

Attachment A to Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2025-0137

Moulton Niguel Water District Sulphur Creek, Aliso Creek, and Aliso Beach January 2025 Sanitary Sewer System Spill Penalty Calculation Methodology

A. Enforcement Policy Background

On December 5, 2023, and August 20, 2024, the State Water Resources Control Board (State Water Board) adopted Resolution Nos. 2023-0043 and 2024-0027, which adopted the most recent version of the Water Quality Enforcement Policy ([2024 Enforcement Policy](#)).¹ The goal of the Enforcement Policy is to protect and enhance the quality of the waters of the State by defining an enforcement process that addresses water quality problems in a fair, efficient, effective, and consistent manner. According to the Enforcement Policy, enforcement is a critical component in creating the deterrence needed to encourage the regulated community to anticipate, identify, and correct violations. Formal enforcement should always result when a non-compliant member of the regulated public begins to realize a competitive economic advantage over compliant members of the regulated public. The principle of fairness in enforcement requires that those who are unwilling to incur the expenses of regulatory compliance not be rewarded for making that choice. It is the intent of the State Water Board that formal enforcement should be used as a tool to maintain a level playing field for those who comply with their regulatory obligations by setting appropriate civil liabilities for those who do not. The 2024 Enforcement Policy was approved by the Office of Administrative Law and become effective on November 7, 2024.

California Water Code (Water Code) section 13327 requires the San Diego Regional Water Quality Control Board (San Diego Water Board) to consider several factors in determining the amount of administrative civil liability, such as 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,

¹ The Enforcement Policy, is available at:
https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/2024/2024-enforcement-policy.pdf.

economic benefit or savings, if any, resulting from the violation, and other matters as justice may require. The 2024 Enforcement Policy incorporates these statutory factors in a methodology for determining an administrative civil liability in instances of noncompliance. The San Diego Water Board's Prosecution Team (Prosecution Team) used the 2024 Enforcement Policy to develop the administrative civil liability proposed below. This document describes the methodology and factors used by the Prosecution Team to calculate the administrative civil liability for the alleged violation.

B. Sanitary Sewer System Spill Background

The Moulton Niguel Water District (District) provides drinking water, recycled water, and wastewater services to more than 170,000 residents and 6,000 businesses located in the cities of Laguna Niguel, Aliso Viejo, Laguna Hills, Mission Viejo, San Juan Capistrano, and Dana Point. The District maintains approximately 500 miles of wastewater pipelines, including 17 lift stations, encompassing an area of approximately 37 square miles.

On January 10, 2025, the District received a phone call reporting a sewage discharge within the Laguna Niguel Regional Park. Upon arrival, the District discovered that a fiberglass reinforced pipe force main, which carries wastewater from the Regional Lift Station to the Regional Treatment Plant, had failed, allowing sewage to discharge into the park. The pipe failure resulted in a release of 589,500 gallons of sewage from the sanitary sewer system, 464,700 gallons of which entered a storm drain discharging to Sulphur Creek, a water of the state and United States. Sulphur Creek converges with Aliso Creek approximately 900 feet downstream of the spill location. Aliso Creek terminates at the Pacific Ocean, at Aliso Beach Park within the City of Laguna Beach. The stretch of Aliso Creek between Sulphur Creek and the Pacific Ocean resides within the Aliso and Woods Canyon Wilderness Park, with several hiking trails adjacent to Aliso Creek.

The District instituted emergency measures as described in its Spill Emergency Response Plan, which included sewage containment and the return of sewage to the sanitary sewer system. Upon arrival at the scene, District staff built dirt berms to protect the nearby storm drain within the park and began using vacuum trucks to recover as much sewage as possible. The District estimates that it was able to recover 124,800 gallons of sewage and return it to the sanitary sewer system. However, the sewage flow overtook the berm and entered the storm drain and Sulphur Creek. The District was able to identify the failure point by isolating each of the parallel force mains beneath the park and subsequently performed an emergency repair. The District stopped the spill at approximately 1:30 pm, slightly less than four hours after discovery.

District staff and contractors traveled downstream along Aliso Creek and identified a road crossing as a suitable location to set up a submersible pump to recover sewage, about 1.5 miles downstream of the spill entry point. The District also set up a pump at the mouth of Aliso Creek, about 4 miles downstream, which was bermed at the time of

the spill.² The District estimates that it recovered about 1 million gallons of a mixture of sewage and freshwater from the crossing, and 130,000 gallons of sewage and freshwater from behind the berm at the mouth of Aliso Creek. The collected water was returned to the sanitary sewer system. The City of Laguna Beach assisted with spill response by reinforcing the sand berm at the mouth of Aliso Creek with bulldozers. Despite attempts to contain the sewage at the creek mouth, tidal activity caused the berm to break on the morning of January 15, 2025, causing sewage to reach Aliso Beach and discharge into the Pacific Ocean.

From January 10, 2025, to January 19, 2025, the District, in conjunction with the Orange County Health Care Agency (OCHCA), took surface water samples of fecal indicator bacteria at 12 locations, including three locations in the surf zone along Aliso Beach to characterize the extent of impacts and protect public health. The District took samples of the surf zone at the mouth of Aliso Creek at 5 p.m. on the afternoon of the day of the spill (January 10, 2025), and the bacteria levels were below water quality objectives established for contact recreation as described in the Water Quality Control Plan for the San Diego Region (9) ([Basin Plan](#)).³

The OCHCA took over the surf zone sampling on January 11, 2025, while the District focused on upstream creek sampling. The surf zone sample taken on January 11, 2025 showed a slight exceedance of the water quality objective for enterococcus, and OCHCA placed a swimming “Advisory Warning⁴” at Aliso Beach on January 12, 2025. OCHCA continued to monitor the surf zone daily and found water quality exceedances at magnitudes consistent with untreated sewage beginning with the sample collected on January 13, 2025 and subsequently closed the beach from January 14 to January 18, 2025.⁵ The beach closure was lifted on January 19, 2025, after two consecutive samples of fecal indicator bacteria were below water quality objectives and the OCHCA deemed the water safe to swim. The District’s samples taken from Sulphur and Aliso Creeks likewise showed bacteria exceedances consistent with untreated sewage in the week following the spill.

The geographical extent of the spill, not including the beach area, is shown in Figure 1. The extent of the beach closure area caused by the spill is shown in Figure 2.

² The mouth of Aliso Creek is naturally bermed by beach sand, and the berm is periodically cleared during storm events and/or tidal activity.

³ The Basin Plan is available at:
https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/

⁴ According to the Ocean Recreational Water Update issued by OCHCA on January 12, 2025 at 5:00 p.m., the “Advisory Warning” was issued because bacterial levels at outlets where urban runoff mixes with ocean receiving waters exceeded health standards the last time it was tested.

⁵ According to the OCHCA website, a beach closure is issued when areas have been impacted by an unauthorized discharge of sewage. Beach goers can visit and enjoy the beach but should avoid contact with ocean or bay waters in the closed areas.

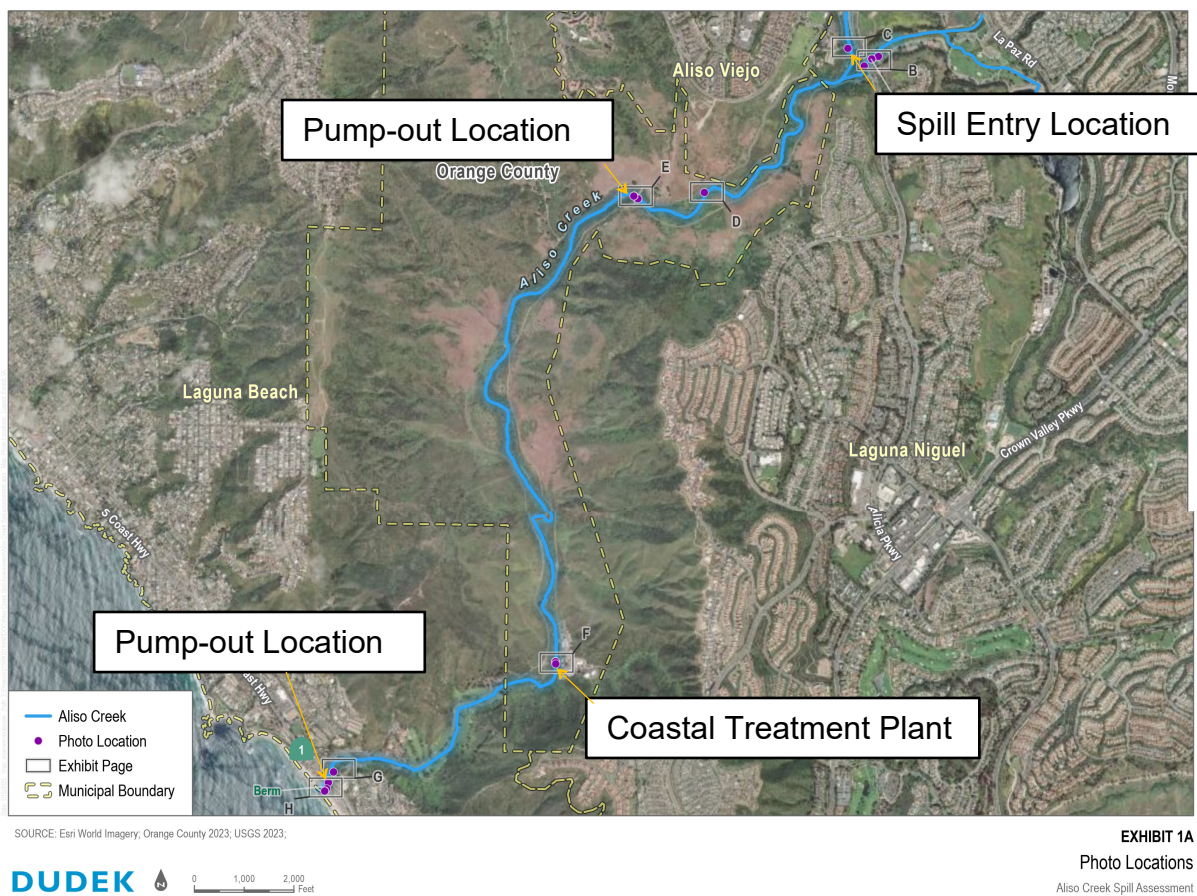


Figure 1. Spill Entry Point and Area Affected ⁶

⁶ Figure 1 taken from *Technical Report for the Regional Force Main Spill Occurring on January 10, 2025*, dated February 24, 2025.



Figure 2. Laguna Beach Closure Area⁷

The District completed the emergency repair on the failed force main on the afternoon of January 10, 2025, successfully stopping the active spill. The District is constructing a capital improvement project (CIP) to replace nearly two miles of force main, including the failed pipe segment, within the Laguna Niguel Regional Park. The project is estimated to cost \$29.2 million with an expected completion date of spring 2027.

⁷ Figure taken from OCHCA Press Release dated January 14, 2025.

C. Violation: Unauthorized Discharge of 464,700 Gallons of Untreated Sewage to Waters of the State and United States.

The District is required to maintain and operate its sanitary sewer system in compliance with the following permits:

- State Water Resources Control Board Order WQ 2022-0103-DWQ, *Statewide Waste Discharge Requirements General Order for Sanitary Sewer Systems* ([Statewide General Order](#));⁸ and
- San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Sanitary Sewer Agencies in the San Diego Region* ([Regional General Order](#)).⁹

Prohibition 4.2 of the Statewide General Order states that “Any discharge from a sanitary sewer system, discharged directly or indirectly through a drainage conveyance system or other route, to waters of the State is prohibited.” Prohibition B.1 of the Regional General Order states that “[t]he discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.”

The District’s discharge of sewage on January 10, 2025, was in violation of Statewide General Order Prohibition 4.2, Regional General Order Prohibition B.1, and Clean Water Act section 301 and/or 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 discharge was also in violation of Basin Plan Waste Discharge Prohibition No. 1 which states “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination, or nuisance as defined in Water Code section 13050, is prohibited.” Finally, Provision 5.19 of the Statewide General Order states that “To prevent discharges to the environment, the Enrollee shall maintain in good working order, and operate as designed, any facility or treatment and control system designed to contain sewage and convey it to a treatment plant.”

For the purposes of calculating an appropriate administrative civil liability, the Prosecution Team exercised discretion to allege the multiple violations as a single violation (Statewide General Order Prohibition 4.2) because a single act (sewage spill)

⁸ The Statewide General Order is available at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf

⁹ The Regional General Order is available at:

https://www.waterboards.ca.gov/sandiego/board_decisions/adopted_orders/2007/R9-2007-0005_ADA.pdf

lead to violations of similar requirements in different permits or plans, but the requirements are designed to address the same water quality issue.¹⁰

The unauthorized discharge of sewage in violation of Statewide General Order Prohibition 4.2 is subject to administrative civil liability pursuant to Water Code section 13350. Water Code section 13350(e) authorizes the San Diego Water Board to impose an administrative civil liability up to \$10.00 for each gallon of waste discharged to waters of the State.

Ten-Step Penalty Calculation Methodology

Step 1. Actual or Potential for Harm for Discharge Violations

For discharge violations, the 2024 Enforcement Policy uses a three-factor scoring system to quantify: (1) the degree of toxicity of the discharge; (2) the actual harm or potential harm to beneficial uses; and (3) the discharge's susceptibility to cleanup or abatement. Application of the three-factor scoring system to is set forth below.

Factor 1: Degree of Toxicity of the Discharge = Above Moderate (3)

The 2024 Enforcement Policy requires an evaluation, using a scale from zero to four (negligible to significant risk), of the degree of toxicity of the discharged material. The evaluation considers the physical, chemical, biological, and/or thermal characteristics of the discharge and the risk of damage the discharge could cause to the receptors or beneficial uses. A score of three or "above-moderate" degree of toxicity is appropriate when the discharged material poses an above-moderate risk or a direct threat to potential receptors (e.g., the chemical and/or physical characteristics of the discharged material exceed known risk factors or there is substantial threat to potential receptors [e.g. human health, aquatic life, habitat, etc.]).

The unauthorized discharge of sewage represents an "above-moderate" risk level because sewage contains high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease, and other pollutants known to exceed existing water quality standards. These pollutants exert varying levels of impacts to beneficial uses of the receiving waters. The high degree of toxicity in sewage poses a direct threat to human and ecological receptors.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses = Major (5)

The 2024 Enforcement Policy requires an evaluation, using a scale from zero to five (negligible to major harm), of the actual or potential harm to beneficial uses in the affected receiving waterbody. This risk may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation(s). A score of five or "major" is typified

¹⁰ See 2024 Enforcement Policy, Section II.E, Multiple Violations Resulting from the Same Incident.

by observed or reasonably expected potential significant impacts, and involves potential for actual acute, and/or chronic (e.g., more than five days) restrictions on, or impairment of, beneficial uses, aquatic life, and/or human health.

Sulphur Creek and Aliso Creek are waters of the state and United States. Aliso Creek drains to the Pacific Ocean at Aliso Beach, located about four miles downstream of the spill entry point. Aliso Beach supports contact and non-contact beneficial uses (REC-1 and REC-2), is a popular swimming beach, and thus a key area for these uses. Additionally, Aliso Creek discharges to the Laguna Beach State Marine Conservation Area and Laguna Beach State Marine Reserve, both of which are Marine Protected Areas and areas of special importance for recreation, habitat, and ecosystem related beneficial uses. In accordance with the key uses/key areas concept, Aliso Beach is a priority for San Diego Water Board protection as described in [Resolution No. R9-2017-0030](#).¹¹

In addition to REC-1 and REC-2, Sulphur and Aliso Creeks support the following beneficial uses: agricultural supply (AGR), warm freshwater habitat (WARM), and wildlife habitat (WILD).¹² Both Sulphur and Aliso Creeks, and the Pacific Ocean shoreline at the mouth of Aliso Creek, are listed on the [California 2024 Integrated Report](#) as impaired for indicator bacteria. Aliso Creek is also listed as impaired for benthic community effects, malathion, nitrogen, phosphorus, salinity, and toxicity.¹³

In general, untreated sewage is known to contain solids and organic materials, ammonia, and excessive nutrients, all of which are potentially harmful to habitat-related beneficial uses due to solids deposition, oxygen depletion, and toxicity. Pathogenic organisms harmful to human health (such as *Campylobacter*, *Salmonella*, *Shigella*, *Vibrio Cholera*, and *Yersinia*) have the potential to impact other beneficial uses such as municipal and domestic supply (MUN), contact recreation (REC-1), and sport fishing (COMM) due to direct contact with or ingestion of impacted waters, or indirect contact via foodborne pathways such as fish and/or shellfish consumption (SHELL). Oil, grease, and floatable or suspended materials may harm non-contact water recreation (REC-2) due to aesthetic impacts.

In response to the spill, the District partnered with OCHCA to take surface water samples of fecal indicator bacteria at 12 locations, including three locations in the surf

¹¹ The Resolution is available at: https://www.waterboards.ca.gov/rwqcb9/board_decisions/adopted_orders/2017/R9-2017-0030.pdf.

¹² Complete definitions of the beneficial uses are described in the Basin Plan.

¹³ The California 2024 Integrated Report is available at: https://www.waterboards.ca.gov/water_issues/programs/water_quality_assessment/2024-integrated-report.html.

zone along Aliso Beach.¹⁴ In addition to analyzing fecal indicator bacteria in the creek samples, the District samples were analyzed for ammonia, electroconductivity, residual chlorine, pH, nitrate, nitrite, total nitrogen, total phosphorus, oil, and grease.

The surf zone samples at Aliso Beach did not exceed water quality objectives established for contact recreation on the afternoon of January 10, 2025 (the day of the spill). The surf zone sample taken on January 11, 2025, showed a slight exceedance of the water quality objective for enterococcus, and OCHCA placed a swimming “Advisory Warning” at Aliso Beach on January 12, 2025. OCHCA continued to monitor the surf zone daily and found water quality exceedances at magnitudes consistent with untreated sewage beginning with the sample collected on January 13, 2025 and subsequently closed the beach from January 14 to January 18, 2025. The beach closure was lifted on January 19, 2025, after two consecutive samples of fecal indicator bacteria were below water quality objectives and the OCHCA deemed the water safe to swim.

The District contracted an environmental consultant to perform a biological resource assessment on January 11, 2025, the day after the spill. The District took photos and observations at multiple locations along the reach from Laguna Niguel Regional Park to Aliso Beach. The District did not observe deposition of discolored water, sewage-related trash, sediment, or evidence of recent high flows outside the ordinary high water mark. The District did not observe dead or injured wildlife or fish. The District did observe small amounts of foam. The District concluded that minimal to no impacts to riparian and in-channel habitat occurred because of the spill, and any sewage was likely diluted with input from urban runoff (non-storm water) originating from the watershed.

Although the District’s assessment of impacts to biological resources found little evidence of impacts to wildlife-related beneficial uses, a score of 5, or major, is appropriate for the Harm to Beneficial Use factor in the penalty calculator. The spill caused chronic impacts to REC-1 and REC-2 beneficial uses along the Aliso Creek mouth/Aliso Beach shoreline from the exceedances of bacteria water quality objectives and use restrictions to high priority public spaces due to the combination of beach warning and closure signs lasting more than five days.

Factor 3: Susceptibility to Cleanup or Abatement = 1

A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to cleanup 50 percent or more of the discharge within a reasonable time.

The District reported that the spill began around 9:45 am on January 10, 2025, resulting in a release of 589,500 gallons of sewage from the sanitary sewer system, 464,700

¹⁴ OCHCA analyzed the surf zone samples for total coliform, fecal coliform, and enterococcus fecal indicator bacteria. The District analyzed the creek samples for total coliform, E.coli, and enterococcus indicator bacteria.

gallons of which discharged into the receiving waters of Sulphur Creek (the District successfully captured 124,800 gallons of sewage and prevented it from reaching the storm drain). The District set up pumps at a road crossing roughly 1.5 miles downstream of the spill entry point at 4:15 pm on January 10, 2025, where it extracted roughly 1 million gallons of combined sewage and freshwater. The District set up a second pump-out location at the mouth of Aliso Creek on January 13, 2025, where it extracted roughly 130,000 gallons of combined sewage and freshwater. The District does not know how much sewage remained in the environment because of these activities.

According to the 15-minute interval flow gauge at the Coastal Treatment Plant located adjacent to Aliso Creek roughly 3.4 miles downstream of the spill entry point (see Figure 1), the average flow rate on the morning of January 10, 2025 was 3.8 cubic feet per second (cfs). Beginning at about 11:15 am, the flow rate steadily climbed until it reached a peak of 9.6 cfs at 9:30 pm. The steady increase in flow rate, which began at 11:15 am, may have been caused by the sewage release. The effectiveness of the pump-out activity initiated at 4:15 pm at the road crossing is unknown because there is insufficient information regarding the amount of sewage recovered. A score of 1 is appropriate for this factor.

The Potential for Harm score is:

Potential for Harm score = 3 [Factor 1] + 5 [Factor 2] + 1 [Factor 3] = **9**.

Step 2. Assessment for Discharge Violations

The initial liability amount is based on the potential for harm score from Step 1 and the extent of deviation from requirement. The deviation from requirement must be characterized as either minor, moderate, or major.

The deviation from requirement is **major**. According to the 2024 Enforcement Policy, a major deviation from requirement occurs when the requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions). The unauthorized discharge of 464,700 gallons of sewage to a receiving water is a major deviation from Statewide General Order Prohibition 4.2.

The per gallon liability assessment is the per gallon factor from Table 1 of the 2024 Enforcement Policy multiplied by the maximum per gallon amount allowed under the Water Code. Using a potential for harm score of 9 and a major deviation from requirement, the per gallon factor from Table 1 is 0.8.

Water Code section 13350(e) states that the per gallon maximum administrative civil liability is \$10.00 per gallon of waste discharged to waters of the State. For discharges that are between 100,000 gallons and 2,000,000 gallons, the 2024 Enforcement Policy allows the use of \$2.00 per gallon instead of \$10.00 per gallon. For this violation, the per gallon amount is based on 464,700 gallons of waste discharged.

Using a high-volume reduced maximum of \$2.00 per gallon, the initial liability assessment calculated on a per gallon basis is:

[\$2.00 (per gallon maximum) x 0.8 (per gallon factor) x (464,700 gallons)] = **\$743,520**

The Initial Liability Amount is = **\$743,520**.

Step 3. Per Day Assessment for Non-Discharge Violations

This step is not applicable.

Step 4. Adjustment Factors

The San Diego Water Board must consider three additional factors for potential modification of the administrative civil liability amount: the discharger's degree of culpability, the discharger's prior violation history, and the discharger's voluntary efforts to clean up and cooperate with regulatory authorities after the violation.

Degree of Culpability = 1.0

The 2024 Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used, with a higher multiplier for intentional or negligent behavior, and a lower multiplier for accidental or non-negligent behavior.

The District reported that the cause of the spill was a break in one of the two parallel force mains that transport sewage from the Regional Lift Station to the Regional Treatment Plant along the south side of Laguna Niguel Regional Park. According to the District, the parallel force mains are composed of Techite, a form of fiberglass that was installed in 1979. The District has been advancing plans for a CIP to construct new force mains since 2017 because the existing material, Techite, has exhibited premature fragility among some sewerage agencies that have used it in their sanitary sewer systems. This CIP is in the final phase of improvements related to the District's sanitary sewer system in this area, which also included improvements to the Regional Lift Station. The CIP calls for the abandonment of the existing force mains and construction of new force mains made of pressure-class polyvinyl chloride (PVC) pipe in a new alignment. The existing and proposed force main alignments are shown in Figure 3.



Figure 3. Regional Lift Station Force Main Replacement Project; Existing and Proposed Sewer Alignments¹⁵

Replacement of the fiberglass pipes using the existing alignment is not an option because the existing force mains must stay in service throughout construction, and the right-of-way corridors are not wide enough to support the trenching required for the new PVC pipes. Consequently, the new alignment will occur on the north side of Laguna Niguel Regional Park, along La Paz Road in the City of Laguna Niguel. The approximate length of the new force mains is 8,500 feet each. Construction on the CIP began in March 2025 after a lengthy delay related to geotechnical concerns and is estimated to cost \$29.2 million. The District anticipates finishing the project in the spring of 2027.

The District finished designing the CIP and was prepared to bid the project and begin construction in 2021 when it became aware of the instability of a major slope adjacent to the footprint of the future force main alignment. The City of Laguna Niguel contacted the District in 2021 to warn it that there was potential for a landslide if the slope was not stabilized. The City of Laguna Niguel became aware of the instability when ground

¹⁵ Figure taken from the Fiscal Year 2020-2021 Moulton Niguel Water District Budget.

movement in the vicinity mandated an emergency CIP to fix fractures in La Paz Road in 2021, which runs north-south on the east side of Laguna Niguel Regional Park.

To ensure slope stability and protect the area of the future force mains, the District postponed the construction of the Regional Lift Station Force Main Replacement CIP and initiated an emergency CIP to reinforce the slope. The unplanned, emergency CIP involved commissioning of geotechnical investigations, a study of alternative solutions, and extensive permitting from the Orange County Public Works Department. The emergency CIP was necessary to protect future sewer force mains located within the Laguna Niguel Regional Park. The project location is shown in Figure 4.



Figure 4. Location of Slope Stabilization at La Paz Road.¹⁶

The District could not begin construction on the Regional Lift Station Force Main Replacement CIP until the Slope Stabilization at La Paz Road emergency CIP was complete, which occurred in March 2025. The District was not negligent in delaying the replacement of the force mains and could not have foreseen the need for the slope stabilization based on what it knew when the Regional Lift Station Force Main CIP was approved. Therefore, the District acted as a reasonable and prudent person would have and a score of 1.0 is appropriate for this factor.

¹⁶ Figure taken from the Fiscal Year 2024-2025 Moulton Niguel Water District Budget.

History of Violations = 1.0

The 2024 Enforcement Policy states that where a discharger has prior violations¹⁷ within the last five years, the Water Boards should use a multiplier of greater than 1.0. Within the last five years, the District has no prior stipulated or adjudicated violations of either the Statewide General Order or Regional General Order, and therefore a neutral score is appropriate. The District has, however, had four Category 1 spills (defined as a spill of any volume that reaches surface waters) in the five years preceding the January 10, 2025 spill, ranging in volume from 470 gallons to 19,000 gallons, but no formal enforcement was pursued for these violations.

Cleanup and Cooperation = 0.8

The 2024 Enforcement Policy allows a multiplier between 0.75 and 1.5 to be used to adjust the penalty to account for voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. Adjustments below or above 1.0 should be applied where the discharger's response to a violation or order is above and beyond, or falls below, the normally expected response, respectively.

Following the spill, the District completed an assessment of impacts on aquatic life and took samples of fecal indicator bacteria and ammonia, as required by the Statewide General Order. The District also partnered with the City of Laguna Beach to reinforce the berm at the mouth of Aliso Creek and set up two pump-out locations to extract the spilled sewage from the environment. Despite these efforts, sewage reached Aliso Beach and resulted in a beach closure. The District went above minimum requirements of the Statewide General Order by taking samples at nine locations along Sulphur and Aliso Creeks¹⁸ and by analyzing the water samples for several additional constituents to characterize the extent of the spill.

Erring on the side of caution, in the event of another pipe failure during construction, the District is positioning emergency response material and equipment at the Regional Lift Station Force Main Replacement CIP construction site. This includes inflatable dams, sandbags, hoses, and mobile pumping units. The contractor's access routes on the construction site were also modified, which included the installation of temporary

¹⁷ For the purpose of this factor, "violation" means a stipulated or adjudicated violation of the Water Code, Health and Safety Code, or other environmental protection statute for which the Water Boards have enforcement authority.

¹⁸ Section 2.3 of Attachment E to the Statewide General Order requires post-spill sampling at four locations: 1) A point in the drainage system before it discharges into a receiving water; 2) a point in the receiving water where sewage initially enters the receiving water; 3) a point in the receiving water upstream of the point of sewage discharge; and 4) a point in the receiving water downstream of the point of sewage discharge, where the spill material is full mixed with the receiving water.

bridges, to limit loading on the existing force main piping as much as possible. Based on these considerations, a score of 0.8 is appropriate for this factor.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability Amount is determined by multiplying the Initial Liability Amount by the Adjustment Factors in Step 4:

Total Base Liability Amount = [\$743,520 (initial liability amount) x 1.0 (degree of culpability) x 1.0 (history of violations) x 0.8 (cleanup and cooperation)] = **\$594,816**.

Step 6. Economic Benefit

The 2024 Enforcement Policy states that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (USEPA's) Economic Benefit Model (BEN Model) liability and financial modeling program. The San Diego Water Board usually uses the BEN Model for purposes of calculating liabilities for violations as outlined in the 2024 Enforcement Policy. Using standard economic principles such as the time-value of money and tax deductibility of compliance costs, the BEN Model calculates a violator's economic benefit derived from delaying or avoiding compliance with environmental statutes.

The underlying assumption in calculating an economic benefit is that a violator failed to exercise reasonable care to prevent or mitigate the violation and, because of that failure, derived an economic benefit from delaying and/or avoiding compliance with environmental statutes. Here, the Discharger's actions delaying necessary repairs planned in the Regional Lift Station Force Main Replacement CIP were reasonable; the need to complete the Slope Stabilization CIP first was unforeseeable in 2020 when the District finished designing the CIP and was prepared to bid the project and begin construction in 2021. Because of the exceptional circumstances presented by the potential landslide, the District had no choice but to delay implementation of the Regional Lift Station Force Main Replacement CIP to allow completion of the Slope Stabilization CIP. Therefore, the District did not gain an economic benefit from delaying the CIP that would have avoided the sewage spill.

Step 7. Other Factors As Justice May Require

Costs of Investigation and Enforcement Adjustment

The 2024 Enforcement Policy allows an adjustment to the administrative civil liability in consideration of the costs of investigating and enforcing the matter. As of April 25, 2025, San Diego Water Board staff expended at least 95 staff hours and accrued \$19,640 in staff costs associated with the investigation and preparation of this penalty methodology. It is appropriate to increase the Total Base Liability Amount by \$19,640 for the violation given the totality of the circumstances and is intended to serve as a sufficient general and specific deterrent against future violations. The Total Base Liability Amount in consideration of staff costs is \$614,456.

Additional Factors Considered to Reduce the Total Base Liability Amount

The Total Base Liability Amount may be reduced under Step 7 if express findings are made to justify the adjustment. Here, the District has provided other pertinent information that the Prosecution Team did not previously consider when preparing this penalty methodology that indicates a lower liability is justified.

- **Slope Stabilization Project:** The District provided further information on the extraordinary circumstances it faced and the expedient actions it took to minimize delays to the Regional Lift Station Force Main Replacement CIP. The District acquired all necessary property rights, and designed, permitted, and constructed a slope stabilization system at an unanticipated cost of approximately \$5.7 million in less than two years from when the City of Laguna Niguel proclaimed a local emergency related to ground movement.
- **Sewage Spill Recovery Protocol:** The District agrees to formulate a process for determining when and where to conduct sewage recovery in the Aliso Creek subwatershed that considers impacts to both habitat-related and recreational beneficial uses. The method, or protocol, must strive to minimize impacts to beneficial uses caused by recovery efforts. The method, or protocol, shall be developed in coordination with other agencies responding to spills in the subwatershed, and must consider public input.

Based on the above findings, reducing the Total Base Liability Amount by approximately 10 percent is justified. The adjusted Total Base Liability Amount is \$553,000.

Step 8. Ability to Pay and Ability to Continue in Business

The District is a public entity with the ability to leverage fees on its customers. The San Diego Water Board is not aware of, and the District has not provided, any evidence of inability to pay.

Step 9. Maximum and Minimum Liability Amounts

Maximum Liability – The alleged violation subjects the District to administrative civil liability pursuant to Water Code section 13350(e), which authorizes the San Diego Water Board to impose administrative civil liability up to \$10.00 for each gallon of waste discharged.

The Maximum Liability Amount that could be assessed for the violation is:

464,700 gallons x (\$10.00/gallon) = **\$4,647,000.**

Minimum Liability – The minimum liability is not applicable here.

Step 10. Final Liability Amount

The Final Liability Amount is **\$553,000**.

Documents Relied Upon

Exhibit No.	ECM Document Handle No.	Item	Date
1	11593990	FY-2020-21 Budget Document - Moulton Niguel Water District	6/30/2020
2	9472780	Moulton Niguel Collection System Compliance Evaluation Inspection Report	1/21/2022
3	9472784	Cover Letter to Compliance Inspection Report	1/27/2022
4	11593991	Media Release Describing Local Emergency Due to Earth Movement Under La Paz Road	5/5/2023
5	11593993	FY-2024-25 Budget Document - Moulton Niguel Water District	6/30/2024
6	11593995	Orange County Health Care Agency Ocean Recreation Water Update	1/12/2025
7	11595154	Certified Spill Report for Category 1 Spills	1/13/2025
8	11595086	Photo Log to Certified Spill Report	1/13/2025
9	11544470	Orange County Health Care Agency Press Release	1/15/2025
10	11544463	Video from G. Viviani showing berm breach from tidal activity	1/16/2025
11	11595068	45-Day Spill Technical Report	2/24/2025
12	11563284	Email from S. Boyer to C. Arias including creek sampling results	3/27/2025

Exhibit No.	ECM Document Handle No.	Item	Date
13	11595080	Estimate of Distance from Spill Point to Beach	3/28/2025
14	11595072	Orange County Health Care Agency Website Describing Postings	3/28/2025
15	11572380	Orange County Health Care Agency Fecal Indicator Bacteria Data	4/9/2025
16	11595075	Coastal Treatment Plant Flow Gauge Data, Jan 10-13, 2025	4/25/2025
17	11595160	Staff Costs through April 25, 2025	4/25/2025