

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

**IN THE MATTER OF PIERER IMMOREAL NORTH AMERICA, LLC
VIOLATIONS OF CLEAN WATER ACT SECTION 401 WATER QUALITY
CERTIFICATION AND WASTE DISCHARGE REQUIREMENTS FOR DISCHARGE OF
DREDGED AND/OR FILL MATERIALS**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER NO. R9-2026-0013**

I. INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order”) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (“San Diego Water Board”), on behalf of the Regional Water Board Prosecution Team (“Prosecution Team”), and Pierer Immoreal North America, LLC (PINA or Discharger) (individually, a “Party”, and collectively, “Parties”), and is presented to the San Diego Water Board, or its delegate, for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against PINA in the amount of **\$342,424**.

II. RECITALS

1. PINA submitted an application for Clean Water Act section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials to the San Diego Water Board on September 1, 2020.¹ The proposed project was a \$53 million, 130,000 square feet commercial corporate complex located on a 31.9-acre site at 30125 KTM Way, Murrieta, California, 92563 (Project). The Project proposal was revised and resubmitted on behalf of the Discharger.
2. On June 28, 2021, the San Diego Water Board issued Clean Water Act section 401 Water Quality Certification No. R9-2021-0144 to the Discharger (Certification). The Certification prescribes waste discharge requirements to the Discharger and enrolls it in the State Water Resources Control Board’s *Water Quality Order No. 2003-017-DWQ, Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification* (General WDRs).

¹ The Project is composed of the following Riverside County Assessor Parcel Numbers (APNs): 963-030-002 and 963-030-003.

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3. The Project site contained approximately 0.67 acre (3,085 linear feet) of unvegetated ephemeral streambed waters of the State. The Certification authorized the discharge/fill of waste that would result in permanent impacts to 0.38 acre (1,982 linear feet) of streambed waters of the United States and/or State. This authorization was contingent upon the timely and successful completion of the Habitat Mitigation and Monitoring Plan dated April 2021 (April 2021 HMMP), which describes the proposed compensatory mitigation for the Project's impacts. A revised HMMP dated April 2026 (April 2026 HMMP) with revised mitigation was approved by San Diego Water Board staff. The San Diego Water Board recognizes that the April 2026 HMMP has not received final approval from the California Department of Fish and Wildlife (CDFW). In the event that CDFW requires modifications or revisions to the April 2026 HMMP that are consistent with the mitigation required by the San Diego Water Board as currently approved in the April 2026 HMMP (CDFW Modification), the San Diego Water Board will not unreasonably withhold its consent to PINA's modifying the April 2026 HMMP with the CDFW Modification as long as any revisions exceed the scope of the April 2026 HMMP and do not prevent PINA's ability to comply with the April 2026 HMMP by December 1, 2026.
4. The Prosecution Team alleges that the Discharger violated section V.H. of the Certification because it failed to complete the required mitigation by June 1, 2022. The mitigation should have been completed by June 1, 2022, since construction for the Project began on August 31, 2021, and was completed on March 2, 2023. The Discharger will receive a revised Certification which contemplates a December 31, 2026, completion date for the updated mitigation proposal in accordance with the terms of the April 2026 HMMP.
5. Pursuant to Water Code section 13350, subdivision (e), a person, who in violation of a waste discharge requirement issued by the San Diego Water Board, discharges waste, or causes or permits waste to be deposited where it is discharged, into the waters of the state shall be civil liable in an amount not to exceed \$5,000 per day of violation or \$10 per gallon discharged.
6. To resolve the alleged violation in Section II, paragraph 4, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$342,424** against the Discharger as described in Section III, paragraph 1. The Prosecution Team developed the liability proposed in this Stipulated Order by using the Penalty Calculation Methodology in the State Water Board's 2024 Water

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Quality Enforcement Policy² (Enforcement Policy), as shown in Attachment A.

7. A material consideration of this settlement was the Discharger's proposal to provide enhanced mitigation as required by Certification section V.H. The April 2026 HMMP proposed additional mitigation comprised of 0.38 acre of wetland establishment and 0.76 acre of wetland rehabilitation, in addition to the original compensatory mitigation requirement of 0.76 acre of wetland establishment, for a total of 1.9 acres. A revised Water Quality Certification will be issued to include the additional mitigation acreage.
8. The Parties have engaged in settlement negotiations and agree to settle the alleged violation without administrative or civil litigation and to present this Stipulated Order to the San Diego Water Board, or its delegate, for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable; that no further action is warranted concerning the alleged violation, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

III. STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate the following:

1. **Administrative Civil Liability:** PINA hereby agrees to the imposition of an administrative civil liability of **\$342,424** to resolve the violation alleged in section II, paragraph 4. No later than 30 days after the San Diego Water Board or its delegate signs this Stipulated Order, PINA must mail a check for **\$342,424** made payable to the "State Water Pollution Cleanup and Abatement Account," referencing Stipulated Order No. R9-2026-0013, to:

State Water Resources Control Board Accounting Office
ATTN: ACL Payment / Order No. R9-2025-0052
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger must provide a redacted copy of the check to the Prosecution Team Party Contact at the email address listed in section III, paragraph 14.

² 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, thereby adopting the most recent version of the Water Quality Enforcement Policy ([2024 Enforcement Policy](#)).

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2. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.
3. **Attorneys' Fees and Costs:** Each Party shall bear its own attorneys' fees and costs incurred pursuant to this Stipulated Order.
4. **Matters Addressed by This Stipulated Order:** Upon the San Diego Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation contained in section II, paragraph 4, as of the date the San Diego Water Board or its delegate signs this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in section III, paragraph 1.
5. **Public Notice:** PINA understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the San Diego Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the San Diego Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the San Diego Water Board or its delegate. PINA agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.
6. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the San Diego Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the San Diego Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the San Diego Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
7. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

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8. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board or its delegate.

9. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the San Diego Water Board or its delegate does not adopt it, or because the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in a hearing or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to the following:
 - a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors, or any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the alleged violations; or
 - b. Laches, delay, or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

10. **Waiver of Hearing:** The Discharger has been informed of the rights Water Code section 13323, subdivision (b) provides and hereby waives its right to a hearing before the San Diego Water Board prior to the Stipulated Order's adoption.

11. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the San Diego Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Order. The failure of the Prosecution Team or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.

12. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the San Diego Water Board's adoption of this Stipulated Order for review by the State Water Board, and further waives its right, if

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any, to appeal the same to a California Superior Court and/or any California appellate level court.

13. **Covenant Not to Sue:** Provided that the San Diego Water Board or its delegate adopts this Stipulated Order, PINA covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.

14. **Party Contacts for Communications Related to This Stipulated Order:**

- a. San Diego Water Board
Christina Arias
California Regional Water Quality Control Board
San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108-2700
Telephone: (619) 521-3361
Email: Christina.Arias@waterboards.ca.gov
- b. Pierer Immoreal North America, LLC
Attention: Diane Roth
31025 KTM Way
Murrieta, CA 92562
Email: Diane.Roth@ktm.com
Email: legal_na@ktm.com
Email: legal_na@pmaq.com

With copy to

Claremont Law Group, Inc.
Attention: Saul Jaffe, ESQ.
618 W. Baseline Road
Claremont, CA 91711
Telephone: (909)445-9133
Email: sjaffe@claremontlaw.com

15. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the allegations stated herein or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior history of violation consistent with Water Code sections 13327 and 13385, subdivision (e), and the Enforcement Policy.

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16. **Necessity for Written Approvals:** All approvals and decisions of the San Diego Water Board or its delegate under the terms of this Stipulated Order shall be communicated to the Discharger in writing.
17. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes this Stipulated Order.
18. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
19. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect, providing that in so doing neither Party is deprived of the value received by entering into or adopting this Stipulated Order.
20. **Counterpart Signatures and Facsimile and Electronic Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
21. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the San Diego Water Board or its delegate adopts the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

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

This signature block was digitally signed on June 19, 2026, and the document with digital signatures is available upon request to Frank Melbourn at Frank.Melbourn@waterboards.ca.gov or by telephone at (619) 521-3372.

**LAURIE A. WALSH
Assistant Executive Officer**

Approved as to form:

This signature block was digitally signed on June 19, 2026, and the document with digital signatures is available upon request to Frank Melbourn at Frank.Melbourn@waterboards.ca.gov or by telephone at (619) 521-3372.

**CATHERINE HAWE, ATTORNEY IV
California State Water Resources Control Board
Office of Enforcement**

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PIERER IMMOREAL NORTH AMERICA, LLC

This signature block was digitally signed on June 22, 2026, and the document with digital signatures is available upon request to Frank Melbourn at Frank.Melbourn@waterboards.ca.gov or by telephone at (619) 521-3372.

DIANE ROTH
Manager

This signature block was digitally signed on June 23, 2026, and the document with digital signatures is available upon request to Frank Melbourn at Frank.Melbourn@waterboards.ca.gov or by telephone at (619) 521-3372.

JOHN HINZ
Manager

Approved as to form:

This signature block was digitally signed on June 22, 2026, and the document with digital signatures is available upon request to Frank Melbourn at Frank.Melbourn@waterboards.ca.gov or by telephone at (619) 521-3372.

SAUL JAFFE, ESQ.
Claremont Law Group, Inc.

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ORDER OF THE SAN DIEGO WATER BOARD

1. This Stipulated Order incorporates the foregoing sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the San Diego Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The San Diego Water Board's consideration of these factors is based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order or otherwise provided to the San Diego Water Board.
3. This is an action to enforce the laws and regulations administered by the San Diego Water Board. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with California Code of Regulations, title 14, section 15321, subdivision (a)(2).
4. The Executive Officer of the San Diego Water Board is authorized to refer this matter directly to the Attorney General for enforcement if PINA fails to perform any of its obligations under this Stipulated Order.

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

DAVID W. GIBSON
Executive Officer
California Regional Water Quality Control Board, San Diego Region

Attachment A
Order No. R9-2026-0013

Penalty Calculation Methodology
Pierer Immoreal North America, LLC
KTM North America, Inc. Project
Violations of Clean Water Act Section 401 Water Quality Certification and Waste
Discharge Requirements For Discharge of Dredged and/or Fill Materials
County of Riverside

I. 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, thereby adopting the most recent version of the Water Quality Enforcement Policy ([2024 Enforcement Policy](#)).¹ The goal of the 2024 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 2024 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 became 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, 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

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

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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. The violations alleged in this complaint pre-date the effective date of the 2024 Enforcement Policy, therefore, consistent with Attachment D to the 2024 Enforcement Policy, substantive changes included in the 2024 Enforcement Policy are not applied to these violations.

II. Project Background

On September 1, 2020, Diane Roth, Chief Financial Officer, KTM North America and Manager of Pierer Immoreal North America, LLC (PINA), Inc. submitted an application for Clean Water Act section 401 Water Quality Certification and Waste Discharge Requirements for Discharge of Dredged and/or Fill Materials² to the San Diego Water Board for PINA where by PINA would construct the Project for its affiliate (Project).³ The Project proposed a \$53 million, 130,000 square feet commercial corporate complex for an affiliate of PINA consisting of a headquarters office, motorsport building, office buildings, warehouse buildings, test track, maintenance intake areas, parking, landscape, fire access areas, drainage facilities and associated infrastructure on a 31.9-acre site.⁴ The Project is located at 30125 KTM Way, Murrieta, California 92563, in between Highway 79/Winchester Road and the French Valley Airport⁵ and its Place Identification Number (PIN) for Electronic Content Management (ECM) is CW-869045. On-site drainage from the Project generally flows east to west, eventually entering culverts beneath Highway 79/Winchester Road. From there, it continues into the ponds of the Golf Club at Rancho California and ultimately discharges into an unnamed drainage to Warm Springs Creek.

On April 30, 2021, in response to a September 21, 2020, incomplete application letter from the San Diego Water Board, PINA's biological consultant submitted the requested additional information. This included a Habitat Mitigation and Monitoring Plan (HMMP) for the Project.⁶ The September 2020 HMMP provided detailed specifications and work descriptions for the proposed compensatory mitigation to address the Project's permanent environmental impacts.

² In accordance with the 2021 [Procedures for Discharges of Dredged or Fill Material to Waters of the State](#) dredge or fill material is a type of discharge of waste. These terms shall be used interchangeably throughout this document.

³ [Exhibit 1](#), September 1, 2020, Clean Water Act section 401 Application by KTM North America, Inc. ECM Document Handle 8850561.

⁴ [Exhibit 2](#), March 29, 2023, Press Release, ECM Document Handle 11743900. Also, Riverside County Assessor Parcel Numbers 936-030-002 and 963-030-003.

⁵ [Exhibit 3](#), Project Location Map. ECM Document Handle 11671451.

⁶ [Exhibit 5](#), April 30, 2021, Gatchel email Response to Incompleteness Letter with attached April 2021 HMMP. ECM Document Handle 9127823.

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On May 11, 2021, Diane Roth,⁷ on behalf of PINA (Discharger) submitted a revised Clean Water Act section 401 application (Application) to the San Diego Water Board for the Project.⁸ The Application identified PINA in lieu of KTM as the Applicant Organization and Diane Roth as the “Legally Responsible Person.” Additionally, the Application identified Shawn Gatchel-Hernandez, Hernandez Environmental Services as a “Duly Authorized Representative.” KTM is an affiliate of PINA.⁹

On June 28, 2021, the San Diego Water Board issued Clean Water Act section 401 Water Quality Certification No. R9-2021-0144 to PINA for the Project via email.¹⁰ The Certification not only prescribes waste discharge requirements but also enrolls the Discharger in the State Water Resources Control Board’s [Water Quality Order No. 2003-017-DWQ, Statewide General Waste Discharge Requirements for Dredged or Fill Discharges That Have Received State Water Quality Certification \(General WDRs\)](#).¹¹ The Certification transmittal letter informed the Discharger that it was “required to implement and comply with all terms and conditions of the Certification in order to ensure that water quality standards are met for the protection of wetlands and other aquatic resources.”¹² It also warned that failure to comply with the Certification “may subject PINA to enforcement actions by the San Diego Water Board including administrative enforcement orders requiring PINA to cease and desist from violations or to clean up waste and abate existing or threatened conditions of pollution¹³ or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.”

⁷ Diane Roth is the Manager and Authorized Agent for PINA and the Chief Financial Officer for KTM North America, Inc. ECM Document Handles 11787460 and 11787461.

⁸ Exhibit 6, May 11, 2021, Clean Water Act section 401 Application from Pierer Immoreal North America, LLC. ECM Document Handle 9132611.

⁹ Exhibit 5, see second paragraph on page one of the letter.

¹⁰ Exhibit 7, June 28, 2021, San Diego Water Board email to PINA containing the Clean Water Act section 401 Water Quality Certification No. R9-2021-0144 for the KTM North America, Inc. Project; transmittal letter; and attachments. ECM Document Handle 9146185.

¹¹ The General WDRs are available at https://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/generalorders/go_wdr401regulated_projects.pdf

¹² See Exhibit 7’s transmittal letter.

¹³ “Pollution” is defined by Water Code section 13050, subdivision (I)(1) as, “an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) the waters for beneficial uses, or (B) facilities which serve these beneficial uses.”

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The Project site contained approximately 0.67 acre (3,085 linear feet) of unvegetated ephemeral streambed waters of the State. The Certification authorized the discharge/fill of waste that would result in permanent impacts to 0.38 acre (1,982 linear feet) of streambed waters of the United States and/or State. This authorization was contingent upon the timely and successful completion of the HMMP dated April 2021, which describes the proposed compensatory mitigation for the Project's impacts.

III. Violation 1: Failure to timely construct proposed compensatory mitigation as required by Certification section V.H. and the Prohibitions of the Water Quality Control Plan for the San Diego Basin (Basin Plan).¹⁴

A. Background

On January 21, 2025, San Diego Water Board staff, Lauren Kim, issued a Staff Enforcement Letter to the Discharger for failing to construct the proposed compensatory mitigation and failing to submit several reports required by the Certification.¹⁵ In response, the Discharger's biological consultant stated that construction on the Project began on August 31, 2021, and was completed on January 27, 2023.¹⁶

During a site inspection with Discharger representatives and consultants on February 20, 2025, San Diego Water Board staff confirmed that the Project had been completed, that waters of the State and/or United States had been filled with earthen material, and that work on the compensatory mitigation had not yet begun.¹⁷ As a result, on March 6, 2025, the San Diego Water Board issued Notice of Violation No. R9-2025-0065 (NOV) to the Discharger, citing seven alleged violations of the Certification.¹⁸ These included the failure to construct the proposed compensatory mitigation and the failure to submit required information and reports.

¹⁴ The Basin Plan can be found at

https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/

¹⁵ Exhibit 8, January 21, 2025, email from Lauren Kim, San Diego Water Board to Diane Roth, PINA. ECM Document Handle 11272604.

¹⁶ Exhibit 9, January 27, 2025, email from Shawn Gatchel-Hernandez, Hernandez Environmental Services to Lauren Kim, San Diego Water Board. ECM Document Handle 11281503.

¹⁷ Exhibit 10, March 6, 2025, San Diego Water Board email transmitting February 20, 2025, San Diego Water Board inspection report for Project, and Notice of Violation No. R9-2025-0065. ECM Document Handle 11548251.

¹⁸ See Exhibit 10 attachment Notice of Violation No. R9-2025-0065.

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B. Certification Section V.H.

The relevant Certification language is the following: Timing of Mitigation Site Construction. The construction of proposed mitigation must be concurrent with project grading and completed no later than 9 months following the start of Project construction. Delays in implementing mitigation must be compensated for by an increased mitigation implementation of 10% of the cumulative compensatory mitigation for each month of delay.

C. Basin Plan

The Basin Plan designates beneficial uses, establishes water quality objectives and waste discharge prohibitions, contains implementation programs for achieving objectives, and incorporates by references, plans and policies adopted by the State Water Board. Beneficial uses for surface waters are designated under the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 et seq.) section 303 (33 U.S.C. § 1313) in accordance with regulations contained in 40 Code of Federal Regulations (CFR) part 131 (2021). The State of California (State) is required to specify appropriate water uses to be achieved and protected. The designation of beneficial uses for waters of the State by each of the Regional Boards is mandated under Water Code section 13240. Water Code section 13241 provides that each Regional Board shall establish water quality objectives for the waters of the state (i.e., ground and surface waters) which, in the Regional Board's judgment, are necessary for the reasonable protection of beneficial uses and for the prevention of nuisance. Clean Water Act section 303 requires that the State adopt water quality objectives (called water quality criteria) for surface waters.

1. Beneficial Uses

The Basin Plan lists the following beneficial uses for Warm Springs Creek (Hydrologic Unit Basin Number 2.36), and tributaries thereto: Municipal and Domestic Supply (MUN); Agricultural Supply (AGR); Industrial Service Supply (IND); Industrial Process Supply (PROC); Contact Water Recreation (REC-1);¹⁹ Non-Contact Water Recreation (REC-2); Warm Freshwater Habitat (WARM); and Wildlife Habitat (WILD). Existing beneficial uses which have not been formally designated in the Basin Plan are protected as well as designated uses.²⁰ Therefore, where the presence of habitat that supports a beneficial use occurs even if not so designated in the Basin Plan, the beneficial use is protected at the site.

¹⁹ Potential.

²⁰ Basin Plan at page 2-13.

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D. Allegation

The Prosecution Team alleges that the Discharger failed to timely construct the mitigation as required under section V.H. of the Certification. According to the Certification, the mitigation was to be completed no later than nine months after the start of construction. Since construction began on August 31, 2021, the mitigation should have been completed by May 31, 2022. This settlement offer is predicated on the Discharger completing the mitigation by December 31, 2026. Therefore, the Discharger is alleged to have violated section V.H. of the Certification for 1,676 days, June 1, 2022, to December 31, 2026.²¹

During the February 20, 2025, site inspection, San Diego Water Board staff confirmed that although the construction project itself was completed, the mitigation had not been initiated. Since the mitigation was not completed on time, the Certification's requirement to implement an additional 10% mitigation for each month of delay was triggered. It was not until after requesting that the Discharger provide additional compensatory mitigation to address the temporal loss of habitat caused by the Project and additional details and improvements to the HMMP during meetings with the Discharger (August 29, September 17, and December 18, 2025, and February 27, 2026) that the Discharger finally proposed an HMMP with additional mitigation acres to partially satisfy the requirement at Certification section V.H. On May 11, 2026, the Discharger provided an HMMP to San Diego Water Board staff which was determined to be adequate to address the Discharger's noncompliance with the Certification's initial mitigation requirements.

The delay in development and implementation of an acceptable HMMP and increased mitigation to address temporal loss not only violated Certification requirements but also raised broader compliance concerns. In particular, the Discharger's actions resulted in additional violations of the Basin Plan, which includes the following Waste Discharge Prohibitions related to the unauthorized filling and discharge of waste into and around the drainages to Warm Springs Creek for the Project:

²¹ The Prosecution Team has estimated that the alleged noncompliance with the Certification is likely to continue until approximately December 31, 2026. This date is based on the estimated time needed for the Discharger to complete the mitigation work outlined in the April 2026 HHMP in accordance with discussions with San Diego Water Board staff.

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1. No. 1. The discharge of waste²² 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.
2. No. 2. The discharge of waste to land, except as authorized by Waste Discharge Requirements (WDRs) or the terms described in Water Code section 13264 is prohibited.
3. No. 3. The discharge of pollutants or dredged or fill material to waters of the United States except as authorized by an NPDES permit or a dredged or fill material permit (subject to the exemption described in Water Code section 13376) is prohibited.
4. No. 7. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit it being transported into the waters, is prohibited unless authorized by the Regional Board.
5. No. 14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, in quantities which cause deleterious bottom deposits, turbidity or discoloration in waters of the state or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

E. Ten Step Penalty Calculation Methodology

1. Step 1. Actual or Potential for Harm for Discharge Violations

Prosecution Team asserts that the Discharger failed to timely construct the proposed compensatory mitigation in violation of section V.H. of the Certification that resulted in the unauthorized discharge of fill material into waters of the United States and/or State, beginning on June 1, 2022, and expected to continue through December 31, 2026. For discharge violations, the 2024 Enforcement Policy procedure consists of calculating a value using 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.

²² "Waste" is defined by Water Code section 13050, subdivision (d) as, "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purpose of, disposal."

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a. Factor 1: The Degree of Toxicity of the Discharge: 2

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. The Prosecution Team selected a score of two. A score of two in the 2024 Enforcement Policy is defined as one where the “[d]ischarged material poses a moderate risk or threat to potential receptors (e.g., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of threat to potential receptors [e.g. human health, aquatic life, habitat, etc.]).”

In this case, the discharged material was uncontaminated construction soil comprised of sediment and fill from the Project. Sediment and fill are “waste” as defined under Water Code section 13050.

Sediment discharges into receiving waters can cause both physical and chemical harm to beneficial uses. These discharges can reduce sunlight for aquatic plants; clog fish gills; smother aquatic habitats and breeding grounds; and transport construction-related pollutants such as nutrients, metals, oils, and grease.²³

Based upon aerial imagery, the Project piped the drainage underground, resulting in the discharged material filling the drainage. However, due to the alteration of natural flow paths, the discharged material is now unlikely to come into contact with potential receptors. As a result, the material poses a moderate level of risk or threat to those receptors.

b. Factor 2: Actual Harm or Potential Harm to Beneficial Uses: Minor (1)

The 2024 Enforcement Policy requires determination of actual or potential harm to beneficial uses, using a scale from zero to five (negligible to major harm), 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 one, or

²³ Finding 11, [2009 Construction Storm Water Permit](#) and Fact Sheet section I.J.1., [2022 Construction Storm Water Permit](#).

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“minor” is defined as “no actual harm and low threat of harm to beneficial uses.” “A score of minor is typified by a lack of observed impacts, but based on the characteristics of the discharge and applicable beneficial uses; there is potential short term impact to beneficial uses with no appreciable harm.”

The discharge of sediment and fill to waters of the US²⁴ and/or State caused permanent impacts²⁵ to beneficial uses, including the WARM²⁶ (warm freshwater habitat) beneficial use and WILD²⁷ (wildlife habitat) beneficial use, which alone would warrant a score of 5. However, the impact is mitigated by the following factors: 1) The Discharger has agreed to implement the original mitigation amount and provide additional mitigation to compensate for the temporal loss of habitat functions and values, and 2) There is a lower threat of harm to beneficial uses because the originally impacted area consists of former agricultural fields without designated critical habitat and sensitive or endangered species present.

c. Factor 3: Susceptibility to Cleanup or Abatement: 0

A score of zero is assigned for this factor when the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time. A score of one is assigned when less than 50 percent of the discharge is susceptible to cleanup or abatement, or when 50 percent or more is susceptible but the discharger fails to cleanup at least half within a reasonable time. In this case, a score of zero is appropriate because although the unnamed drainage has been filled and buildings have been constructed over it, the originally required mitigation will ultimately be built thereby abating the original discharge, while the additional

²⁴ The Application stated that there were 0.45 acres of potential Waters of the U.S. for the Project. See March 29, 2018, ECORP Consulting, Inc. Preliminary Jurisdiction Determination report attached to the Application (Exhibit 1, page 55 of 552 in PDF).

²⁵ “Permanent impacts” is defined as lasting more than five days in the 2024 Enforcement Policy.

²⁶ The WARM beneficial use supports warm water ecosystems. This includes the preservation or enhancement of aquatic habitats, vegetation, fish or wildlife, including invertebrates. Basin Plan page 2-8.

²⁷ The WILD beneficial use supports terrestrial ecosystems. It encompasses the preservation and enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources. Basin Plan page 2-9.

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mitigation as required by Certification section V.H., partially abates the temporal loss.

d. Final Score – Potential for Harm: 3

The scores assigned to each factor are summed to calculate the total Potential for Harm score for the violation. The total score is then used to determine the position on the “Potential for Harm” axis in Penalty Factor Tables 1 and 2. The score can range from a minimum 0 to a maximum of 10.

$$\text{Potential for Harm} = 2 + 1 + 0 = 3$$

2. Step 2. Assessments for Discharge Violations

This step addresses per gallon and per day assessments for the discharge violation.

a. Per Gallon Assessments for Discharge Violations

Under Water Code Section 13350(e), the San Diego Water Board may impose liability either on a per day basis or a per gallon basis, but not both. The San Diego Water Board has elected to assess liability on a per day basis.

b. Per Day Assessments for Discharge Violations

When a discharge occurs, the San Diego Water Board determines an initial liability factor per day based on the Potential for Harm score and the extent of Deviation from Requirement. This determination follows Table 2 of the 2024 Enforcement Policy, using the combined analysis of the Potential for Harm score and the Deviation from Requirement.

b. Deviation from Requirement: Moderate

In this case, the Prosecution Team assigned a “moderate” rating to this penalty factor. The 2024 Enforcement Policy defines a “moderate” deviation as one where “[t]he intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).” In this case, the Discharger delayed in completing the required mitigation and was not fully able to satisfy the increased mitigation requirement addressing temporal loss.

Therefore, the Certification requirement was partially compromised because the Discharger did not provide

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“an increases mitigation implementation of 10% of the cumulative compensatory mitigation for each month of delay,” amounting in this case to 34.4 acres of total mitigation. Instead, the Discharger offered a total of 1.9 acres of mitigation, or 2.3% cumulative increase.

c. Calculation of the Per Day Liability

The Per Day Factor for Discharges from Table 2 of the 2024 Enforcement Policy based upon a Potential for Harm score of “3” and a Deviation from Requirement of “moderate” is 0.025.

d. Calculation of the Initial Liability Amount

The Water Code section 13350 statutory maximum liability is \$5,000 per day per violation. The number of days of violation from June 1, 2022, to December 31, 2026, is 1,676. Therefore, the Initial Liability Amount is $\$5,000 \times 0.025 \times 1,676 \text{ days} = \$209,500$.

3. Step 3. Per Day Assessment for Non-Discharge Violations

This step is not applicable because this is a discharge violation.

4. Step 4. Adjustment Factors

The San Diego Water Board must consider three additional factors (Violator’s Conduct 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.

a. **Degree of Culpability: 1.3**

Higher penalties are warranted for violations that are intentional or negligent, as opposed to those that are accidental. Under the 2024 Enforcement Policy, a multiplier ranging from 0.75 and 1.5 may be applied, where higher multipliers reflect intentional or negligent behavior, and lower multipliers apply to accidental or non-negligent behavior.

The Discharger was aware of the requirement to complete compensatory mitigation, as evidenced by its efforts to obtain the necessary permits and its submission of the HHMP. Despite this, the Discharger proceeded with Project construction without initiating the required mitigation.

The Discharger attributes the delay to the California Department of Fish and Wildlife (CDFW) not approving its

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mitigation plan. However, this does not excuse the violation. By choosing to construct the Project without concurrently implementing the mitigation plan, the Discharger knowingly violated Certification section V.H. A reasonable and prudent discharger would have reviewed the certification conditions and ensured full compliance, including timely implementation of required mitigation before beginning Project construction. Instead, the Discharger proceeded with Project construction without notifying the San Diego Water Board of the construction start date, as required by the Certification. It also failed to report its noncompliance, which only came to light after San Diego Water Board staff contacted the Discharger on January 21, 2025, to inquire about the anticipated start of the Project.

b. History of Violations: 1.0

The 2024 Enforcement Policy states that where a discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. The Discharger has no prior history of violating orders issued by the State Water Board or the San Diego Water Board. Therefore, a score of 1.0 is assigned.

c. Cleanup and/or Cooperation: 1.1

The cleanup and cooperation factor evaluates a violator's voluntary efforts to cleanup the discharge and/or to cooperate with regulatory authorities after the violation. This factor is assessed using a multiplier ranging from 0.75 to 1.5.

A lower multiplier is applied when the discharger demonstrates exceptional cleanup and cooperation beyond what is reasonably expected. Conversely, a higher multiplier is used when such efforts are lacking. A neutral multiplier is appropriate when the discharger responds in a manner consistent with what a reasonable and prudent party would do under the circumstances.

The Discharger was informed at least three times that it was in violation of Certification section V.H. for failing to construct compensatory mitigation. In response, the Discharger or its representative stated that it was in the process of obtaining approval of the mitigation plan by CDFW.

San Diego Water Board staff issued the Discharger a Staff Enforcement Letter on January 21, 2025, detailing the violation. The Discharger was verbally notified of the

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violation during the February 20, 2025, San Diego Water Board Project inspection and again with a Notice of Violation on March 6, 2025. After receiving these notifications, the Discharger finally submitted a draft HMMP that was approved by San Diego Water Board staff on May 11, 2026. Therefore, the Prosecution Team has assigned a Cleanup and Cooperation Factor of 1.1.

5. 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 = \$209,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1.0 (History of Violations) x 1.1 (Cleanup and/or Cooperation)] = \$299,585.

6. Step 6. Economic Benefit

The 2024 Enforcement Policy states that the economic benefit of noncompliance be calculated using the U.S. Environmental Protection Agency's (USEPA's) Economic Benefit Model (BEN Model)²⁸ and the San Diego Water Board does so. Using standard economic principles such as the time value of money and tax deductibility of compliance costs, the BEN Model estimates the economic advantage a violator gains by delaying or avoiding compliance with environmental laws. The BEN Model assumes the violator failed to exercise reasonable care to prevent or mitigate the violation and, as a result benefited financially from noncompliance.

Water Code section 13327 requires consideration of economic benefit in determining the amount of civil liability imposed because it is unfair to dischargers that voluntarily incur the costs of regulatory compliance. The San Diego Water Board should only impose civil liabilities in an amount less than the economic benefit to the violator for violations of other provisions of the Water Code in exceptional circumstances where not doing so would be against public policy, have a disproportionate effect on a disadvantaged community or group, or be patently unjust.

Using the BEN Model, the Discharger gained an economic benefit of \$109,351 by delaying construction of the compensatory mitigation to January 1, 2026.²⁹ The original cost of the compensatory mitigation was \$494,000.

²⁸ Version 2024.0.0.

²⁹ Exhibit 11, BEN Model analysis.

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7. Step 7. Other Factors as Justice May Require

If the San Diego Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this adjustment. Here the Prosecution Team applies a consideration for San Diego Water Board staff costs.

San Diego Water Board staff expended over 269 staff hours and accrued \$42,839.59 in staff costs associated with the investigation and preparation of Administrative Civil Liability Complaint No. R9-2026-0013 to January 30, 2026.³⁰ The Prosecution Team finds that it is appropriate to increase the Total Base Liability Amount by \$42,839.59 in consideration of these investigation and enforcement costs. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

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

The 2024 Enforcement Policy states that the Total Base Liability Amount may be adjusted to address ability to pay or to continue in business if the San Diego Water Board has sufficient financial information necessary to assess a violator’s ability to pay the Total Base Liability Amount or to assess the effect of the Total Base Liability Amount on a violator’s ability to continue in business. A violator’s ability to pay an administrative civil liability is determined by its revenues and assets.

In most cases, it is in the public interest for a violator to continue in business and bring operations into compliance. While the Water Code requires the San Diego Water Board to consider this issue when imposing civil liability, it does not require the San Diego Water Board to set civil liabilities at levels that allow a violator to continue in business. Civil liabilities should be imposed at levels that do not allow violators to obtain a competitive economic advantage over dischargers that voluntarily incur the costs of regulatory compliance, whether or not the violator is able to continue in business after incurring the liability.

The Discharger constructed the \$53 million, 130,000 square feet commercial corporate campus complex which houses approximately 113 employees PINA's affiliate consisting of a headquarters office, motorsport building, office buildings, warehouse buildings, test track, maintenance intake areas, parking,

³⁰ Exhibit 12, Staff Costs.

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landscape, fire access areas, drainage facilities and associated infrastructure on a 31.9-acre site.³¹

9. Step 9. Maximum and Minimum Liability Amounts

For all violations, the applicable statute sets a maximum liability amount that may be assessed for each violation. For some violations, the statute also requires the assessment of a liability at no less than a specified amount. Where the amount calculated for a particular violation exceeds the statutory maximum, the amount proposed must be reduced to that maximum. Similarly, the minimum statutory amount may require raising the amount being proposed, unless there is a specific provision that allows assessment below the minimum. In such cases, the express findings to support assigning a liability amount below this minimum must be set forth in the proposed settlement agreement, ACL Complaint, and/or order imposing liability.

a. Maximum Liability

The violations described above subject the Discharger to administrative civil liability pursuant to Water Code section 13350(e), which authorize the San Diego Water Board to impose administrative civil liability up to \$5,000 per violation per day, or \$10 for each gallon of waste discharged. In this case the number of gallons discharged was not determined.

The Maximum Liability Amount that can be assessed for Violation 1 is:

$$(1,676 \text{ days}) \times (\$5,000/\text{day}) = \$8,380,000$$

b. Minimum Liability

The 2024 Enforcement Policy states that the minimum liability should be at least ten percent higher than the economic benefit amount so that liabilities are not construed as the cost of doing business.

The Minimum Liability Amount that can be assessed for this violation is:

$$\$109,351 \text{ (Economic Benefit)} \times 1.1 = \$120,286.10$$

³¹ See Exhibits 2 and 6.

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10. Step 10. Final Liability Amount

The Final Liability Amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts.

The Total Base Liability Amount for Violation 1 is \$342,424.59 which is above the Minimum Liability Amount and below the Maximum Liability Amount. Therefore, the recommended Final Liability Amount for Violation 1 is \$342,424.59.