

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

**TENTATIVE ORDER NO. R9-2010-0069**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
PURSUANT TO SETTLEMENT AGREEMENT  
AGAINST COUNTY OF RIVERSIDE  
MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PROGRAM**

**FOR VIOLATIONS OF  
ORDER NO. R9-2004-001,  
WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES OF URBAN RUNOFF  
FROM THE MUNICIPAL SEPARATE STORM SEWER SYSTEMS DRAINING THE  
COUNTY OF RIVERSIDE, THE CITY OF MURRIETA, THE CITY OF TEMECULA AND  
THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION  
DISTRICT WITHIN THE SAN DIEGO REGION**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board), having considered in a public meeting on May 12, 2010, all comments received on the issuance of liability against the County of Riverside (Discharger) regarding violations alleged in Complaint No. R9-2009-0026, dated December 10, 2009 (Complaint), having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of civil liability in the amount of \$234,291 finds as follows:

1. The San Diego Water Board incorporates Settlement Agreement and Stipulation for Order No. R9-2010-0069 by this reference as if set forth fully herein.
2. The San Diego Water Board finds that the Recitals set forth in the Settlement Agreement and Stipulation for Order No. R9-2010-0069 are true.
3. The Settlement Agreement and Stipulation for Order and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

4. In accepting this settlement, the San Diego Water Board has considered, where applicable, each of the factors prescribed in CWC section 13385. The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the San Diego Water Board for this matter.
5. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

**IT IS HEREBY ORDERED**, that pursuant to California Water Code sections 13323 and 13385, and California Government Code section 11415.60 that:

1. The Settlement Agreement and Stipulation for Order No. R9-2010-0069 is approved.
2. The County of Riverside shall submit a check to the San Diego Water Board in the amount of \$234,291 payable to the "State Water Resources Control Board, Cleanup and Abatement Account" within 30 days of adoption of this Order in accordance with the terms of the Settlement Agreement and Stipulation for Order No. R9-2010-0069.
3. The San Diego Water Board's Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the County of Riverside fails to perform any of its obligations under this Order.
4. Fulfillment of the County of Riverside's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of this Order.

I, David W. Gibson, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control board, San Diego Region, on May 12, 2010.

**TENTATIVE**  
\_\_\_\_\_  
DAVID W. GIBSON  
Executive Officer

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION

In the matter of:	)	
	)	
<b>COUNTY OF RIVERSIDE,</b>	)	<b>Settlement Agreement and Stipulation for</b>
<b>Complaint No. R9-2009-0026</b>	)	<b>Order No. R9-2010-0069</b>
<b>For Administrative Civil</b>	)	
<b>Liability</b>	)	

**Section I: Introduction**

This Settlement Agreement and Stipulation for Order (“Stipulation”) is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R9-2009-0026, dated December 10, 2009 (the “Complaint”). The parties to this proceeding are the San Diego Regional Water Quality Control Board (“San Diego Water Board”) Prosecution Team and the County of Riverside (“Discharger”) (collectively the “Parties”).

**Section II: Recitals**

1. The Discharger, located at 4080 Lemon Street, 4<sup>th</sup> Floor, Riverside, California 90502, is the owner/operator of a municipal separate storm sewer system (MS4) within the Santa Margarita watershed and subject to Order No. R9-2004-001 (“MS4 Permit”), including the requirements of Sections A and F thereof. A portion of the Scott Road expansion project at issue in the Complaint (“Project”) and the MS4 at issue herein has been transferred to the City of Menifee.
2. The Complaint describes an administrative civil liability totaling \$612,591 for alleged violations of the MS4 Permit. That amount includes staff costs of \$64,291. To resolve by consent and without further administrative proceedings certain alleged violations of the MS4 Permit set forth in the Complaint, the Discharger shall pay \$234,291 to the State Water Resources Control Board Cleanup and Abatement Account, which includes \$64,291 for staff costs. Payment of \$234,291 is due no later than 30 days following the San Diego Water Board executing the order sought by this Stipulation (“Order”). In addition, Discharger shall meet and confer with staff of the San Diego Water Board concerning the review and enhancement, if required, of best management practices (“BMPs”) for the Project as well as shall conduct a workshop, by no later than December 31, 2010 or three months following the adoption of a new MS4 permit to supplant the MS4 Permit (“New MS4 Permit”), whichever shall be later, on the Standard Urban Stormwater Mitigation Plan (“SUSMP”) provisions of the new MS4 permit.

3. The Complaint alleges that the Discharger violated Section F of the MS4 Permit by failing to implement a SUSMP for projects set forth in the MS4 Permit, including the failure to implement a project-specific SUSMP for the Project. The Complaint further alleges that Discharger violated Section A.3 of the MS4 Permit by failing to reduce the discharge of pollutants from the MS4 associated with the Project to the MEP.

4. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Stipulation.

### **Section III: Stipulations**

5. The Parties incorporate Paragraphs 1 through 4 by this reference as if set forth fully herein, stipulate to the entry of this Stipulation as set forth below, and recommend that the San Diego Water Board issue the Order to effectuate the settlement:

6. This Stipulation is entered into by Parties to resolve by consent and without further administrative proceedings those certain alleged violations of the MS4 Permit set forth in the Complaint.

7. The Discharger hereby agrees to pay the administrative civil liability totaling \$234,291 as set forth in Paragraph 2 of Section II herein.

8. The Discharger further agrees to have its staff meet and confer with San Diego Water Board staff concerning the review and possible enhancement of BMPs installed at the Project. Such meeting occurred on April 5, 2010.

9. The Discharger further agrees to hold, by December 31, 2010 or three months following the adoption of a New MS4 permit (whichever shall be later), a workshop on the SUSMP requirements set forth in the New MS4 Permit. Such workshop shall be open to both staff of the Discharger and to private development personnel. The training will focus on issues such as SUSMP/WQMP implementation, best management practices, hydromodification, and other related requirements of the New MS4 Permit.

10. The Discharger understands that performance of the payment and other tasks in accordance with this Stipulation is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

11. Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

12. In consideration of the Discharger's compliance with the Stipulation and Order, the Prosecution Team and the San Diego Water Board hereby covenant not to bring any administrative or judicial enforcement action against the Discharger, whether under California or federal law, arising from or related to the facts giving rise to the violations

alleged in the Complaint, including without limitation, actions concerning the Discharger's alleged failure to comply with the MS4 Permit with respect to the Project; provided, however, that the Prosecution Team and the San Diego Water Board do not waive any right to bring an appropriate judicial or administrative action relating to the Discharger's alleged failure to implement a SUSMP program where the facts giving rise to such an action occurred subsequent to December 10, 2009.

13. In settling this matter, the Discharger does not admit to any of the findings of the Complaint, or that it has been or is in violation of the California Water Code ("CWC") or any other federal, state, or local law or ordinance. The Discharger agrees, however, that in the event of any future enforcement actions by the San Diego Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

14. The Discharger understands that this Stipulation must be noticed for a public review period prior to consideration by the San Diego Water Board. In the event objections are raised during the public comment period, the San Diego Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Stipulation or Order as necessary or advisable under the circumstances. In no event, however, shall the Discharger be required to revise the terms of Paragraphs 2, 7, 8, 9 or 12 of this Stipulation, or otherwise increase the amounts paid under this Stipulation.

15. The Parties agree that the procedure contemplated for adopting the Order by the San Diego Water Board and review of this Stipulation and Order by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances. In no event, however, shall the Discharger be required to revise the terms of Paragraphs 2, 7, 8, 9 or 12 of this Stipulation, or otherwise increase the amounts paid under this Stipulation.

16. This Stipulation shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

17. This Stipulation shall not be modified by any of the Parties 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 and the County of Riverside Board of Supervisors.

18. This Stipulation may be executed in counterparts and by facsimile signature.

19. In the event that the Order does not take effect because it is not approved by the San Diego Water Board or is vacated in whole or in part by the State Board or a court,

the Parties acknowledge that they will proceed to a contested evidentiary hearing before the San Diego Water Board to determine whether to assess administrative civil liabilities for the violations alleged in the Complaint, unless the Parties otherwise agree. In that event, the Parties agree that all oral and written statements and agreements made during the course of settlement discussions both before and after the filing of the Complaint, including this Stipulation and the terms thereof, will not be admissible as evidence in the hearing and further that any monies paid hereunder by the Discharger shall be refunded to the Discharger within 30 days of the date that the Order is vacated or shortly thereafter in a timely fashion. It also is understood and agreed that in the event that the Order does not take effect, in whole or in part, this Stipulation, and any covenants or requirements contained therein, shall be of no further force or effect. The Parties further agree to waive the following objections:

- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors based 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 the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

20. The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of the Order.

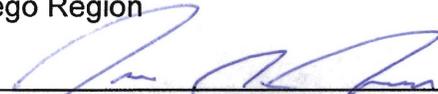
21. Provided that the San Diego Water Board adopts the Order in the form attached to this Stipulation, the Discharger hereby waives its right to petition the San Diego Water Board's adoption of the Order for review by the State Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. Such waiver shall not extend to bar the Discharger's right to appear before the San Diego Water Board, the State Board or any court if such body considers the terms of the Stipulation or the Order.

22. The Assistant Executive Officer warrants by signing below that he has the authority to execute the Stipulation on behalf of the Prosecution Team. The person signing on behalf of the Discharger warrants by signing below that he has the legal authority to bind the Discharger to the terms of the Order. The Parties hereto have caused this Stipulation to be executed by their respective officers on the dates set forth below.

23. This Stipulation is effective and binding on the Parties upon the execution of this Order by the San Diego Water Board.

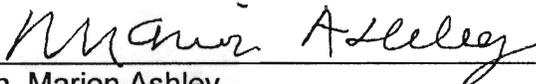
**IT IS SO STIPULATED.**

California Regional Water Quality Control Board Prosecution Team  
San Diego Region

By:   
James G. Smith, Assistant Executive Officer

Date: 27 Apr 10

County of Riverside

By:   
Hon. Marion Ashley  
Chair, Board of Supervisors

Date: 4-27-2010

ATTEST:  
KECIA HARPER-IHEM, Clerk  
By:   
DEPUTY