

## San Diego Regional Water Quality Control Board

**February 20, 2020**

Mr. Glenn Pruim  
General Manager  
Vallecitos Water District  
201 Vallecitos De Oro  
San Marcos, CA 92069

**CERTIFIED MAIL**  
**7015 0640 0006 1569 9753**

**In reply refer to:**  
CW-631590:cmeans

Dear Mr. Pruim:

**SUBJECT: OFFER R9-2020-0009 TO SETTLE ADMINISTRATIVE CIVIL LIABILITY FOR A VIOLATION RESULTING FROM FEBRUARY 28, 2017, SANITARY SEWER OVERFLOW FROM THE VALLECITOS WATER DISTRICT MEADOWLARK COLLECTION SYSTEM**

This letter (hereafter, "Settlement Offer") contains an offer from the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Prosecution Team to settle potential claims for administrative civil liability arising from a discharge of 96,940 gallons of untreated sewage to San Marcos Creek and Batiquitos Lagoon, both waters of the United States and waters of the State. As the owner and operator of the Meadowlark Collection System, Vallecitos Water District (District) is responsible for complying with all provisions of the Clean Water Act (33 U.S.C. 1251 et seq.), Porter-Cologne Water Quality Control Act (Cal. Water Code, Division 7), and relevant state and regional waste discharge requirements and prohibitions. The unauthorized discharge of untreated sewage to San Marcos Creek and Batiquitos Lagoon on February 28, 2017, is in violation of:

1. **Section 301 of the Federal Clean Water Act (33 U.S.C. § 1311) and 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 unauthorized discharge was not in compliance with the requirements in the District's NPDES permit.

2. **Prohibition C.1 of Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*.** Prohibition C.1 of Order No. 2006-0003-DWQ prohibits any sanitary sewer overflow (SSO) that results in a discharge of untreated or partially treated wastewater to waters of the United States. The District's SSO resulted in the discharge of approximately 96,940 gallons of untreated sewage to San Marcos Creek and Batiquitos Lagoon, waters of the United States.
3. **Prohibition C.2 of Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*.** Prohibition C.2 of Order No. 2006-0003-DWQ prohibits any SSO discharge of untreated or partially treated wastewater that creates a nuisance as defined in Water Code section 13050(m). SSO discharges pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. Because of the characteristics of untreated sewage, the District's SSO posed a significant threat to several different types of beneficial uses of San Marcos Creek and Batiquitos Lagoon, including habitat and ecosystem related beneficial uses and recreational beneficial uses. The threat of these unreasonable impairments presented an obstruction to the public's free use of and enjoyment of the affected waters and thereby caused or created nuisance conditions in San Marcos Creek and downstream waters.
4. **Prohibition B.1 of Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.** Prohibition B.1 of Order No. R9-2007-0005 prohibits the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant. The District's SSO was from a location upstream of a wastewater treatment plant.

These four violations are addressed as one for the purpose of proposing this Settlement Offer. The administrative civil liability proposed consolidates these four violations into one.

**This Settlement Offer provides the District with an opportunity to resolve the alleged violation through payment of sixty-six thousand three hundred thirty-five dollars (\$66,335). Please read this letter carefully and respond no later than March 23, 2020.**

Alleged Violation

The San Diego Water Board Prosecution Team (Prosecution Team) alleges the following violation, as summarized below, and further described in Attachments 1 and 2 (*Acceptance of Settlement Offer and Waiver of Right to Hearing Order No. R9-2020-0009* and *Penalty Calculation Summary*, respectively).

**Discharge of untreated sewage to surface waters:** On February 28, 2017, during a heavy rain event (3.24 inches in a seven-hour period), the increased flow caused a 16-inch Techite bypass sewer pipeline to become pressurized, resulting in damage to the pipe. A total of 435,190 gallons of untreated sewage was discharged to land, with a portion reaching San Marcos Creek as a result of the pipe break. District staff responded quickly to the spill and were able to recover 338,250 gallons of sewage by using a spill response trailer, with two pumps. District staff created an impoundment and returned a majority of the sewage to the sewage system. A total of 96,940 gallons of sewage reached surface waters in San Marcos Creek and ultimately Batiquitos Lagoon. The District determined that the cause of the SSO was that the 16-inch Techite line was incorrectly installed in 1968. The pipeline was placed on solid bedrock, and a gravel bed was not installed per standards to protect the pipe from damage (Supporting Document 4). This discharge was investigated concurrent with two subsequent lower volume SSOs in the same general area, as detailed in Notice of Violation and Investigative Order R9-2019-0110 (Supporting Document 3).

### **Responsible Parties**

Vallecitos Water District is the owner and operator of the Meadowlark Collection System (Meadowlark CS), a municipal sewage collection system serving a population of approximately 104,000 residents. The Meadowlark CS is the collection system that includes the 16-inch Techite line that caused the discharge of sewage. As a result, this Settlement Offer names the District as the Responsible Party.

### **Statutory Liability**

Pursuant to Water Code section 13385, the District is liable for administrative civil liability of up to \$10,000 per violation for each day in which the violation occurs, and for up to \$10 per gallon discharged in excess of the first 1,000 gallons not cleaned up. The statutory minimum civil liability is the economic benefit resulting from the violation. The 2010 State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy)<sup>1</sup> states that the minimum penalty is to be the economic benefit plus 10 percent (10%). For the discharge violation, the maximum potential liability is \$969,400 and the statutory minimum liability is \$16,925 (Attachment 2).

---

<sup>1</sup> The 2010 Water Quality Enforcement Policy is available on-line at: [https://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](https://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf). The 2010 policy is being used instead of the updated 2017 policy in accordance with guidance provided by the Office of Enforcement in a September 12, 2017, memo (*Application of 2010 and 2017 Enforcement Policies*) which determined that "Generally, the Water Boards should use the version of the Enforcement Policy in effect on the date of the violation at issue".

## **Settlement Offer**

**The Prosecution Team proposes to resolve the alleged violation with this Settlement Offer of \$66,335.** This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13327 using the penalty methodology set forth in the 2010 Enforcement Policy. The enclosed “Penalty Calculation Summary” (Attachment 2) describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation is fair and reasonable, fulfills the San Diego Water Board’s enforcement objectives, and is in the best interest of the public.

In the interest of settlement and to avoid the inherent risk and uncertainty of litigation, the Prosecution Team is willing to reduce the proposed administrative civil liability by 10% for this Settlement Offer.

Should the District choose *not* to accept this Settlement Offer, please be advised that the Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, and the right to refer the matter to the Office of the California Attorney General. The Prosecution Team also reserves the right to conduct additional investigations, including issuance of investigation orders and/or subpoenas to determine whether to allege additional violations. Any additional violations subjecting the District to liability may be included in a formal enforcement action. The District can avoid the risks inherent in a formal enforcement action and settle the alleged violation by accepting this Settlement Offer.

This Settlement Offer does not address or resolve liability for any violation that is not specifically identified in Attachment 2. The Prosecution Team reserves the right to take any enforcement action authorized by law.

## **Options for Responding to the Settlement Offer**

### **Option A: Accept the Offer**

If the District chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing, Order No. R9-2020-0009 (Acceptance and Waiver)* (Attachment 1) shall be completed and submitted no later than **March 23, 2020**, to the following address:

California Regional Water Quality Control Board, San Diego Region  
2375 Northside Drive, Suite 100  
San Diego, CA 92108  
Attention: CW-631590:cmeans  
Email: [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov)

Important! Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the San Diego Water Board's Executive Officer to formally endorse the *Acceptance and Waiver* as an Order of the San Diego Water Board. Payment is due within 30 days from when the Settlement Offer is signed by the Executive Officer.

If, however, comments are received in opposition to this settlement or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the District will be notified, and its waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. An administrative civil liability complaint may be issued, and the matter may be set for an evidentiary hearing before the Board.

**Option B: Contest the Alleged Violation**

If the District wishes to contest the violation alleged in this Settlement Offer, the Prosecution Team will review any written response identifying the basis for the challenge, including any evidence to support its claims. The District's response must be received by the San Diego Water Board no later than **March 23, 2020**. The Prosecution Team will evaluate the District's basis for a challenge and may seek clarifying information or schedule an in-person meeting. The Prosecution Team will inform the District as to whether it will consider reducing the proposed settlement amount, or whether the original settlement amount remains recommended. The District will be provided a final opportunity to accept the revised/original settlement amount before proceeding to formal enforcement.

**Option C: Reject Offer**

If the District chooses to reject this Settlement Offer or does not timely respond to this offer, the Prosecution Team will initiate a formal enforcement action with regard to the alleged violation, and others, if any, identified through additional investigation. The District will receive notice of any deadlines associated with that action. As previously stated, in such an action, the liability amount sought or imposed may exceed the liability amount set forth in this Settlement Offer.

If you have any questions about this settlement offer, please contact Christopher Means at (619) 521-3365 or at [christopher.means@waterboards.ca.gov](mailto:christopher.means@waterboards.ca.gov).

Respectfully,



KELLY DORSEY  
Acting Assistant Executive Officer

KD:jh:cmc:cjm

cc: (via email)

Chiara Clemente, Enforcement Coordinator, San Diego Water Board  
[chiara.clemente@waterboards.ca.gov](mailto:chiara.clemente@waterboards.ca.gov)

David Barker, Chief, Surface Water Protection Branch, San Diego Water Board  
[david.barker@waterboards.ca.gov](mailto:david.barker@waterboards.ca.gov)

Keith Yaeger, Source Control Regulation Unit, San Diego Water Board  
[keith.yaeger@waterboards.ca.gov](mailto:keith.yaeger@waterboards.ca.gov)

Trisha Woolslayer, Risk Management Supervisor, Vallecitos Water District  
[twoolslayer@vwd.org](mailto:twoolslayer@vwd.org)

Attachments:

- 1 - Acceptance of Settlement Offer and Waiver of Right to Hearing, Order No. R9-2020-0009
- 2 - Penalty Calculation Summary

Additional Supporting Documents: (available upon request)

- 3 - Notice of Violation and Investigative Order R9-2019-0110. (ECM DH 4068848)
- 4 - 02/28/17 SSO Report. (ECM DH 4739851)
- 5 - First Response to Investigative Order R9-2019-0110. (ECM DH 4455277)
- 6 - Second Response to Investigative Order R9-2019-0110. (ECM DH 4739847)
- 7 - Staff Costs Worksheet (ECM DH 4745057)
- 8- Economic Benefit Calculations (ECM DH 4846816)

For Internal Use Only:

Order No.	R9-2020-0009
Place ID	CW-631590

**ATTACHMENT 1**

**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING**

**ORDER R9-2020-0009**

**FOR  
VALLECITOS WATER DISTRICT  
MEADOWLARK COLLECTION SYSTEM**

**FEBRUARY 28, 2017 SANITARY SEWER OVERFLOW**

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing, Order No. R9-2020-0009 (Acceptance and Waiver)* to the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), **Vallecitos Water District** (hereinafter District) hereby accepts the Settlement Offer described in the letter dated February 20, 2020 and titled *Offer R9-2020-0009 to Settle Administrative Civil Liability for a Violation Resulting from February 28, 2017 Sanitary Sewer Overflow from the Vallecitos Water District Meadowlark Collection System*. The District also hereby waives the right to a hearing before the San Diego Water Board to dispute the alleged violation described in the Settlement Offer and its enclosures.

The District agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the San Diego Water Board to assert jurisdiction over the alleged violations. The District agrees to perform the following:

- Pay an administrative civil liability in the sum of **sixty-six thousand three hundred thirty-five dollars (\$66,335)** to the "State Water Resources Control Board Cleanup and Abatement Fund." This payment shall be deemed payment in full of the civil liability pursuant to Water Code section 13385 addressed for the violation described in the Settlement Offer and its enclosures.
- Fully comply with the requirements of Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* and Order R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.

Upon execution by the District, the *Acceptance and Waiver* shall be returned to the following address:

California Regional Water Quality Control Board, San Diego Region  
2375 Northside Drive, Suite 100  
San Diego, CA 92108  
Attention: CW-631590:cmeans  
Email: [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov)

The District understands that prior to the San Diego Water Board or its delegate formally endorsing it, this *Acceptance and Waiver* will be published for at least 30 days for a public comment period.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the San Diego Water Board's Executive Officer for signature and issuance on behalf of the San Diego Water Board.

The District understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the District will be notified and its waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation may be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The District further understands that once the *Acceptance and Waiver* is executed by the San Diego Water Board, or its delegate, payment of the full administrative civil liability is required by the deadline set forth below is a condition of this *Acceptance and Waiver*. In accordance with Water Code section 13385(n), funds collected for the alleged violations shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the liability shall be paid by a cashier's or certified check for \$66,335 made out to the "State Water Pollution Cleanup and Abatement Account." Please write the Settlement Order Number (R9-2020-0009) on the check.

Payment must be submitted to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888, no later than thirty (30) calendar days after the San Diego Water Board, or its delegate, has executed this *Acceptance and Waiver*. A redacted copy of the check must also be received by the San Diego Water Board at 2375 Northside Drive, Suite 100, San Diego, CA 92108 within thirty (30) days of approval via U.S: Postal Service or e-mail to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov), attention CW-631590:cmeans.

I hereby affirm that I am duly authorized to act on behalf of and to bind the District in the making and giving of this **Acceptance of Settlement Offer and Waiver of Right to a Hearing Order R9-2020-0009**.

---

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IT IS SO ORDERED, pursuant to Water Code section 13385.

By: \_\_\_\_\_  
David W. Gibson, Executive Officer, San Diego Water Board

Date: \_\_\_\_\_

## Attachment 2- Penalty Calculation Summary

### **Alleged Violation: Unauthorized Discharge of Untreated Sewage to San Marcos Creek and Batiquitos Lagoon**

On February 28, 2017, during a heavy rain event (3.24 inches in a seven-hour period), the increased flow caused a 16-inch Techite bypass sewer pipeline to become pressurized, resulting in damage to the pipe. A total of 435,190 gallons of untreated sewage was discharged to land and eventually San Marcos Creek as a result of the pipe break. District staff responded quickly to the spill and were able to recover 338,250 gallons of sewage by using a spill response trailer, with twin pumps. District staff created an impoundment and returned a majority of the sewage to the sewage system for treatment. A total of 96,940 gallons of sewage reached surface waters, including San Marcos Creek and ultimately Batiquitos Lagoon. The District determined that the cause of the sanitary sewer overflow (SSO) was that the 16-inch Techite line was incorrectly installed in 1968. The pipeline was placed on solid bedrock, and a gravel bed was not installed per standards to protect the pipe from damage. Subsequent to shutting down the damaged pipe, the District implemented a capital improvement project to repair the pipeline at a cost of \$180,000. The project was completed in October 2018 (Supporting Document 6).

This discharge is in violation of:

1. **Section 301 of the Federal Clean Water Act (33 U.S.C. § 1311) and 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 unauthorized discharge was not in compliance with the District's NPDES requirements.
2. **Prohibition C.1 of Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.** Prohibition C.1 of Order No. 2006-0003-DWQ prohibits any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States. The District's SSO resulted in the discharge of approximately 96,940 gallons of untreated sewage to San Marcos Creek and Batiquitos Lagoon, waters of the United States.
3. **Prohibition C.2 of Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.** Prohibition C.2 of Order No. 2006-0003-DWQ prohibits any SSO discharge of untreated or partially treated wastewater that creates a nuisance as defined in Water Code section 13050(m). SSO discharges pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. Because of the characteristics of untreated sewage, the District's SSO posed a significant threat to several different types of beneficial uses of San Marcos Creek and Batiquitos Lagoon, including habitat and ecosystem related beneficial uses and recreational

beneficial uses. The threat of these unreasonable impairments presented an obstruction to the public's free use of and enjoyment of the affected waters and thereby caused or created nuisance conditions in San Marcos Creek and downstream waters.

4. **Prohibition B.1 of Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.** Prohibition B.1 of Order No. R9-2007-0005 prohibits the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant. The District's SSO was from a location upstream of a wastewater treatment plant.

In accordance with the 2010 Enforcement Policy, certain situations that involve multiple violations can be treated as a single violation per day. For purposes of calculating liability for the above SSO, which violated multiple provisions of the Clean Water Act, Porter-Cologne Water Quality Control Act, and relevant State and regional Waste Discharge Requirements, the Prosecution Team assessed the liability for the SSO as a single violation because the violations are all based on one discharge event.

## PENALTY CALCULATION METHODOLOGY

### STEP 1 – Actual or Potential for Harm for Discharge Violations

FACTOR	VALUE	DISCUSSION
The Potential for Harm to Beneficial Uses	4	<p>Factor 1 was scored a <b>4 (Above Moderate)</b> which is defined by the 2010 Enforcement Policy (Policy) as: “<i>more than moderate threat to beneficial uses (i.e., impacts are observed or likely substantial, temporary restrictions on beneficial uses (e.g., less than 5 days), and human or ecological health concerns)</i>”.</p> <p>The Basin Plan designates the following Beneficial Uses (BUs) for San Marcos Creek: Potential Municipal and Domestic Supply (<b>MUN</b>), Agricultural Supply (<b>AGR</b>), Contact Water Recreation (<b>REC-1</b>), Non-Contact Water Recreation (<b>REC-2</b>), Warm Freshwater Habitat (<b>WARM</b>) and Wildlife Habitat (<b>WILD</b>).</p> <p>The Basin Plan designates the following BUs for Batiquitos Lagoon: Contact Water Recreation (<b>REC-1</b>), Non-Contact Water Recreation (<b>REC-2</b>), Preservation of Biological Habitats of Special Significance (<b>BIOL</b>), Estuarine Habitat (<b>EST</b>), Wildlife Habitat (<b>WILD</b>), Rare, Threatened, or Endangered Species (<b>RARE</b>), Migration of Aquatic Organisms (<b>MIGR</b>), Marine Habitat (<b>MAR</b>), Spawning, Reproduction, and/or Early Development (<b>SPWN</b>).</p> <p>In 2017, the San Diego Water Board adopted Resolution No. R9-2017-0030 supporting use of the key beneficial uses / key areas</p>

FACTOR	VALUE	DISCUSSION
		<p>concept to help the Board focus on what is most important. The purpose of the resolution is to help the Board and its staff make decisions about how to prioritize work and allocate and use resources consistent with the Practical Vision ("Healthy Waters, Healthy People") endorsed by the Board in November 2013.</p> <p>San Marcos Creek and Batiquitos Lagoon are key areas for supporting beneficial uses related to habitats and ecosystems. Lagoons and stream systems have been given the highest rank as key waterbodies for supporting Habitats and Ecosystems. The receiving waters also support the key beneficial uses of Recreation and Fish and Shellfish Consumption.</p> <p>Batiquitos Lagoon is a 544-acre ecological reserve. The property was designated as an ecological reserve by the Fish and Game Commission in 1983. Habitat types include open water/subtidal, intertidal mudflats, southern coastal salt marsh, coastal brackish marsh, nesting areas, transitional zones, and southern arroyo willow riparian forest. Dominant flora includes eelgrass, pickleweed, alkali heath, and white sage. Dominant fauna includes striped mullet, great egret, horn snail, raccoon, woodrat, skunk, and ground squirrel. The Lagoon is home to the U.S. Federally listed endangered species, Least Tern (<i>Sternula antillarum browni</i>), and the State of California listed Belding's Savannah Sparrow (<i>Passerculus sandwichensis beldingi</i>), as well as threatened species the Western Snowy Plover (<i>Charadrius nivosus nivosus</i>) and the California Gnatcatcher (<i>Polioptila californica</i>).</p> <p>A discharge of 96,940 gallons of raw sewage could reasonably be expected to negatively impact beneficial uses of waters including naturally occurring biota within San Marcos Creek and Batiquitos Lagoon. SSOs contain pollutants that have the potential to impact WARM, WILD, BIOL, EST, RARE, MARINE, MIGR and SPAWN BUs. SSOs may cause a public nuisance when sewage is discharged into surface waters used for fishing or recreation, potentially negatively impacting REC-1 and REC-2 BUs.</p>
The Degree of Toxicity of the Discharge	3	<p>Factor 2 was scored a <b>3 (Above Moderate)</b>. Above Moderate is defined in the Policy as:</p> <p><i>"Discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and /or there is substantial concern regarding receptor protection)."</i></p>

FACTOR	VALUE	DISCUSSION
		Untreated 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 receiving waters. The high degree of toxicity in untreated sewage poses a direct threat to human and ecological receptors which supports a score of <b>3</b> .
Susceptibility to Cleanup or Abatement	0	A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. Of the 435,190 gallons of sewage spilled, the District was able to recover 338,250 gallons, which is greater than 50% of the total discharge.

### Final Score: Potential for Harm

VIOLATION	VALUE	DISCUSSION
Alleged Violation No. 1	7	The potential for harm score is calculated as follows: (the potential for harm to beneficial uses)+(the degree of toxicity of the discharge)+(susceptibility to cleanup and abatement) = (4)+(3)+(0) = 7.

### STEP 2 – Assessments for Discharge Violations

FACTOR	VALUE	DISCUSSION
Deviation from Requirement	Major	<p>The Enforcement Policy defines a <b>major</b> deviation as follows: <i>“The requirement has been rendered ineffective (e.g. discharger disregarded the requirement, and/or the requirement is rendered ineffective in its essential functions).”</i></p> <p>The unauthorized discharge of 96,940 gallons of untreated sewage to surface waters is a major deviation from the Federal Clean Water Act (33 U.S.C. 1311 and Water Code section 13376), Order No. 2006-0003-DWQ, <i>Statewide General Waste Discharge Requirements for Sanitary Sewer Systems</i>, and Order R9-2007-0005, <i>Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region</i>. The SSO violated the strict unauthorized discharge prohibitions in the statutes and orders, rendering it a major deviation from the requirements.</p>
Per Gallon assessments for Discharge Violations	0.31	Based on 2010 Enforcement Policy, Table 1 – Per Gallon Factors for Discharges

FACTOR	VALUE	DISCUSSION
High volume discharges	\$2/gallon	The 2010 Enforcement Policy, page 14, allows a reduction in the liability sought per gallon in the methodology when there is a high volume spill. The total discharge of 435,190 gallons of untreated sewage constitutes a high volume discharge and supports the use of \$2.00 per gallon.

### Per Day Factor for Discharges

FACTOR	VALUE	DISCUSSION
Per Day Factor for Discharges	0.31	Enforcement Policy, Table 2 – Per Day Factors for Discharges
Per Day Assessments for Discharge Violations	1	The discharge occurred on one day (February 28, 2017). According to Water Code section 13385 the maximum penalty is \$10,000 for each day the violation occurred.

### Initial Liability Amount

VIOLATION	VALUE	DISCUSSION
Alleged Violation No. 1	\$62,583	<p>The initial liability is calculated as follows:</p> <p><u>Per Gallon Liability:</u> (Per gallon factor)(gallons discharged - 1000 gallons)(\$2/gallon) = (0.31)(96,940-1000)(2) = \$59,483</p> <p><u>Per Day Liability:</u> (per day factor)(days violated)(maximum liability) = (0.31)(1)(\$10,000) = \$3,100</p> <p>Initial Liability = \$59,483 + \$3,100 = \$62,583</p>

### STEP 3 – Factor does not apply to discharge violations

### STEP 4 – Adjustment Factors

FACTOR	VALUE	DISCUSSION
Degree of Culpability	1.0	A neutral culpability multiplier is being applied because the District was unaware that the pipe was improperly installed until the SSO occurred. Once the deficiency was identified, the District took the necessary steps to repair it.
Cleanup and Cooperation	1.0	A neutral cleanup and cooperation multiplier applies because the District's cleanup response to the SSO was reasonable, and the damaged pipe was eventually repaired and put back into operation.

FACTOR	VALUE	DISCUSSION
History of Violations	1.1	In the five years preceding the 2017 SSO, there have been multiple Category 1 SSOs within the Meadowlark CS. These include a 104,100 gallon spill on 12/08/2015 (Event ID 820103) and a 57,420 gallon spill on 4/26/2016 (Event ID 824285). Per the Enforcement Policy a multiplier of 1.1 is appropriate.

#### **STEP 5 – Determination of Total Base Liability Amount**

FACTOR	VALUE	DISCUSSION
Total Base Liability Amount	\$68,841	The total base liability is: (initial liability)(culpability)(history of violation)(cleanup and cooperation) = (\$62,583)(1.0)(1.0)(1.1)=\$68,841

#### **STEP 6 – Ability to Pay and Ability to Continue in Business**

FACTOR	VALUE	DISCUSSION
Ability to Pay	Yes	The District is a public entity with the ability to leverage fees and/or taxes. The San Diego Water Board is not aware of, and the District has not provided, any evidence of inability to pay.

#### **STEP 7 – Economic Benefit**

FACTOR	VALUE	DISCUSSION
Economic Benefit	\$15,386	The District discharged a total of 96,940 gallons of sewage to surface waters as a result of Violation 1. According to the District, it costs \$1.55 per 1,000 gallons to treat raw sewage at the Meadowlark Reclamation facility and cost \$180,000 to repair the damaged pipeline in October 2018. Assuming 10% of the pipeline repair costs were to address the SSO's underlying cause, and using the 2019 USEPA BEN model, the District received an economic benefit of \$156 for the avoided cost of treating the sewage, and \$15,230 for the delayed cost of the pipe repair. The total economic benefit received was (\$156 + \$15,230) = \$15,386.

#### **STEP 8 – Other Factors As Justice May Require**

FACTOR	VALUE	DISCUSSION
Staff Costs	\$4,864	Refer to Supporting Document 7. Staff costs to 10/31/2019 are (\$4,864). If the matter is contested, the Prosecution Team reserves the right to update the staff costs accrued.
Settlement Consideration	-\$7,371	In the interest of settlement and to avoid the inherent risk and uncertainty of litigation, the Prosecution Team is reducing the proposed administrative civil liability (\$73,705) by 10%.

### **STEP 9 - Maximum and Minimum Liability Amounts**

<b>FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Maximum Liability Amount	\$969,400	The maximum liability amount is: (Total gallons discharged – first 1000 gallons not cleaned up)(statutory maximum) +(days of discharge)(statutory maximum) = $(96,940-1000)(10) + (1)(10,000) = \$969,400$
Minimum Liability Amount	\$16,925	The minimum liability amount is: (economic benefit)(1.1)= $(15,386)(1.1) = \$16,925$

### **Final Liability Amount**

<b>FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Final Liability	\$66,335	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than or equal to the maximum liability.

<b>Maximum Liability</b>	<b>Minimum Liability</b>	<b>Initial Liability</b>	<b>Base Liability</b>	<b>Final Liability</b>
\$969,400	\$16,925	\$62,583	\$68,841	\$66,335