

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

**ENFORCEMENT SUMMARY REPORT
PREPARED BY THE PROSECUTION TEAM AND
REVIEWED BY THE CITY OF SAN DIEGO
JUNE 14, 2023**

ITEMS 5 & 6

SUBJECT

Item 5. Tentative Cease and Desist Order: Consideration of Adoption of Stipulated Cease and Desist Order No. R9-2023-0016, City of San Diego Sanitary Sewer System. This item will be heard concurrently with Item 6. (Tentative Order No. R9-2023-0016). (Christina Arias)

Item 6. Tentative Administrative Civil Liability Order: Consideration of Adoption of Stipulated Administrative Civil Liability Order No. R9-2023-0017 with Supplemental Environmental Projects, related to a City of San Diego April 2020 Sanitary Sewer Overflow. This item will be heard concurrently with Item 5. (Tentative Order No. R9-2023-0017). (Christina Arias)

THE PARTIES' RECOMMENDATION

The Prosecution Team and the City (together, the Parties) recommend adoption of Tentative Order Nos. R9-2023-0016 (**Supporting Document 1**) and R9-2023-0017 (**Supporting Document 3**).

KEY ISSUE

Cease and Desist Order No. R9-2023-0016 (Tentative Stipulated CDO) requires the City of San Diego (City) to complete corrective actions on portions of its sanitary sewer system and improve its sanitary sewer overflow (SSO) response protocol. Tentative Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2023-0017 (Tentative Stipulated ACLO) consists of a settlement agreement between the City and the San Diego Water Board's Prosecution Team (Prosecution Team) to resolve liability associated with an 11.23-million-gallon SSO into the Sweetwater River and San Diego Bay that occurred in April 2020.

The Parties have agreed to stipulation for entry of both the Tentative Stipulated CDO and the Tentative Stipulated ACLO. If the Tentative Stipulated CDO is adopted, the City will complete corrective actions at Pump Station 1 by December 31, 2028, and make changes to its Sewer System Management Plan during its update in 2024. If the Tentative Stipulated ACLO is adopted, the City will also pay an administrative civil liability of \$4.6 million dollars, \$3.7 million dollars of which will fund two supplemental environmental projects (SEPs) in and near the lower San Diego Bay.

Because the Tentative Stipulated ACLO is contingent upon the adoption of the Tentative Stipulated CDO, the Tentative Stipulated CDO must be adopted prior to consideration of the Tentative Stipulated ACLO. If the Tentative Stipulated CDO is not adopted, the Parties intend to withdraw the Tentative Stipulated ACLO from consideration.

PRACTICAL VISION

The San Diego Water Board's regional enforcement priorities, as discussed at the February 2023 Board meeting, align with the Practical Vision by focusing on violations that affect one or more key beneficial use categories in a key area for that use, and considering additional factors including violations occurring in disadvantaged communities. This enforcement action is in response to an SSO of 11.23 million gallons into the Sweetwater River and San Diego Bay. The areas affected include a wildlife refuge and areas of shellfish harvesting and recreational use. Both the area where the violation occurred, and the areas of the proposed SEPs, are surrounded by severely disadvantaged communities.

DISCUSSION

On April 10-11, 2020, after rainfall totaling almost 6 inches over 7 days, the City's sanitary sewer system failed, resulting in an SSO of 11.23 million gallons directly into the Sweetwater River. The spill site is located approximately one-quarter mile upstream of where the Sweetwater River joins lower San Diego Bay. City staff were unaware of the SSO as it was occurring due to failures from the level sensor and alarm system at the spill site. According to a report commissioned by the City, several factors contributed to the SSO: 1) higher than normal rainfall spanning several days, 2) reduction in capacity of the underground siphon traversing the Sweetwater River due to a blockage in one of four siphon barrels, 3) debris buildup in all four siphon barrels, and 4) inoperability of one or more pumps at Pump Station 1.

The Parties initiated confidential settlement negotiations in June 2021 and agreed to a settlement in concept on May 24, 2022. The Prosecution Team presented the City with a proposed penalty based on the unique factors of the case using the penalty calculation methodology of the Water Quality Enforcement Policy ([Enforcement Policy](#)) (Attachment A to Tentative Stipulated ACLO No. R9-2023-0017; **Supporting Document 4**). The Prosecution Team agreed to reduce the penalty under Step 8, *Other Factors As Justice May Require* to the equivalent of a cleanup and cooperation score of 0.75 (the lowest score allowed by the Enforcement Policy) in exchange for the City's commitment to make needed improvements to Pump Station 1 according to the time schedule in the Tentative Stipulated CDO.

The Tentative Stipulated CDO commits the City to complete improvements to Pump Station 1 by December 31, 2028. The City will also revise its Sewer System Management Plan during its 2024 update to include new SSO response protocols, specifically biological assessments, following suspected Category 1 SSOs. The City has already begun, and in some cases completed, several corrective measures (Table 1 in **Supporting Document 1**).

The total liability associated with the April 2020 SSO is \$4,609,724. If adopted, the City will pay \$907,901 into the State Water Pollution Cleanup and Abatement Account and the remaining \$3,701,823 will fund two SEPs, both of which are in and benefit disadvantaged communities.

Attachment B to Tentative Stipulated ACLO No. R9-2023-0017 (**Supporting Document 5**) describes the "Ocean Connectors" SEP (\$1,081,823), which includes restoration and enhancement of wetland and riparian habitat. The sites are directly adjacent to Paradise Creek and areas of San Diego Bay, including Sweetwater Marsh Units 1 and 2, the South

San Diego Bay Unit of the San Diego Bay National Wildlife Refuge, the Sweetwater Channel, and the Chula Vista Wildlife Reserve. The SEP also includes community outreach, monthly wildlife kayaking tours, and education programs for schoolchildren in the National City School District. This SEP will benefit disadvantaged communities within the city limits of National City, Chula Vista, and Imperial Beach. The “Ocean Connectors” SEP is strongly supported in the San Diego Water Board’s pre-approved list of environmental project concepts described in Resolution No. [R9-2017-0014](#).

Attachment C to Tentative Stipulated ACLO No. R9-2023-0017 (**Supporting Document 6**) describes the “Living Shorelines” SEP (\$2,600,000), which consists of removal of riprap and installation of biologically enhanced interlocking tidepool concrete units at the mouth of the Sweetwater River as it joins San Diego Bay. The project footprint replaces riprap at: 1) Pepper Park, a community park with playground equipment and picnic tables, 2) the adjacent marina, and 3) bordering the San Diego Bay National Wildlife Reserve. Although the SEP Policy requires that all SEPs arising out of settlements be completed within 36 months of the order’s adoption, the Director of Office of Enforcement granted the Prosecution Team’s request to allow the “Living Shorelines” SEP to be completed over 48 months because the SEP has an exceptional environmental benefit. Namely, it furthers the Water Boards’ mission of addressing climate change because it will serve as a pilot for ecologically favorable alternatives to improve coastal resiliency which, if successful, can be employed in other areas of San Diego Bay. This SEP will create and enhance nursery and refuge habitat to increase fish and shellfish productivity, which may provide additional opportunities for subsistence fishing within the lower San Diego Bay.

PUBLIC NOTICE

San Diego Water Board staff posted the Tentative Orders and all attachments, and a Notice of Public Hearing and Opportunity to Comment (**Supporting Document 7**) for a 30-day review and comment period on the “Tentative Orders” page of the San Diego Water Board’s website. Staff also emailed a message to the “Penalty Assessment Notice” email list subscribers on March 23, 2023, to announce the review and comment period. No comments were received on the Tentative Orders.

The agenda notice for today’s meeting was posted on the San Diego Water Board’s website and sent to subscribers to the email list for Board meetings. This satisfies the Bagley-Keene Open Meeting Act requirements to publish the meeting notice and agenda.

SUPPORTING DOCUMENTS

1. Tentative Cease and Desist Order No. R9-2023-0016
2. Stipulation for Entry of Cease and Desist Order No. R9-2023-0016
3. Tentative Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2023-0017
4. Attachment A to Order No. R9-2023-0017 (Penalty Calculation Methodology)
5. Attachment B to Order No. R9-2023-0017 (Ocean Connectors SEP)
6. Attachment C to Order No. R9-2023-0017 (Living Shorelines SEP)
7. Notice of Public Hearing and Opportunity to Comment