 2 through 6).

Facility: LOSSAN-Mid Coast Corridor Project

Inspection Date: 1/9/2018

6. A Staff Enforcement Letter was issued on January 9, 2018, to address the violations observed during the inspection.

Recommendations

1. Issue a Notice of Violation for discharges of sediment and sediment-laden water from the site and failure to implement Risk Level 2 requirements of CGP.
2. Refer the site to the Compliance Assurance Unit to determine whether or not issuing formal enforcement action may be appropriate.

IV. SIGNATURE SECTION

| | | |
|--|--|-----------------------------|
| Erica Ryan STAFF INSPECTOR |  SIGNATURE | 1/9/2018 INSPECTION DATE |
| Laurie Walsh, PE REVIEWED BY SUPERVISOR |  SIGNATURE | 2/16/18 DATE |

SMARTS:

| Tech Staff Info & Use | |
|-----------------------|----------------|
| WDID | 937C373277 |
| Place ID | SM-836109 |
| Inspection ID | 2036131 |
| Violation ID | 865396, 865397 |

Photo From January 9, 2018, Site Visit**Discharge Location Map**

Photos 1 through 7 shows the sediment laden storm water discharged from the site to Anna Avenue via Pacific Coast Highway approximately a quarter mile downstream of the site at 12:45 p.m. There were no BMPs visible in Anna Avenue or Pacific Coast Highway and no apparent reduction in turbidity was visible between the discharge point and the impounded water on site (see Photos 8 and 10)



Photo 1 shows the sediment laden storm water discharged from the site to Anna Avenue.



Photo 2 shows the sediment laden storm water discharged from the site to Anna Avenue.



Photo 3 shows the sediment laden storm water discharged from the site to Anna Avenue.



Photo 4 shows the sediment laden storm water discharged from the site to Anna Avenue.



Photo 5 shows the sediment laden storm water discharged from the site at Anna Avenue and Pacific Coast Highway.



Photo 6 shows the sediment laden storm water discharged from the site at Pacific Coast Highway onto Anna Avenue.



Photo 7 shows the sediment laden storm water discharged from the site to Pacific Coast Highway.



Photo 8

Photo 8 shows the blue highline from the pump in the impounded sediment laden storm water (green arrow), up the site embankment (pink arrow), and onto Pacific Coast Highway. Photo 8 also shows a lack of perimeter sediment controls, stockpile BMPs (yellow arrow), erosion controls or tracking controls at the entrance/exit to the site (blue arrow). Photo 8 shows the impounded storm water on the construction site with the pump in center (green arrow).

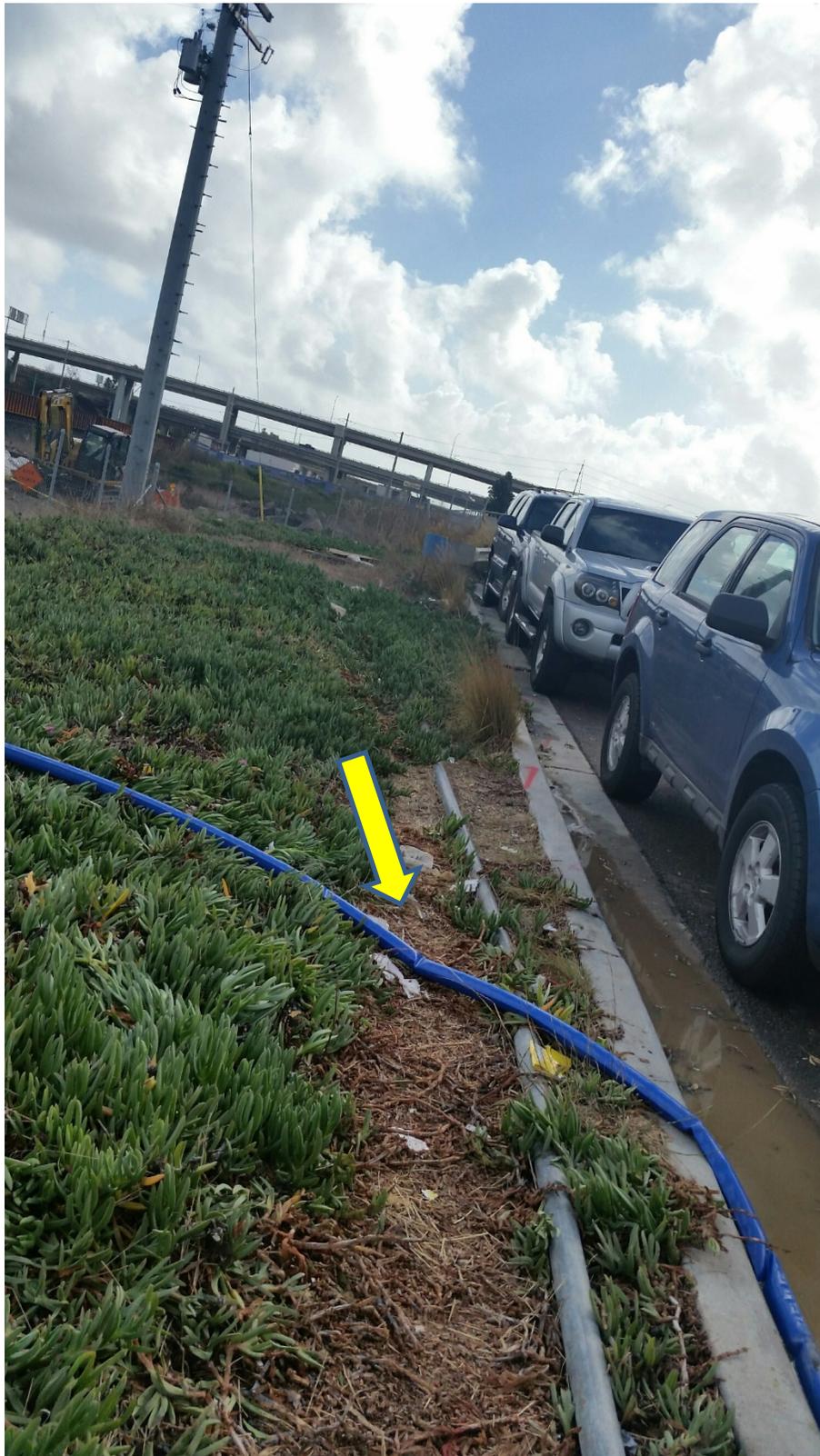


Photo 9 shows the blue hose from the pump on the site to Pacific Coast Highway.

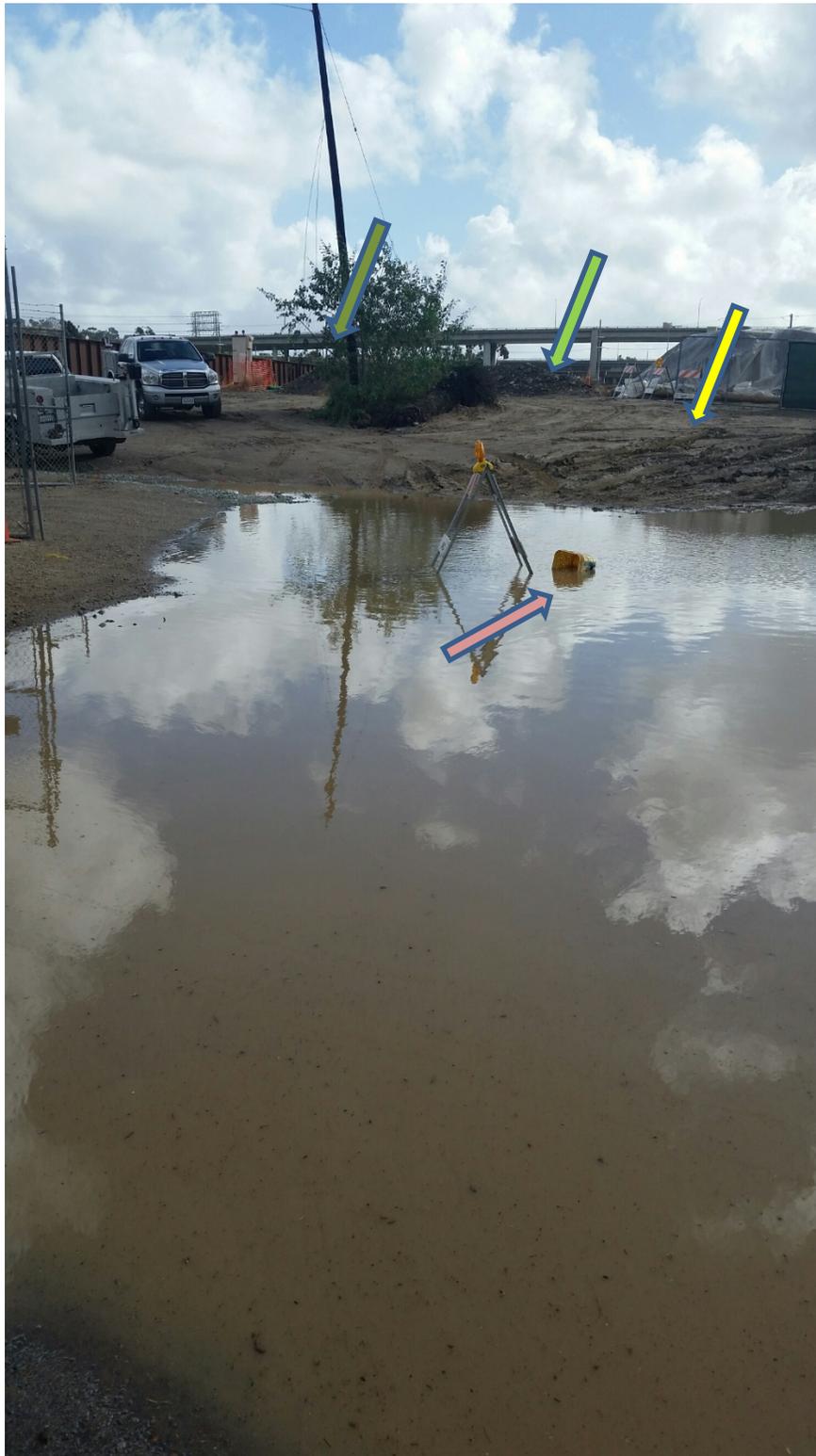


Photo 10 shows a lack of perimeter sediment controls, a lack of stockpile BMPs (green arrows), erosion controls (yellow arrow). Photo 10 shows the impounded storm water on the construction site with the pump in center (pink arrow).

Exhibit 2 - Settlement Offer Calculation

Abbreviations used in Settlement Offer

| | |
|----------------|---|
| ACL | Administrative Civil Liability |
| BAT | Best Available Technology |
| BCT | Best Conventional Technology |
| BMP | Best Management Practice |
| CASQA | California Stormwater Quality Association |
| General Permit | Order No. 2009-0009-DWQ, as amended |
| MS4 | Municipal Separate Storm Sewer System |
| NAL | Numeric Action Level |
| QSP | Qualified SWPPP Practitioner |
| REC-1 | Contact Recreation |
| REC-2 | Non-contact Recreation |
| SWPPP | Storm Water Pollution Prevention Plan |
| WARM | Warm Freshwater Habitat |
| WC | California Water Code |
| WILD | Wildlife Habitat |

Exhibit 2 - Settlement Offer Calculation

Alleged Violation No. 1: Failure to Minimize Pollutants in Storm Water Discharges (Provision A.1.b of Attachment D of the General Permit)

Dischargers shall minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve best available technology (BAT) for toxic and non-conventional pollutants and best conventional technology (BCT) for conventional pollutants.

SANDAG violated Water Code section 13376; General Permit Discharge Prohibitions III.A and III.B, Section V.A.2 and Attachment D section A.1.b; Basin Plan Waste Discharge Prohibition No. 8; and Federal Water Pollution Control Act (Clean Water Act) (22 U.S.C. § 1251 et seq.) section 301 (33 U.S.C. § 1311) by pumping sediment laden storm water offsite, to Tecolote Creek and Mission Bay, traditionally navigable waters of the United States, without BAT/BCT for a period of 1 day.

| PENALTY FACTOR | VALUE | DISCUSSION |
|---|----------------|--|
| Degree of Toxicity | 2 | Sediment laden storm water poses a moderate risk or threat to potential receptors. Sediment acts as a binding particle to some bacteria, metals, and organic compounds transporting these pollutants downstream. Discharges of sediment can cloud the receiving water which reduces the amount of sunlight reaching aquatic plants, clog fish gills, and smother aquatic habitat and spawning areas. Over time, excess sediment accumulation can alter the geomorphic conditions of a receiving water, leading to habitat reduction and/or conversion. |
| Harm to Beneficial Uses | 3 | During an inspection on January 9, 2018, San Diego Water Board inspectors observed evidence of a discharge of sediment-laden storm water runoff being pumped from the construction site into the MS4 along Pacific Highway and Anna Ave. without BAT/BCP. The discharge reached Tecolote Creek and Mission Bay. Beneficial Uses in the Tecolote Creek and Mission Bay include REC-1, REC-2, WARM and WILD. Tecolote Creek is 303(d) impaired for bacteria, sediment (turbidity), nutrients (total nitrogen and total phosphorous), pesticides (Bifenthrin, Diazinon and Cypermethrin), metals (cadmium, copper, lead, and zinc), and selenium, and therefore has little to no assimilative capacity for these pollutants. It is also impaired for benthic community effects and toxicity demonstrating actual harm to ecosystem health. Mission Bay is a Key Area for Habitats and Ecosystems and Recreation. Discharges of sediment laden storm water have the potential to further impair these Beneficial Uses. |
| Susceptibility to Cleanup or Abatement | 1 | SANDAG did not clean up 50% or more of the discharge within a reasonable amount of time. |
| Final Score: Potential for Harm | 6 | |
| Per Gallon and Per Day Factor for Discharge Violations | 0.15 | The "Deviation from Requirement" is moderate because although SANDAG intentionally pumped sediment laden storm water off site without BMPs, the discharge had the benefit of some BMP treatment prior to entering Tecolote Creek, rendering the requirement only partially compromised. The value of 0.15 was determined from Tables 1 and 2 of the Enforcement Policy. |
| Volume Discharged | 0 | Based on approximately 5 hours of continuous pumping from a 4" diameter hose at 25% of capacity, and Manning's roughness coefficient(s) it is estimated that at least 6,600 gallons were discharged from the site. As a settlement consideration, liability for this violation is only calculated using the per day assessment. |
| Adjustment for High Volume Discharges | n/a | The discharge does not qualify as a high volume discharge. |
| Days of Discharge | 1 | The discharge was observed by San Diego Water Board staff for one day on January 9, 2018 during the inspection. |
| Initial Liability for Alleged Violation No. 1 | \$1,500 | The liability is calculated as follows: (per day factor) (days violated) (maximum liability) = \$1,500. |
| Degree of Culpability | 1.2 | The SWPPP, BMP placement, and training requirements were clear that the discharge was intended for a location with a designated treatment train. Nevertheless, SANDAG elected to discharge to a different location without proper authorization, and the QSP did not identify this as a violation. A reasonable and prudent person would have identified the need for BMPs at the new discharge location. |
| History of Violations | 1.3 | An ACL was issued November 19, 2016 (R9-2015-0166) for \$50,000 to SANDAG for numerous similar and dissimilar violations from the same project. The Prosecution Team has applied a higher adjustment to reflect the history of similar violations associated with the project. |
| Cleanup and Cooperation | 1.1 | Although SANDAG immediately stopped the discharge when notified, and ultimately implemented necessary BMPs, its overall efforts to oversee its contractor(s) in the effective use of BMPs throughout the project area continue to indicate a lack of focus on permit requirements. |
| Total Base Liability for Alleged Violation No. 1 | \$2,574 | The total base liability is calculated as the initial liability multiplied by the culpability, history of violation, and cleanup and cooperation factors. |
| Final Liability for Alleged Violation No. 1 | \$2,574 | The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than or equal to the maximum liability. |

Alleged Violation No. 2: Failure to Manage the Discharge of Sediment from Stockpiles

Risk Level 2 dischargers shall cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).

SANDAG violated section B.1.b of Attachment D to the General Permit by failing to berm stockpiled material on site on the day of inspection. San Diego Water Board inspectors observed stockpiles without adequate containment during a predicted rain event period. All construction sites are required to contain and securely protect stockpiled material from wind and rain at all times unless actively being used.

| PENALTY FACTOR | VALUE | DISCUSSION |
|---|----------------|--|
| Discharge Violations | n/a | This step is not applicable because the violation is not a discharge violation. |
| Harm to Beneficial Uses | Moderate | The Prosecution Team assigned a Harm score of "moderate" because the characteristics of the violation present a substantial threat to beneficial uses. Beneficial Uses in the Tecolote Creek and Mission Bay include REC-1, REC-2, WARM and WILD. Tecolote Creek is 303(d) impaired for bacteria, sediment (turbidity), nutrients (total nitrogen and total phosphorous), pesticides (Bifenthrin, Diazinon and Cypermethrin), metals (cadmium, copper, lead, and zinc), and selenium, and therefore has little to no assimilative capacity for these pollutants. It is also impaired for benthic community effects and toxicity demonstrating actual harm to ecosystem health. Discharges of excess sediment can further impair beneficial uses of WARM and WILD. The BMP violation occurred during a rain event and likely contributed to the discharge of excess sediment to receiving waters. |
| Deviation from Requirement | Moderate | The Prosecution Team assigned a Deviation from Requirement score of "moderate" because SANDAG and its contractor had covered the stockpiles, rendering the requirement partially effective. |
| Per Day Factor | 0.35 | Determined from Table 3 in the Enforcement Policy. |
| Days of Violation | 1 | The violation was observed by San Diego Water Board staff on January 9, 2018 (1 day). |
| Initial Liability for Alleged Violation No. 2 | \$3,500 | The initial liability is calculated as a per day factor multiplied by the number of days multiplied by the maximum liability per day (i.e. \$10,000). |
| Degree of Culpability | 1.4 | This project has been under construction since 2015, and has had prior inspections noting the same violations. The Discharger claims to have improved BMP oversight as a result of prior enforcement actions. Its own SWPPP acknowledges the requirement to cover and berm stockpiles per CASQA WM-03 and its inspection report notes that the stockpiles were covered and bermed. Therefore, SANDAG's lack of oversight appears to be willful or negligent. |
| History of Violations | 1.3 | An ACL was issued November 19, 2016 (R9-2015-0166) for \$50,000 to SANDAG for numerous similar and dissimilar violations from the same project. The Prosecution team has selected a higher adjustment to reflect the history of similar violations associated with the project. |
| Cleanup and Cooperation | 1.1 | Although SANDAG made efforts to address noted deficiencies at the inspection area, its overall efforts to oversee its contractor(s) in the effective use of BMPs throughout the project area continue to indicate a lack of focus on permit requirements. |
| Total Base Liability for Alleged Violation No. 1 | \$7,007 | The total base liability is calculated as the initial liability multiplied by the culpability, history of violation, and cleanup and cooperation factors. |
| Final Liability for Alleged Violation No. 2 | \$7,007 | The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than or equal to the maximum liability. |

Alleged Violation No. 3: Failure to Implement Adequate Sediment Control BMPs

Risk Level 2 dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

SANDAG violated section E.1 of Attachment D to the General Permit by failing to maintain effective perimeter control at the site and failing to stabilize the construction entrance/exit in a manner that would control sediment discharges from the site.

| PENALTY FACTOR | VALUE | DISCUSSION |
|---|----------------|--|
| Discharge Violations | n/a | This step is not applicable because the violation is not a discharge violation. |
| Harm to Beneficial Uses | Moderate | The Prosecution Team assigned a Harm score of "moderate" because the characteristics of the violation present a substantial threat to beneficial uses. Beneficial Uses in the Tecolote Creek and Mission Bay include REC-1, REC-2, WARM and WILD. Tecolote Creek is 303(d) impaired for bacteria, sediment (turbidity), nutrients (total nitrogen and total phosphorous), pesticides (Bifenthrin, Diazinon and Cypermethrin), metals (cadmium, copper, lead, and zinc), and selenium, and therefore has little to no assimilative capacity for these pollutants. It is also impaired for benthic community effects and toxicity demonstrating actual harm to ecosystem health. Discharges of excess sediment can further impair beneficial uses of WARM and WILD. Ineffective perimeter controls were observed during a rain event and likely contributed to the discharge of excess sediment to receiving waters. |
| Deviation from Requirement | Moderate | Project boundaries were not properly identified with construction fencing. The site drains to a large pond that is in the middle of the site's entrance/exit. No perimeter control BMPs were visible, and BMPs to stabilize the site entrance/exit were not sufficient to control erosion and sediment discharges from the site. Therefore, the intended effectiveness of the requirement was at least partially compromised. |
| Per Day Factor | 0.35 | Determined from Table 3 in the Enforcement Policy. |
| Days of Violation | 1 | The violation was observed by San Diego Water Board staff on January 9, 2018 (1 day) |
| Initial Liability for Alleged Violation No. 3 | \$3,500 | The initial liability is calculated as a per day factor multiplied by the number of days multiplied by the maximum liability per day (i.e. \$10,000). |
| Degree of Culpability | 1.4 | This project has been under construction since 2015, and has had prior inspections noting the same violations. SANDAG claims to have improved BMP oversight as a result of prior enforcement actions. Its own SWPPP acknowledges the requirement to maintain effective perimeter controls per CASQA TC-1. But its implementation of TC-1 is not what a reasonable and prudent person would have done. Therefore, this lack of oversight appears to be willful or negligent. |
| History of Violations | 1.3 | An ACL was issued November 19, 2016 (R9-2015-0166) for \$50,000 to SANDAG for numerous similar and dissimilar violations from the same project. The Prosecution team has selected a higher adjustment to reflect the history of similar violations associated with the project. |
| Cleanup and Cooperation | 1.1 | Although SANDAG made efforts to address noted deficiencies at the inspection area, its overall efforts to oversee its contractor(s) in the effective use of BMPs throughout the project area continue to indicate a lack of focus on permit requirements. |
| Total Base Liability for Alleged Violation No. 3 | \$7,007 | The total base liability is calculated as the initial liability multiplied by the culpability, history of violation, and cleanup and cooperation factors. |
| Final Liability for Alleged Violation No. 3 | \$7,007 | The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than or equal to the maximum liability. |

Alleged Violation No. 4: Failure to Manage all Run-on and Runoff

Risk Level 2 dischargers shall effectively manage all run-on, all runoff within the site and all runoff that discharges off the site.

SANDAG violated General Permit Attachment D, section F by failing to effectively manage all run-on and runoff from the site on the day of inspection.

| PENALTY FACTOR | VALUE | DISCUSSION |
|---|-----------------|--|
| Discharge Violations | n/a | This step is not applicable because the violation is not a discharge violation. |
| Harm to Beneficial Uses | Moderate | The Prosecution Team assigned a Harm score of "moderate" because the characteristics of the violation present a substantial threat to beneficial uses. Beneficial Uses in the Tecolote Creek and Mission Bay include REC-1, REC-2, WARM and WILD. Tecolote Creek is 303(d) impaired for bacteria, sediment (turbidity), nutrients (total nitrogen and total phosphorous), pesticides (Bifenthrin, Diazinon and Cypermethrin), metals (cadmium, copper, lead, and zinc), and selenium, and therefore has little to no assimilative capacity for these pollutants. It is also impaired for benthic community effects and toxicity demonstrating actual harm to ecosystem health. Discharges of excess sediment can further impair beneficial uses of WARM and WILD. Ineffective run-on and runoff controls were observed during a rain event and likely contributed to the discharge of excess sediment to receiving waters. |
| Deviation from Requirement | Major | The Prosecution Team assigned a Deviation from Requirement score of "major" because SANDAG failed to implement run-off and run-on controls throughout the site, rendering the requirement ineffective. e.g. Failure to have effective runoff controls allowed for the discharge of sediment from uncovered stockpiles on the adjacent property to enter the project site, to discharge to the pond, and ultimately receiving waters. |
| Per Day Factor | 0.55 | Determined from Table 3 in the Enforcement Policy. |
| Days of Violation | 1 | The violation was observed by San Diego Water Board staff on January 9, 2018 (1 day). |
| Initial Liability for Alleged Violation No. 4 | \$5,500 | The initial liability is calculated as a per day factor multiplied by the number of days multiplied by the maximum liability per day (\$10,000). |
| Degree of Culpability | 1.4 | This project has been under construction since 2015, and has had prior inspections noting the same violations. SANDAG claims to have improved BMP oversight as a result of prior enforcement actions. Because of SANDAG's extensive construction history being focused on linear-type projects, it should already be acutely aware of the run on and runoff challenges and expectations associated with such projects. A reasonable and prudent person would have implemented run on and runoff controls, rather than rely on the pond capturing all discharges without treatment. Therefore, this lack of oversight appears to be willful or negligent. |
| History of Violations | 1.3 | An ACL was issued November 19, 2016 (R9-2015-0166) for \$50,000 to SANDAG for numerous similar and dissimilar violations from the same project. The Prosecution team has selected a higher adjustment to reflect the history of similar violations associated with the project. |
| Cleanup and Cooperation | 1.1 | Although SANDAG made efforts to address noted deficiencies at the inspection area, its overall efforts to oversee its contractor(s) in the effective use of BMPs throughout the project area continue to indicate a lack of focus on permit requirements. |
| Total Base Liability for Alleged Violation No. 4 | \$11,011 | The total base liability is calculated as the initial liability multiplied by the culpability, history of violation, and cleanup and cooperation factors. |
| Final Liability for Alleged Violation No. 4 | \$10,000 | The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than or equal to the maximum liability. |

**Administrative Civil Liability
Settlement Offer Calculator Summary**

| Allegation of Violation | Civil Liability | | | | |
|---|--|-----------|---------|----------|----------|
| | Maximum | Minimum | Initial | Base | Final |
| Alleged Violation No. 1: Failure to Minimize Pollutants in Storm Water Discharges (Provision A.1.b of Attachment D of the General Permit) | \$66,000 | see below | \$1,500 | \$2,574 | \$2,574 |
| Alleged Violation No. 2: Failure to Manage the Discharge of Sediment from Stockpiles | \$10,000 | see below | \$3,500 | \$7,007 | \$7,007 |
| Alleged Violation No. 3: Failure to Implement Adequate Sediment Control BMPs | \$10,000 | see below | \$3,500 | \$7,007 | \$7,007 |
| Alleged Violation No. 4: Failure to Manage all Run-on and Runoff | \$10,000 | see below | \$5,500 | \$11,011 | \$10,000 |
| Ability to Pay and Continue in Business: Yes | Based on publicly available information, the Prosecution Team concludes that SANDAG should have the ability to pay the Total Base Liability Amount. | | | | |
| Economic Benefit = \$4,554 | SANDAG provided evidence that the corrective measures implemented on the site cost \$8,937 and that it would cost an additional \$4,500 each time the impounded stormwater would need to be pumped. Based on the BMPs being a delayed cost and the pumping amount being an avoided cost, and using USEPA's BEN model, the economic benefit is calculated as \$4,554. | | | | |
| Other Factors: Reimbursement of Staff Costs = \$9,783 | Refer to Attachment for a summary of staff costs incurred. | | | | \$9,783 |
| Minimum Civil Liability = \$5,009 | Per the Enforcement Policy the minimum civil liability should equal Economic Benefit, plus 10% so that liabilities are not perceived as the "cost of doing business." \$5,009 represents the minimum liability for all of the violations combined. The final liability for all of the alleged violations is greater than the minimum civil liability. | | | | |
| Maximum Civil Liability = \$96,000 | The maximum civil liability was calculated pursuant to WC section 13385. The final liability for all of the alleged violations is less than the maximum civil liability. | | | | |

| | |
|--------------------------------------|-----------------|
| Total Final Civil Liability : | \$36,371 |
|--------------------------------------|-----------------|

EXHIBIT NO. 3

| Description | Staff | Position | Time | Time unit | Hours | Hourly Rate | Staff Cost |
|---|-------------------|--------------------------------|------|-----------|-------|-------------|-------------------|
| Complaint inspection, Preparation of SEL and Inspection Report, email correspondence with City of SD and Discharger | Erica Ryan | WRC Engineer | 12 | hrs | 12 | \$108.73 | \$1,304.76 |
| Review, editing of Inspection report | Laurie Walsh | Senior WRC Engineer | 3 | hrs | 3 | \$150.20 | \$450.60 |
| Review of Inspection report, news videos, preparation of draft ACL Settlement offer, email correspondence with Discharger | Christopher Means | Environmental Scientist | 55 | hrs | 55 | \$99.17 | \$5,454.35 |
| Review of draft ACL for signature | Chiara Clemente | Senior Environmental Scientist | 4 | hrs | 4 | \$157.41 | \$629.64 |
| Meetings and teleconferences with Sandag (4/30/18, 5/21/18, 8/2/18) | Chiara Clemente | Senior Environmental Scientist | 5 | hrs | 5 | \$157.41 | \$787.05 |
| Review Sandag response and evidence, and revise allegations and penalty calculations | Chiara Clemente | Senior Environmental Scientist | 12.5 | hrs | 12.5 | \$157.41 | \$1,967.63 |
| Prepare settlement offer transmittal package | Chiara Clemente | Senior Environmental Scientist | 6 | hrs | 6 | \$157.41 | \$944.46 |
| | | | | | | | |
| | | | | | | | |
| Total Staff Cost | | | | | | | \$9,783.13 |

| Economic Benefit Analysis | | | | | | | | | | |
|---------------------------------|--|--------------------------------------|-------|-------------------------------|----------|---------------------|-----------------|-----------------------|---------------|---------------------------|
| Project Name | | | | | | | | | | |
| Compliance Action | | One-Time Non-Depreciable Expenditure | | | | Non-Compliance Date | Compliance Date | Penalty Payment Date | Discount Rate | Benefit of Non-Compliance |
| | | Amount | Basis | Date | Delayed? | | | | | |
| 1 | | \$ 8,937 | CCI | 1/13/2018 | Y | 1/7/2018 | 1/13/2018 | 11/1/2018 | 3.70% | \$ 5 |
| 2 | | \$ 4,500 | CCI | 11/1/2018 | N | 1/7/2018 | 1/13/2018 | 11/1/2018 | 3.70% | \$ 4,549 |
| Income Tax Schedule: | | Municipality | | Analyst: | | Bryan Elder | | Total Benefit: | | \$ 4,554 |
| USEPA BEN Model Version: | | Version 5.8.0 (April 2018) | | Date/Time of Analysis: | | 8/1/2018 11:03 | | | | |
| Assumptions: | | | | | | | | | | |