

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

**ENFORCEMENT SUMMARY REPORT
MARCH 13, 2019**

ITEM 5

SUBJECT

Tentative Order: Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order, San Diego County Sanitation District (District) Sanitary Sewer Overflow to Los Coches Creek, San Diego River. (Tentative Order No. R9-2019-0020). (*Christopher Means*)

STAFF RECOMMENDATION

The Prosecution Team recommends adoption of Tentative Order No. R9-2019-0020 and asserts that the proposed resolution of the alleged violations is fair, reasonable, fulfills the San Diego Water Board's enforcement objectives, is in the best interest of the public, and that no further action is warranted concerning the alleged violations.

KEY ISSUES

Adoption of the tentative Settlement Order (tentative Order) will approve the terms of the settlement agreement to resolve alleged violations as described in the Agreement. Should the San Diego Water Board decide not to adopt the tentative Settlement Order, the Prosecution Team may either take no action, re-open settlement discussions with the District, or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board to determine if the Board will assess administrative civil liabilities against the District for the alleged violations.

PRACTICAL VISION

The San Diego Water Board's regional enforcement priorities focus on violations that affect one or more key beneficial use categories in a key area for that use. This enforcement action was initiated because the discharge of untreated sewage to Los Coches Creek, the San Diego River, and possibly the Pacific Ocean can negatively impact habitats and ecosystems and recreation in multiple key areas and is therefore a priority through the lens of the Practical Vision. Los Coches Creek and the San Diego River are key areas for habitats and ecosystems; with several areas of special importance located downstream including Lakeside River Park Conservancy lands, Mission Trails Regional Park, and the San Diego River Ecological Reserve. The Pacific Ocean at Ocean Beach Dog Beach is also an area of special importance for recreation. Untreated sewage contains high levels of pathogenic organisms, suspended solids, toxic pollutants, nutrients, oxygen-demanding organic compounds, oil and grease and other pollutants. The high degree of toxicity in untreated sewage poses a direct threat to human and ecological receptors.

DISCUSSION

From February 28, 2017 to March 17, 2017 (18 days of discharge) a District owned and operated sewer main discharged 762,739 gallons of untreated raw sewage into Los Coches Creek, a water of the United States, in the vicinity of Sierra Alta Way in El Cajon CA. The sewer main was damaged as result of stream bank erosion that occurred during a 25-year, 24-hour storm event near the end of February 2017. The discharge was discovered on March 17, 2017 during routine maintenance inspections by District staff, and within hours, District staff set up a bypass of the damaged line, ceasing the discharge.

The following day the District hired an outside contractor to repair the line. The County of San Diego applied for and received an emergency Clean Water Act Section 404 permit under Regional General Permit 63 (RGP 63) to conduct repair work in the creek. The repair activities resulted in permanent impacts to 0.05 acre (234 linear feet) of waters of the United States within the channel of Los Coches Creek through the discharge of riprap to protect the repaired line, which remains in the creek, and temporary impacts to 0.1 acre (60 linear feet).

In September 2018 the Prosecution Team and District entered into settlement negotiations to resolve the alleged violations resulting from the sewage discharge. The Parties came to a tentative agreement described in the tentative Order.

Under terms of the settlement, the District agrees to an administrative civil liability totaling \$662,414, of which \$331,207 will be paid to the State Water Pollution Cleanup and Abatement Account, and the remaining \$331,207 will be used for the implementation of an Enhanced Compliance Action (ECA) as described in Attachment C of the tentative Order.

The ECA includes structural lining of approximately 7,505 feet of the Los Coches Sanitary Sewer, thus enhancing protection of the sewer during wet weather events and reducing a potential source of pollution to the watershed. In addition, the District will conduct a pilot study of sanitary sewer exfiltration rates before and after lining, to quantify rates of exfiltration and determine the effectiveness of structural lining on reducing exfiltration. The total project cost is approximately \$2,798,000. Upon successful completion of the ECA, \$331,207 of the total liability will be suspended.

Additionally, the District will mitigate for the impacts to Los Coches Creek, resulting from the repair work, in accordance with the *Sierra Alta Way Wastewater Emergency Pipe Replacement Project Conceptual Mitigation Plan, August 2018* (Attachment D of the tentative Order). Mitigation will consist of the onsite re-establishment of approximately 702 linear feet (0.15 acre) of southern willow scrub and coast live oak riparian woodland.

A summary of the penalty calculation is provided in Attachment A of the tentative Order. The total liability was determined by applying the methodology in the 2010 State Board Water Quality Enforcement Policy.¹ The final liability amount includes the Prosecution Team's application of the Policy's provision for "Other Factors" that warrant a reduction in the total liability amount. These include efforts by the District that were not directly related to the discharge violation. A reduction in the "Other Factors" multiplier from a neutral score of 1.0 to 0.8 has been given to the District for the voluntary development and implementation of a Stream Crossing Vulnerability Assessment Program (Supporting Document 2). This study will inform subsequent assessments of any high-risk sewers that may be identified through the District's system-wide inspection and maintenance programs.

The 30-day written comment period is scheduled to close on March 3, 2019. To date, no comments have been received. Any comments timely received will be included in the second agenda mailout.

LEGAL CONCERNS

None.

PUBLIC NOTICE

Notice of the San Diego Water Board's planned consideration of the tentative Order was provided with the Agenda notice. The settlement agreement was publicly noticed on the San Diego Water Board website with a 30-day comment period and was shared via the Lyris "Penalty Assessment Notice" to email subscribers. The initial public notice provided a copy of the settlement agreement signed only by the Assistant Executive Officer on February 1, 2019. The agenda package contains a copy that was countersigned by the District on February 1, 2019. No other changes were made to the settlement agreement.

SUPPORTING DOCUMENTS

1. Tentative Settlement Order No. R9-2019-0020 (with Attachments)
2. February 2018 Vulnerability Assessment

¹ The 2010 Enforcement Policy is available at:
https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf