

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:)	
)	
MONTARA WATER AND)	SETTLEMENT AGREEMENT AND
SANITARY DISTRICT, SAN)	STIPULATION FOR ENTRY OF
MATEO COUNTY)	ADMINISTRATIVE CIVIL LIABILITY
)	ORDER
Discharges of Untreated Sewage to)	
Surface Water between May 2, 2007,)	ORDER R2-2018-1022
and December 31, 2017)	
)	

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team) and the Montara Water and Sanitary District (District) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the District in the amount of \$32,100.

Section II: RECITALS

1. The District owns and operates a sanitary sewer collection system consisting of approximately 24 miles of gravity sewer pipeline, 5.5 miles of force main, and 13 pump stations. The District serves the communities of Montara and Moss Beach in unincorporated San Mateo County, California. Wastewater collected by the District’s collection system is conveyed to the Sewer Authority Mid-Coastside for treatment and disposal.
2. The District is required to operate and maintain its collection system in compliance with State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Sanitary Sewer Order). The State Water Resources Control Board adopted the Sanitary Sewer Order on May 2, 2006.
3. Prohibition C.1 of the Sanitary Sewer Order prohibits sanitary sewer overflows (SSOs) that result in a discharge of untreated wastewater to waters of the United States.
4. Section 301 of the federal Clean Water Act (CWA) prohibits the discharge of any pollutant by a person except in compliance with the CWA. (33 U.S.C. § 1311.)

5. On January 17, 2018, the Prosecution Team issued a Proposed Settlement Offer to the District under Administrative Civil Liability Proceedings for 12 SSOs allegedly occurring between May 2, 2007, and December 31, 2017, that allegedly discharged a total of 16,525 gallons of untreated sewage to the Pacific Ocean, a water of the United States.¹ Those SSOs, detailed in Attachment B (incorporated by reference herein), were alleged to have violated Prohibition C.1 of the Sanitary Sewer Order and Section 301 of the CWA. The Parties entered into settlement discussions and decided to resolve all said 12 outstanding SSOs.
6. Pursuant to California Water Code (Water Code) section 13385, subdivision (a)(5), a person that violates section 301 of the CWA is subject to administrative civil liability under Water Code section 13385, subdivision (c):

...in an amount not to exceed the sum of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violations occur. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
7. To resolve the alleged violations in Section II, paragraph 5, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of \$32,100 against the District. The administrative civil liability imposed for the Water Code violations is the proposed liability the Prosecution Team calculated and asserted using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachments A and B. Payment of \$16,050 to the State Water Pollution Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board or its delegate executing this Stipulated Order. The remaining \$16,050 in penalties shall be suspended upon completion of an Enhanced Compliance Action (ECA) as outlined in Section III, paragraph 2.
8. The Parties have engaged in settlement negotiations and agreed to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as a Stipulated Order by settlement pursuant to Government Code section 11415.60.
9. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action, including administrative issuance of a cleanup and abatement, cease and desist, or compliance order, or pursuit of injunctive relief in a civil action, is warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

Section III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

¹ The timeframe begins on May 2, 2007, because that is when an enrollee was required to use the California Integrated Water Quality System for its reporting.

1. **Administrative Civil Liability:** The District hereby agrees to the imposition of an administrative civil liability totaling **\$32,100** to resolve the alleged violations as set forth in Section II, paragraph 5, as follows:
 - a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the District shall submit a check for **\$16,050** made payable to the “State Water Pollution Cleanup and Abatement Account,” with reference to the Order number on page one of this Stipulated Order, to the following address:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888
 - b. The Parties agree that **\$16,050** of the administrative civil liability amount shall be suspended pending completion of the ECA described in Section III, paragraph 2 and Attachment C, incorporated by reference herein.
2. **Enhanced Compliance Action:** The proposed ECA allows the District to improve its operational equipment beyond those actions required by law and is separate from projects designed to bring the District into compliance with the Sanitary Sewer Order and the CWA. The ECA goal is the purchase and installation of three sewer monitoring units consisting of manhole lids with continuous dynamic level sensors, early warning systems, detection loggers, and direct link transmitters. The units will be placed in selected sewer line segments where SSOs have occurred, where SSOs are likely to occur, or where the units may identify sources of inflow and infiltration. After installation, the District will use the units as a tool to collect data in various parts of the collection system, and may move the units to different locations within the collection system. Through alarms, data, and notifications from the units, District staff will have the opportunity to respond to sewer line anomalies before or shortly after SSOs occur, which will directly benefit surface water quality by mitigating SSO size and volume, thereby reducing SSO risk and harm.
3. **Representations and Agreement Regarding ECA**
 - a. As a material condition for the Regional Water Board’s acceptance of this Stipulated Order, the District represents that it will use the suspended liability of \$16,050 (ECA Amount) to implement the ECA set forth in Section III, paragraph 2, and Attachment C. The District understands that its promise to implement the ECA, in its entirety, is a material condition of this settlement of liability between the District and the Regional Water Board.
 - b. The District agrees to (1) spend the ECA Amount as described in this Stipulated Order, (2) provide certified, written reports to the Regional Water Board detailing ECA implementation consistent with the terms of this Stipulated Order, and (3) within 30 days

of ECA completion, provide a certification by a responsible official, signed under penalty of perjury, that the District followed all applicable environmental laws and regulations in implementing the ECA, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act. The District further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the ECA at the District's cost, and that the District bears ultimate responsibility for meeting all deadlines specified in Attachment C.

4. **Publicity Associated with the ECA:** Whenever the District, or its agents or subcontractors, publicize one or more elements of the ECA, they shall state in a **prominent manner** that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the District.
5. **Progress Reports and Inspection Authority:** As described in Attachment C, the District shall provide reports to the Regional Water Board describing its progress in implementing the ECA. The District agrees that Regional Water Board staff have permission to inspect the ECA installation and deployment progress at any time without notice.
6. **Certification of ECA Completion:** On or before December 31, 2019, a responsible official of the District shall submit a final report and certified statement that documents the District's ECA expenditures and the District's completion of the ECA in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include normal, routine work undertaken by District staff. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of ECA completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate ECA completion and the costs incurred. The District shall provide Regional Water Board staff with any additional information reasonably necessary to verify ECA expenditures and completion.
7. **Request for Extension:** The Executive Officer may extend the ECA deadlines contained in this Stipulated Order for good cause if the District demonstrates delays from circumstances beyond the District's control, such as a delay in receipt of construction materials or initiation of litigation or other legal proceedings challenging this Stipulation and Order or substantially seeking similar relief or penalties or monetary compensation, and justify the extension(s). The District's request(s) for extension shall be in writing. The Executive Officer shall not unreasonably withhold approval of an extension request.
8. **Regional Water Board Acceptance of Completed ECA:** Upon the District's satisfaction of its obligations under this Stipulated Order, ECA completion, and any audits, the Executive Officer will issue a "Satisfaction of Order" terminating any further District obligations under this Stipulated Order, permanently suspending the remaining liability and resolving the Administrative Civil Liability proceedings.

9. **Failure to Expend All Suspended Funds on Approved ECA:** If the District is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire ECA Amount was spent on the completed ECA, the District shall pay the difference between the ECA Amount and the amount the District can demonstrate was actually spent on the ECA (the Difference). The Executive Officer shall issue a “notice” that will require the District to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the notice issuance date. The District shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the Difference shall satisfy the District’s obligations to implement the ECA.
10. **Failure to Complete ECA:** If the ECA is not fully implemented by December 31, 2019, or by the due date extended pursuant to Section III, paragraph 7, or if there has been a material failure to satisfy a project milestone, the Executive Officer shall issue a Notice of Violation. The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Regional Water Board or its delegate. The District shall be liable to pay the entire ECA Amount, some portion thereof less the value of any completed milestones (if shown by the District) as stipulated to by the Parties in writing, or an amount determined by the Motion for Payment of Suspended Liability. Unless the Regional Water Board or its delegate determines otherwise, the District shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the ECA prior to the issuance date of the Notice of Violation. Within 30 days of the Regional Water Board’s or its delegate’s determination of the suspended liability amount to be assessed, the District shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the assessed amount shall satisfy the District’s obligations to implement the ECA.
11. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the District or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board, its members, or staff be held as parties to, or guarantors of, any contract entered into by the District or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
12. **Compliance with Applicable Laws:** The District understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and compliance with 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.

13. Party Contacts for Communications related to this Stipulated Order:

For the Regional Water Board:

Michael Chee
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
michael.chee@waterboards.ca.gov
(510) 622-2333

For the District:

Clemens Heldmaier
General Manager
Montara Water and Sanitary District
8888 Cabrillo Highway
Montara, CA 94037
mwsd@coastside.net
(650) 728-3545

14. Attorneys' Fees and Costs: Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred pursuant to this Stipulated Order.

15. Matters Addressed by this Stipulated Order: Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of 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.

16. Public Notice: The District understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional 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 Regional Water Board or its delegate. The District agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

17. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Regional 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 or revise this Stipulated Order as necessary or advisable under the circumstances.

18. 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.

19. 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 Regional Water Board or its delegate.

20. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control 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 Regional 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 the hearing or in any other administrative or judicial proceeding. With the exception of State and federal statutes of limitations for actions to enforce alleged violations under the Clean Water Act or the Porter-Cologne Act and laches or delay or other equitable defenses based on the time period for administrative, or judicial review as raised by the District during the course of settlement discussion, the Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors or any other objections that are premised in whole or in part on the fact that the Regional 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 Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein in this matter.
21. **Waiver of Hearing:** The District has been informed of its rights under Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to this Stipulated Order's adoption. However, if the Stipulated Order is not adopted and if the matter proceeds to the Regional Water Board or State Water Resources Control Board for hearing, the District does not waive the right to a hearing before an order is imposed.
22. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board, the District hereby waives its right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including but not limited to time extensions, ECA completion, and other terms contained in this Stipulated Order.
23. **Covenant Not to Sue:** The District 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 or the ECA, except that this covenant is not intended to bar and does not limit the District's rights to sue over other Regional Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the District's rights to defend against any additional enforcement or other actions taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any State agency or the State of California, its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent that such

covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.

24. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the District does not admit to liability or to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulated Order or its attachments, or admit to any violations of the Water Code, any Regional Water Board order, any permit, or any other federal, State, or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of resolution of a prior enforcement action consistent with Water Code section 13327 and the Enforcement Policy. By entering into this Stipulated Order, the District does not waive any defenses or arguments related to any new enforcement action the Regional Water Board may bring, including any brought under its discretionary enforcement authority reserved herein.
25. **Necessity for Written Approvals:** All Regional Water Board approvals and decisions under the terms of this Stipulated Order shall be communicated to the District in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the District of its obligation to obtain final written approval this Stipulated Order.
26. **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.
27. **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.
28. **Severability:** The District's obligations under Section III, Paragraphs 1-6, are contingent upon the entry of the Stipulated Order by the Regional Water Board in the form attached hereto. Otherwise, this Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
29. **Counterpart Signatures, Facsimile and Electronic Signature:** 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. Furthermore, 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.
30. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: September 27, 2018



By:

Thomas Mumley
Assistant Executive Officer

Approved as to form:




By:

Susie Loscutoff, Attorney
State Water Resources Control Board
Office of Enforcement


Settlement Agreement and Stipulated Administrative Civil Liability
Montara Water and Sanitary District

Montara Water and Sanitary District

Date: 10/02/2018

By: 
Clemens Heldmaier, General Manager

Approved as to form:

By: 
David E. Schricker, Attorney
Law Offices of David E. Schricker, P.C.

ORDER OF THE REGIONAL 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 Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the Enforcement Policy, which is incorporated by reference herein. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board, which therefore finds issuance of this Stipulated Order exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the District 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 Francisco Bay Region.

Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

Factors in Determining Administrative Civil Liability

MONTARA WATER AND SANITARY DISTRICT SANITARY SEWER COLLECTION SYSTEM SANITARY SEWER OVERFLOWS MAY 2, 2007, TO DECEMBER 31, 2017 SAN MATEO COUNTY

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability.² Use of the methodology addresses the factors required by Water Code sections 13327 and 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation, is presented below. The Enforcement Policy is at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

ALLEGED VIOLATIONS

From May 2, 2007, through December 31, 2017, the Montara Water and Sanitary District (Discharger) had 12 sanitary sewer overflows (SSOs) that discharged a total of 16,525 gallons of untreated sewage to the Pacific Ocean. These SSOs are violations of section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13385, subdivision (a), which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System permit. Section 301 of the Clean Water Act prohibits any person from discharging any pollutant into waters of the United States unless that person has complied with all permitting requirements under the Clean Water Act. The SSOs also violate Prohibition C.1 of State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (Sanitary Sewer Order), which prohibits SSOs that result in a discharge of untreated wastewater to waters of the United States.

Details of the SSOs are shown in Attachment B. The 12 SSO violations include the following:

- Three wet weather SSOs, two of which occurred on January 25, 2008 (1,125 gallons and 202 gallons) and one on January 22, 2017 (11,500 gallons, 7,000 gallons of which were recovered and 2,500 gallons absorbed into the ground). The Discharger reported the causes of these SSOs as rainfall exceeded system design, lift station failure, or pump station failure.
- Nine dry weather SSOs that occurred on the following dates: January 4, 2008 (816 gallons); February 17, 2008 (6,360 gallons, 100 gallons of which were recovered);

² The Regional Water Board Prosecution Team used the 2010 Enforcement Policy for this enforcement.

April 28, 2008 (20 gallons, 10 gallons of which were recovered); March 13, 2010 (192 gallons, 50 gallons of which were recovered); April 22, 2010 (4,000 gallons); April 9, 2011 (50 gallons); May 29, 2012 (1,000 gallons); December 17, 2012 (100 gallons, 80 gallons of which were recovered); and August 7, 2016 (900 gallons). The Discharger reported the causes of these SSOs as lift station power failure, pump station failure, root intrusion, debris blockage, grease blockage, or pipe failure.

The factors considered in determining the liabilities are described below.

PENALTY FACTOR	VALUE	DISCUSSION
Harm or Potential Harm to Beneficial Uses for Discharge Violations	1	A “minor” potential for harm is selected for the three wet weather SSOs because the impacts fit the Enforcement Policy definition for minor harm (“potential short term impact to beneficial uses with no appreciable harm”). The San Francisco Bay Regional Water Quality Control Plan (Basin Plan) designates the following beneficial uses of Montara Creek and the Pacific Ocean: industrial service supply (IND), commercial and sport fishing (COMM), shell harvesting (SHELL), marine habitat (MAR), fish migration (MIGR), preservation of rare and endangered species (RARE), fish spawning (SPWN), wildlife habitat (WILD), water contact recreation (REC1), noncontact water recreation (REC2), and navigation (NAV). The beneficial uses most affected were REC1 and REC2. Because the discharges were diluted with high wet weather flows in the creeks and ocean, there were short-term impacts to the recreational beneficial uses of the water bodies involved with no appreciable harm.
	2	A “below moderate” potential for harm is selected for the nine dry weather SSOs because the impacts fit the Enforcement Policy definition for below moderate harm (“harm or potential harm to beneficial uses is measurable in the short term, but not appreciable”). The SSOs occurred during dry weather when creek flows were lower and the discharges were full strength. Since health warning signs were posted along the affected water areas as a result of some of the SSOs, the recreational beneficial uses were impacted because public use was limited, but not appreciably so.
Physical, Chemical, Biological, or Thermal Characteristics (Degree of Toxicity)	3	An “above moderate” degree of toxicity is selected for all of the SSOs because the sewage discharged was not treated, was potentially toxic to aquatic organisms, and contained bacteria at levels exceeding human health standards. Therefore, the discharges posed an above moderate risk to potential receptors.

PENALTY FACTOR	VALUE	DISCUSSION
Susceptibility to Cleanup or Abatement	1	Less than 50 percent of each wet weather SSO was amenable to cleanup or containment because the discharges were quickly carried away by high creek flows to the ocean and the ocean current prevented cleanup or containment of untreated sewage.
	0	Greater than 50 percent of each dry weather SSO was susceptible to cleanup. However, the actual average SSO recovery was about 18 percent.
Final Potential for Harm Score	5	A value of 5 (1+3+1) applies to the two wet weather SSOs.
	5	A value of 5 (2+3+0) applies to the ten dry weather SSOs.
Per Gallon and Per Day Factor for Discharge Violations	0.15	<p>Based on the Enforcement Policy, a major deviation from requirement occurs when the requirement has been rendered ineffective (e.g., a discharger disregards the requirement or the requirement is rendered ineffective in its essential functions). Prohibition C.1 of the Sanitary Sewer Order prohibits discharge of untreated sewage to waters of the United States. Discharging to waters of the United States rendered this prohibition ineffective in its essential functions. This represents a “major” deviation from the requirement.</p> <p>Based on Tables 1 and 2 of the Enforcement Policy, a factor of 0.15 applies to all the SSOs due to their Potential for Harm score of “5” and the “major” Deviation from Requirement.</p>
Adjustment for High Volume Discharges	\$10/day No adjustment	The largest of the 12 SSOs was 11,500 gallons. This is not considered a “high volume discharge.” Therefore, \$10 per gallon liability is appropriate.
Initial Liability	\$32,078	<p>The initial liability is determined by adding the individual liabilities for each of the 12 SSOs:</p> <p>Each individual SSO liability = (Per gallon factor x [SSO gallons discharged to surface water minus 1,000 gallons]) + (Per day factor x maximum per day liability allowed [i.e., \$10,000] x number of days of SSO duration).</p> <p>January 4, 2008: \$1,500 = (0.15 x 0 x 10) + (0.15 x 1 x 10,000) January 25, 2008: \$1,500 = (0.15 x 0 x 10) + (0.15 x 1 x 10,000) January 25, 2008: \$1,688 = (0.15 x 125 x 10) + (0.15 x 1 x 10,000) February 17, 2008: \$9,390 = (0.15 x 5,260 x 10) + (0.15 x 1 x 10,000) April 28, 2008: \$1,500 = (0.15 x 0 x 10) + (0.15 x 1 x 10,000) March 13, 2010: \$1,500 = (0.15 x 0 x 10) + (0.15 x 1 x 10,000) April 22, 2010: \$6,000 = (0.15 x 3,000 x 10) + (0.15 x 1 x 10,000) April 9, 2011: \$1,500 = (0.15 x 0 x 10) + (0.15 x 1 x 10,000)</p>

PENALTY FACTOR	VALUE	DISCUSSION
		<p>May 29, 2012: \$1,500 = $(0.15 \times 0 \times 10) + (0.15 \times 1 \times 10,000)$ December 17, 2012: \$1,500 = $(0.15 \times 0 \times 10) + (0.15 \times 1 \times 10,000)$ August 7, 2016: \$1,500 = $(0.15 \times 0 \times 10) + (0.15 \times 1 \times 10,000)$ January 22, 2017: \$3,000 = $(0.15 \times 1,000 \times 10) + (0.15 \times 1 \times 10,000)$</p>
Adjustments for Discharger Conduct		
Culpability	1.0	For the 12 SSOs, a neutral culpability factor is appropriate because the Discharger is responsible for the operation and maintenance of its collection system pipelines. However, the SSOs were not caused by intentional or negligent behavior.
Cleanup and Cooperation	1.0	For the 12 SSOs, a neutral cleanup and cooperation factor is appropriate because the Discharger cooperated during investigations.
History of Violations	1.0	A neutral history of violations factor is appropriate because the Discharger has no history of enforcement due to SSO violations.
Total Base Liability	\$32,078	Each applicable factor relating to the Discharger's conduct is multiplied by the total initial liability to determine the total base liability.
Ability to Pay and Continue in Business	No adjustment	The ability of a discharger to pay the recommended administrative civil liability is determined by its revenues and assets. The Discharger has an annual operating budget of \$1.5 million for fiscal year 2017-2018. The proposed liability will not affect the Discharger's ability to continue operation and maintenance of its collection system.
Economic Benefit	Minimal	Pursuant to Water Code section 13385, subdivision (e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The Discharger incurred minimal economic benefit as a result of the 12 SSOs.
Other Factors as Justice May Require		
Maximum Liability	\$203,850	Water Code section 13385 allows up to \$10,000 for each day in which the violation occurs, plus \$10 for each gallon exceeding 1,000 gallons discharged and not cleaned up. Therefore, the maximum liability reflects 12 SSOs totaling 16,525 gallons discharged to surface water and 12 days of violations.
Final Liability	\$32,100 (rounded)	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, considering the maximum and minimum liabilities, and rounding to nearest hundred dollars.

Attachment B - Settlement Agreement and Stipulated Administrative Civil Liability
 Montara Water and Sanitary District

Attachment B – Montara Water and Sewer District reported SSOs discharged to surface water in CIWQS from May 2, 2007, through December 31, 2017

Event ID	Start Date	End Date	Spill Location	Gallons Discharged	Gallons Recovered	Net Gallons Reaching Surface Water	Final Spill Destination	Impacted Surface Water	Cause
711445	1/4/08	1/4/08	7th Street Lift Station	816	0	816	Surface water, Unpaved surface	Pacific Ocean	Lift Station Power Failure ²
711894	1/25/08	1/25/08	Seal Cove 3 Lift Station	202	0	202	Beach; Surface water	Pacific Ocean	Lift Station Failure ¹
711895	1/25/08	1/25/08	14th Street, Montara	1125	0	1125	Beach; Surface water	Pacific Ocean	Rainfall exceeded design ¹
713028	2/17/08	2/17/08	Date - Haarte Street Lift Station	6360	100	6260	Surface water	Montara Creek, Pacific Ocean	Pump station failure ²
716820	4/28/08	4/28/08	13th Street and Farallone	20	10	10	Surface water	Montara Creek	Root intrusion ²
750547	3/13/10	3/13/10	66 Madrone Ave	192	50	142	Beach; Other paved surface; Surface water	Pacific Ocean	Pump station failure ²
751920	4/22/10	4/22/10	Intersection of 14th St and Highway 1	4000	0	4000	Storm drain; Surface water	Storm drain that leads to Pacific Ocean	Debris-Rags ²
765329	4/9/11	4/9/11	140 Beach Way	50	0	50	Unpaved surface	not applicable	Pipe structural problem/failure ²
781676	5/29/12	5/29/12	Nevada Avenue	1000	0	1000	Surface water; Unpaved surface; Other (specify below)	Drainage ditch that leads to Pacific Ocean	Pipe structural problem/failure ²
789127	12/17/12	12/17/12	El Gran Amigo restaurant	100	80	20	Other paved surface; Separate storm drain; Street curb and gutter	Pacific Ocean	Grease deposition (FOG) ²
827060	8/7/16	8/7/16	2015 Carlos St. Moss Beach CA.	900	0	900	Surface Water	Pacific Ocean	Root Intrusion ²
831952	1/22/17	1/22/17	Kanoff lift station 8150 Cabrillo Hwy	11500	7000	2000 ³	Surface Water	Pacific Ocean	Pump Station Failure-Power ¹
¹ Wet weather SSO									
² Dry weather SSO									
³ In addition to recovering 7,000 gallons, the District reported 2,500 gallons absorbed into the ground.									

ATTACHMENT C

Montara Water and Sanitary District Proposal for Enhanced Compliance Action Gravity Pipe Sewage Level Monitoring and Response Near Coastal Waters

1. **Project Title:** Gravity Pipe Sewage Level Monitoring and Response Near Coastal Waters
2. **Service Area:** Montara Water and Sanitary District (District)
3. **Name of Responsible Entity:** District
4. **Estimated Cost for Project Completion:** The District will purchase and install three sewer manhole lids equipped with continuous dynamic level sensors, early warning system, detection loggers, and direct link transmitters (together, the “units”). The total cost to purchase, map, and install three units is estimated to be \$19,500. This does not include costs for District staff to monitor and log the devices’ data, or respond to any identified surcharged pipes.
5. **District Contact Information:**

Clemens Heldmaier, General Manager
Montara Water & Sanitary District
8888 Cabrillo Hwy., Montara, CA 94037
Voice: (650) 728-3545 Fax: (650) 728-8556
Email: mwsd@coastside.net
6. **Project Goals and Description:** The goal of this project is to purchase, install, and make operational three sewer monitoring units consisting of manhole lids with continuous dynamic level sensors, early warning systems, detection loggers, and direct link transmitters. The District will purchase the three units and will install them in selected sewer line segments. The units will be placed where SSOs have occurred, where SSOs are likely to occur, or where the units may identify sources of inflow and infiltration. After installation, the District will use the units as a tool to collect data in various parts of the collection system, and may move the units to different locations within the collection system. The long-term goal is to minimize the risk of SSOs to surface waters.
7. **Water Quality and Beneficial Uses:** Through alarms, data, and notifications from the units, District staff will have the opportunity to respond to sewer line anomalies before or shortly after SSOs occur, which will directly benefit surface water quality by mitigating SSO size and volume, thereby reducing SSO risk and harm. Thus, surface water quality and beneficial uses will be protected.
8. **Confirmation that the ECA Contains Only Measures that Go Above and Beyond Applicable Obligations of the Discharger:** The District is under no prior obligation to install the units described here; therefore, the project qualifies as an ECA.

9. Demonstration that the ECA Does Not Directly Benefit, in a Fiscal Manner, a Water Board’s Functions, its Members, or its Staff: The ECA does not provide any fiscal benefit to the Regional Water Board or fund any of its functions, members, or staff.

10. Project Schedule, Milestones, and Deliverables: The District is responsible for providing all deliverables described below and in Table 1 for each project phase.

a. **Purchase Contract Award:** The District Board of Directors has provided the authority to purchase the leak detection loggers.

b. **Plan for Deployment:** The District shall purchase and install all level detection loggers for this project during the first quarter following adoption of the Stipulated Order.

c. **Quarterly Report:** The District shall submit a certified Quarterly Report on its progress with project implementation as described in Table 1.

- **Deliverable:** Quarterly Report #1.

d. **Final Report:** No later than the date indicated below in Table 1, the District shall provide a final report documenting completion of the project. The final report shall include a summary of all tasks completed, including a description of the implementation and deployment of the loggers, summary levels observed during different weather conditions, if any stoppages are found and cleared, if repairs were required, and accounting of all expenditures. The accounting must clearly document that the final cost of the ECA is equal to or more than the suspended liability of \$16,050, as described in Table 1. The report shall be completed under penalty of perjury and shall include the certified statements and all other information required by the Stipulated Order, Section III, paragraph 6.

- **Deliverable:** Final Report including the above information

Table 1 – Deliverables Table	
Due Date	Description and Deliverables
03/29/2019	Quarterly Report #1 , including status of the following items: <ul style="list-style-type: none"> • Level detection loggers purchased (proof of payment, invoices) • Level detection loggers deployed (map with geo-location of each device) • Summary of first set of data harvested through the devices
06/28/2019	Final Report , including the following items: <ul style="list-style-type: none"> • The certification along with all information required by Stipulated Order Section III, paragraph 6. • Verification of project completion– provide photos and data samples from each of the three installed level detection data loggers • Description of the implementation and initial deployment location of the loggers • Summary levels observed during different weather conditions

	<ul style="list-style-type: none">• Summary of levels observed if any stoppages occurred• Summary of cleaning or repairs made, if required from stoppage• Detailed accounting of all expenditures equal to or in excess of the suspended liability
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11. Reports to the Regional Water Board: All deliverables, reports, and accounting invoices pertaining to this ECA shall be submitted to the Regional Water Board and the State Water Resources Control Board Office of Enforcement. Regional Water Board staff will review and approve the reports to ensure that they meet the requirements set forth here and the Stipulated Order. All reports must be emailed to the following:

Michael Chee
San Francisco Bay Regional Water Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
(510) 622-2333
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Jasmine Oaxaca
State Water Resources Control Board
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, CA 95816
(916) 322-5327
Jasmine.Oaxaca@waterboards.ca.gov