

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION**

In the Matter of:)
)
City of Norco)
2870 Clark Avenue:)
Norco, CA 92860:)
Attn: Sam Nelson)

**SETTLEMENT AGREEMENT FOR
ADOPTION OF ORDER NO. R8-2016-0006
AND STIPULATIONS
(STIPULATED ORDER)**

A. Introduction:

1. This Settlement Agreement and Stipulation for Adoption of proposed Order No. R8-2016-0006 ("Stipulated Order" or "Order") is entered into by and between the Division Chief of the Santa Ana Regional Water Quality Control Board ("Regional Water Board") and the City of Norco ("City") (collectively referred to as "Parties") and is presented to the Executive Officer of the Regional Water Board for approval in accordance with Government Code 11415.60.
2. This Stipulated Order accepts the stipulations for settlement of alleged violations by the City of Norco of the Areawide Urban Runoff NPDES Permit, Order No. R8-2002-0011 as set forth in the Administrative Civil Liability Complaint R8-2007-0056 ("Complaint").

B. Background:

1. On October 1, 2007, the Regional Water Board issued the Complaint to the City of Norco for failure to implement specific provisions of Order No. R8-2002-0011 (MS4 Permit). Complaint No. R8-2007-0056 is attached (Exhibit A). The Complaint proposed that the City be assessed a penalty of \$78,494 pursuant to Water Code section 13385(a)(2).
2. The Parties agreed to resolve the allegations in the Complaint through imposition of \$78,494 in liability, of which 50% was to be allocated for a Supplemental Environmental Project (SEP). In 2007, the City paid \$39,247 to the State Water Resources Control Board's Cleanup and Abatement Account. On November 29, 2007, the Regional Water Board Executive Officer transmitted a check from the City of Norco containing the remaining administrative civil liability amount of \$39,247 to the Orange County Water District ("OCWD") to fund the SEP.
3. The SEP funding was intended to support a wetlands project within the Prado Basin floodplain and to support the construction of an Interpretive/Education Center. However, OCWD did not undertake the SEP or expend any of the SEP funding.
4. On August 2015, OCWD returned the unspent SEP funds to the Regional Water Board.

This Stipulated Order disburses those SEP funds to the Santa Ana Watershed Project Authority ("SAWPA" or "SEP Proponent") for the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP and requires implementation of the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP.

C. Parties to This Agreement:

1. Regional Water Board Division Chief
2. City of Norco
3. Santa Ana Watershed Project Authority

D. Proposed Settlement:

Settlement by the City of the liability assessed in Complaint No. R8-2007-0056 (total liability: \$78,494) is in accordance with the following:

1. In 2007, the City paid \$39,247 to the State Water Resources Control Board Cleanup and Abatement Account.
2. Given that OCWD will not undertake the original planned SEP, the City now agrees to the transfer of \$39,247 to SAWPA for the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP. The \$39,247 shall be treated as a suspended liability. The suspended liability shall become permanent only after the City funds the SEP and the SEP is completed by SAWPA in accordance with the schedule proposed in the SEP proposal, attached hereto as Attachment Exhibit B and incorporated by reference.
3. SAWPA shall utilize the SEP allocation of \$39,247 as per the proposed budget in accordance with the schedule included in Exhibit B¹.
4. The Parties have agreed to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board's Executive Officer for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Regional Water Board Division Chief believes that no further action is warranted concerning the MS4 Permit violations and that this Stipulated Order is in the best interest of the public.
5. To resolve by consent and without further administrative proceedings, the Parties have agreed that the City shall pay **thirty-nine thousand two hundred forty seven dollars**

¹ The Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP is also partially funded by settlement of a Mandatory Minimum Penalty issued to the City of Beaumont. The City of Beaumont settled the Mandatory Minimum Penalty with the payment of \$24,000 to SAWPA for the SEP. (Order No. R8-2015-0012). Total funding for the SAWPA Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP is \$63,247 (\$39,247 from the City of Norco and \$24,000 from the City of Beaumont).

(\$39,247) in suspended penalties to SAWPA to support a SEP called the "Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project."

6. The SEP outlined in Exhibit B is hereby incorporated into this Stipulated Order and satisfies the provisions of the State Water Resources Control Board Policy on Supplemental Environmental Projects. The remaining **thirty-nine thousand two hundred forty seven dollars (\$39,247)** has been paid to the State Water Resources Control Board Cleanup and Abatement Account.

E. STIPULATIONS

The Parties incorporate Sections A through D above by this reference and stipulate to the entry of this Order as set forth below, and recommend that the Regional Water Board issue this Stipulated Order to effectuate the settlement:

1. This Stipulated Order is entered into by the Parties to resolve by consent and without further administrative proceedings alleged violations of the MS4 Permit as set forth in the Complaint (Exhibit A).
2. **Supplemental Environmental Project:** The City shall pay **thirty-nine thousand two hundred forty seven dollars (\$39,247)** to SAWPA for the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP. This payment shall be treated as a suspended liability.
 - a. The suspended liability shall be deemed satisfied once the City funds the SEP and the project is completed by the SEP Proponent in accordance with the schedule proposed in the SEP Proposal (Exhibit B). The City shall ensure that the SEP allocation of **thirty-nine thousand two hundred forty seven dollars (\$39,247)** is used as per the proposed budget in accordance with the schedule included in Exhibit B of this Stipulated Order.
 - b. **Description of the SEP:** See Exhibit B.
 - c. **Deliverable Products from SEP:** See Exhibit B.
 - d. **Budget and Milestones:** See Exhibit B.
3. **Waiver of Hearing:** City has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waived its right to a hearing before the Regional Water Board prior to the adoption of the Stipulated Order.
4. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.
5. **Scope of Order:** Upon adoption by the Regional Water Board's Executive Officer, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in the Complaint or which could have

been asserted based on the facts alleged in the Complaint against the City as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the City's full payment of the administrative civil liability by the specified deadlines.

6. Failure to expend the funds as proposed in Exhibit B shall cancel the SEP provisions for suspended penalty and suspended penalty amount will be immediately due and payable to the State Water Resources Control Board Cleanup and Abatement Account.
7. **Denial of Liability:** Neither this Stipulated Order, nor any payment pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future actions by the Regional Water Board, against the City.
8. **Covenant not to Sue:** Upon the effective date of this Stipulated Order, the City shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
9. **Public Notice:** The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board, or its delegee, for adoption. In the event objections are raised during the public review and comment period, the Regional Water Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. Except in such event, the City agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
10. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
11. **Waivers:** In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board's Executive Officer, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that the Prosecution Staff may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess

administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative- or judicial proceeding or hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections to the extent that they 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
12. **Appeals:** The City hereby waives its right to appeal this Stipulated Order to a California Superior Court and/or any California appellate level court.
 13. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
 14. **Water Boards 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 the negligent or intentional acts or omissions by the City or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Water Board, its members, or staff be held as parties to or guarantors of any contract entered into by City, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
 15. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. This Order relates only to the violations that were listed in Exhibit A of this Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

16. **Regulatory Changes:** Nothing in this Stipulated Order shall excuse City from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
17. **Authority to Enter Stipulated Order:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
18. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
19. **Modification:** This Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by City and the Regional Water Board or its Executive Officer.
20. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
21. **Third Party Claims:** Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
22. **Extensions:** The Executive Officer may extend any of the due dates in this Order upon the joint request of the Parties. Such extensions must be in writing.
23. **Effective Date:** The effective date of this Order shall be the date on which it is adopted by the Executive Officer.
24. **Disputes:** In the event of a dispute, the City shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Water Board and City shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Water Board and the City are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.
25. **Counterpart Signatures:** This 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.
26. **Incorporated Exhibits:** Exhibit "A", Exhibit "B", " Exhibit C", and Exhibit "D", are incorporated by reference.

IT IS SO STIPULATED²:

Hope A. Smythe
Hope A. Smythe, Division Chief
For the Regional Water Board Prosecution Team

9/22/16
Date

Andy Okoro, City Manager
For City of Norco

Date

Mark Norton,
For the Santa Ana Watershed Project Authority

Date

² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

IT IS SO STIPULATED²:

Hope A. Smythe, Division Chief
For the Regional Water Board Prosecution Team

Date



Andy Okoro, City Manager
For City of Norco

1-21-16
Date

Mark Norton,
For the Santa Ana Watershed Project Authority

Date

² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

IT IS SO STIPULATED²:

Hope A. Smythe, Division Chief
For the Regional Water Board Prosecution Team

Date

Andy Okoro, City Manager
For City of Norco

Date


Mark Norton,
For the Santa Ana Watershed Project Authority

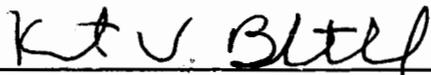

Date

² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board as such is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) in accordance with California Code of Regulations, title 14, sections 15061(b)(3), 15306, 15307, 15308, and 15321. This Order Includes a SEP (Exhibit B) and the Discharger shall provide the SEP Proponent \$39,247 for the work. To the extent this Order requires earth disturbing and revegetation activities not to exceed five acres in size and to assure restoration of stream habitat and prevent erosion, this Order is exempt from provisions of CEQA pursuant to California Code of Regulations, title 14, section 15333. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The SEP Proponent will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any required plan by this Order will have a significant effect on the environment and, if so, in preparing and handling any documents necessary for environmental review. If necessary, the discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Board regarding such costs prior to undertaking any environmental review.
3. The SEP Project is consistent with the State Water Resources Control Board's Policy on Supplemental Environmental Projects because: (1) Its scope and parameters are defined at this time; (2) The SEP Project directly benefit the area impacted by the discharge; and (3) There is a nexus between the "Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project" and the nature of the violations alleged above, as well as a geographic nexus between the SEP Project and the location of the violations.

PURSUANT TO SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board



Date

Exhibits:

- A. Complaint No. R8-2007-0056 for Administrative Civil Liability in the Matter of City of Norco
- B. Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project SEP
- C. SEP Memorandum of Agreement between Norco and SAWPA
- D. SEP Certificate of Completion

Exhibit A – ACLC Order No. R8-2007-0056

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:

**City of Norco
2870 Clark Avenue
Norco, CA 92860-1903**

Attn: Mr. Jeff Allred

Complaint No. R8-2007-0056
For
Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The City of Norco (City) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.
2. A hearing concerning this Complaint may be held before the Board within ninety (90) days of the date of issuance of this Complaint. The hearing in this matter is scheduled for the Board's regular meeting on November 30, 2007, at the Irvine Ranch Water District, 15600 Sand Canyon Avenue, Irvine. You or your representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting and staff report relating to this item will be mailed to you not less than ten (10) days prior to the hearing date.
3. At the hearing, the Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The City is a co-permittee under the National Pollutant Discharge Elimination System (NPDES) Permit No. CAS618033, Waste Discharge Requirements for the Riverside County Flood Control and Water Conservation District, the County of Riverside, and the Incorporated Cities of Riverside County within the Santa Ana Region, Areawide Urban Runoff, Order No. R8-2002-0011 (MS4 Permit). The current MS4 Permit is the third term of this permit, having been originally adopted in 1990 and renewed in 1996 and 2002.
5. The County of Riverside and the incorporated cities (permittees) developed a Drainage Area Management Plan (DAMP) that included programs and policies that the permittees were required to implement in order to reduce the discharge

of pollutants to receiving waters from urban runoff. Permittees submitted a Report of Waste Discharge (ROWD, permit renewal application), in which they made certain performance commitments. The City was a signatory to the ROWD and is bound by the commitments in the DAMP, ROWD and the terms and conditions of the MS4 Permit.

6. Section X.V(3) of the MS4 Permit states, "The DAMP and amendments thereto are hereby made an enforceable part of this Order.
7. Evaluation of compliance with the MS4 Permit is through information provided to Board staff by the City in the annual reports and through audits of the MS4 program. On August 2-3, 2006, Board staff conducted an audit of the City's MS4 program to determine the City's overall compliance with the MS4 Permit. At the conclusion of the audit, Board staff discussed the findings with representatives of the City. On February 23, 2007, the City was issued a Notice of Violation (NOV), and an evaluation report was included with the NOV. The City's March 20, 2007 response to the NOV was reviewed and considered prior to issuing this Complaint.
8. This Complaint is based on the allegation that the City has violated a number of provisions of the MS4 Permit. The violations noted are based on the program evaluation conducted by Board staff on August 2-3, 2006, an ongoing review of different elements of the City's storm water program, and/or the annual reports. The City has been under the MS4 Permit since 1990, and the audit indicated that the City has failed to implement provisions of the MS4 Permit and has done very little to control the discharge of pollutants to surface waters. The City is an equestrian community with approximately 20,000 horses (the City indicated that this number has not been substantiated; however, the City has not provided any other number). Horse excreta are a major source of pollutants. At the time of the audit, the City was still in the process of formulating a comprehensive manure control policy. Only a few of the violations noted during these review processes are cited below.

This complaint is based on the following:

- a. **Failure to Develop a Commercial Facilities Database:** Section IX.C.1 of the MS4 Permit required the City to develop a computerized database of commercial sites within 18 months of the Permit adoption date. The City had not developed the required database at the time of the audit.
- b. **Failure to Identify Significant Pollutant Sources:** Section IX.C.2 of the MS4 Permit required the City to add additional categories of commercial facilities to the above list within 24 months of Permit adoption. These additional categories should have included facilities which are determined to be significant sources pollutants, such as horse stables. The City did not develop a list of commercial facilities and did not update it as required by the Permit.

- c. **Failure to Revise Compliance Assistance Program (CAP):** Section IX.C.3 of the MS4 Permit required the City to revise the CAP to include certain additional inspection parameters for restaurant inspections. The City did not revise the CAP to include these parameters.
- d. **Failure to Prioritize Commercial Facilities for Inspection:** Section IX.C.4 of the MS4 Permit required the City to prioritize the commercial sites and Section IX.C.5 required the City to conduct inspections based on the priority ranking. The City did not prepare a computerized database of commercial facilities, did not prioritize them and did not conduct inspections based on a priority ranking. The City's Fire Department conducts inspections of commercial facilities to determine compliance with fire safety requirements. In 2005, the City assigned commercial storm water inspection responsibilities to the Fire Department. Fire Department staff indicated that 2007 was the first year that inspections were conducted as part of the storm water inspection program.
- e. **Failure to Bring Facilities into Compliance:** Section IX.C.5 of the MS4 Permit required the City to conduct frequent inspections of facilities found to be in violation of the City's ordinance to cause the facility to come into compliance. The City received a complaint regarding the TLC Horse Stables (TLC) in early May 2006. The complainant indicated that excessive amount of horse manure was being deposited within the TLC facility. TLC has 65 horse stables and routinely spreads horse manure on the horse tracks within the facility. On May 5, 2006, City's Animal Control Division inspected the facility and issued an "Order to Comply with City Ordinance". On May 22, 2006, when Regional Board staff responded to a complaint regarding the same facility, it was determined that the facility had not done anything to correct the situation, and the City had not followed up to assure compliance by the facility. Furthermore, this manure spreading operation at the facility had been going on for a number of years.
- f. **Lack of Enforcement:** Section I.B(1)(f) of the MS4 Permit requires the City to continue to pursue enforcement actions as necessary for violations of Storm Water Ordinances, and other elements of its urban runoff management program. TLC staff indicated that, for at least the last ten years, TLC had been spreading manure on its horse tracks. The City did not take any enforcement actions against TLC, except for the "Order to Comply with City Ordinance," issued in 2006. Municipal Code, Chapter 15.80, provides legal authority for the City to take enforcement actions against violators. The City has development standards to mitigate erosion from sloped horse trails. However, there is no indication that the City has enforced its ordinances and standards. Even for repeated violations, the City typically issues oral warnings. Manure and eroded horse trails resulting in sediment deposition to the street were observed at a number of locations within the City. Both erosion and manure were observed on Valley Drive, Friesian Street, Red Rock Way, Gunsmoke Road, Harness Lane, and Hillside Avenue.
- g. **Inadequate Programs and Policies to Address Problems Associated with Horse Manure:** The February 23, 2007 NOV to the City alleged that the

City failed to implement a number of provisions of the Permit, including not establishing a mechanism to adequately address pollutants from horse manure. In the City's March 20, 2007 response to the NOV, the City indicated that it has had a curbside manure collection service through its waste hauler for over a decade, and that the City is in the process of developing a comprehensive Manure Management Strategy. The City is also considering a "Mandatory Manure Collection" ordinance. The existing programs do not seem to be adequate to control the discharge of pollutants from residential and agricultural properties within the City. Section II. B of the Permit requires the City to reduce the discharge of pollutants, including trash and debris to Receiving Waters to the maximum extent practicable. The City has been slow in enacting appropriate programs and ordinances to address the horse manure problems.

- h. **Lack of Oversight of Industrial Facilities:** Section IX.B of the MS4 Permit required the City to develop a computerized database of all industrial facilities, rank them according to their threat to water quality and conduct inspections based on their priority ranking. In its March 20, 2007 response to the NOV, the City indicated that it only has one industrial facility (Norco Ranch) and that the facility is routinely inspected by the City. However, on August 22, 2007, Regional Board's Executive Officer issued a Notice of Non-Compliance to Quick Crete, a concrete-casting facility. This industrial facility has been in operation within the City for the last three decades and did not have the necessary storm water permits. Sections IX.A.9 and IX.B.8 of the MS4 Permit require the City to provide information to the Regional Board regarding facilities operating without proper coverage under the State's General Permits.
- i. **Failure to Prepare and Implement a Site-specific Urban Runoff Pollution Prevention Plan for Municipal Facilities and Activities:** Section XI.N of the MS4 Permit required the City to maintain an updated site-specific Urban Runoff Pollution Prevention Plan. At the time of the audit, the City had not developed a site-specific Urban Runoff Pollution Prevention Plan.
- j. **Failure to File a Notice of Intent and to Develop and Implement a Storm Water Pollution Prevention Plan for Municipal Construction Activities:** Sections XII. D and F of the MS4 Permit require the City to file a Notice of Intent and to develop and implement a storm water pollution prevention plan. At least for one of the municipal construction sites inspected by Board staff during the audit, the City had not filed a Notice of Intent and had not prepared a storm water pollution prevention plan.
- k. **Lack of City's Oversight:** Section VIII.B of the MS4 Permit requires the City to ensure that the provisions of the approved Water Quality Management Plan (WQMP) are properly implemented. The Engineer of Record for a project within the City, with an approved WQMP, had falsely certified that the control measures specified in the WQMP were constructed. These control measures were not constructed at the time of the program audit and field inspection by Board staff. The March 20, 2007 response to the NOV indicates that this problem has been rectified since then.

- i. **Failure to Properly Implement Provisions of the WQMP:** A review of the WQMP approved by the City for the Hampton Inn project at 1530 Hamner Avenue indicated that the City had not properly implemented the approved County of Riverside WQMP. The project design included sub-surface infiltration vaults that the City had not ensured were designed according to the approved County of Riverside WQMP. On July 27, 2007, Board staff requested the City to implement corrective actions to remedy this situation.

9. Section 13385(a)(2) of the Water Code provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000.00) for each day each violation occurs.

10. Pursuant to Section 13385(c), the maximum penalty that can be assessed for the violations cited above is shown in the table below. Some of the violations that could have been remedied by a single action (e.g., developing a computerized database for construction, industrial and commercial facilities) are grouped together and only significant violations were considered in calculating the maximum penalties in the table below.

Maximum Penalties for Significant Violations

Serial #	Permit Provisions Violated	Number of Days of Violation	Maximum Penalty @ \$10,000/day of Violation	Remarks
1	Section I.B(1)(f)	72	\$720,000	From 5/22/06 to 8/3/2006
2	Section VIII.B	1	\$10,000	From 8/2/04 to 8/03/06
3	Section IX.B	818	\$8,180,000	From 4/26/04 to 8/3/2006
4	Sections IX. C.1 & 2	818	\$8,180,000	From 4/26/04 to 8/3/2006
5	Sections IX.C.3, 4 & 5	997	\$9,970,000	From 10/27/2003 to 8/3/2006
6	Section XI.N	1359	\$13,590,000	From 10/25/2002 to 8/3/2006
7	Sections XII. D & F	1088	\$10,880,000	From 6/1/2004 to 6/8/2007
Total Maximum			\$40,650,000	

As indicated in the table above, the maximum penalty for the significant violations cited above is \$ \$40,650,000.

11. Board staff spent a total of 159 hours investigating the City's compliance with the MS4 Permit, for a total expenditure of \$16,593. The City saved at least \$61,901 by

not hiring adequate staff to manage the NPDES program under the MS4 Permit from the issuance of the MS4 Permit on October 25, 2002 to July 31, 2007.

12. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent, and Gravity of Violation	The City had been under the MS4 program for the last 17 years. The City has failed to fully implement a number of programs under the MS4 Permit that would have reduced the discharge of pollutants from the City's MS4 systems to waters of the U.S.
B. Culpability	The discharger was a signatory to the Report of Waste Discharge and has been a permittee under the municipal storm water program since 1990. The discharger is required to comply with the terms and conditions of the MS4 Permit.
C. Economic Benefit or Savings	The discharger saved at least \$61,901 by not having adequate staffing to manage the storm water program.
D. Prior History of Violations	On July 29, 1997, Board staff audited the City's storm water program, and it was determined that the City was in violation of its permit (Order No. 96-30). On December 11, 1997, an NOV was issued to the City citing the permit violations.
E. Other Factors	Board staff spent approximately 159 hours conducting the audit and reviewing the City submittals and other submittals.
F. Ability to Pay	The City has not provided any information to indicate that it is unable to pay the proposed amount.

13. After consideration of these factors, the Executive Officer proposes that civil liability be imposed on the City of Norco in the amount of \$78,494 for the violations cited above (\$61,901 in cost savings + \$16,593 for Regional Board staff costs = \$78,494).

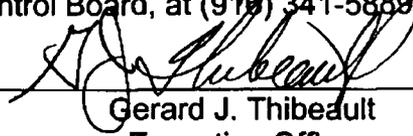
WAIVER OF HEARING

The City may waive its right to a hearing. If the City wishes to do so, please sign the attached waiver form and return it, together with a check payable to the State Water Resources Control Board, for the amount of civil liability proposed under Paragraph 13, above, to Regional Board's office in the enclosed preprinted envelope.

If you have any questions, please contact Mary Bartholomew at (951) 321-4586 or Milasol Gaslan at (951) 782-4419. For legal questions, contact Reed Sato, Chief of Enforcement at the State Water Resources Control Board, at (916) 341-5889

10-1-07

Date



Gerard J. Thibeault
Executive Officer

In the matter of:

**City of Norco
2870 Clark Avenue
Norco, CA 92860-1903**

Atten: Mr. Jeff Allred

Complaint No. R8-2007-0056
for
Administrative Civil Liability

WAIVER OF HEARING

I agree to waive the right of the City of Norco to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2007-0056. I have enclosed a check for \$78,494 made payable to the State Water Resources Control Board. I understand that I am giving up the right of the City of Norco to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

Date

for the City of Norco

Exhibit B – SEP Project

EXHIBIT B

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA AN REGION

3737 Main Street, Suite 500, Riverside, CA 92501-3348

Phone: 951-782-4130; Fax: 951-781-6288

www.waterboards.ca.gov/santaana

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

Application

(Please review the General SEP Qualification Criteria and the SEP Evaluation Form before completing this form; please provide all relevant information that could be used for evaluating your application.)

The following information is needed for consideration of a project for inclusion to the list of approved SEP projects for the Santa Ana Region.

I. Information about the Entity Requesting SEP Funds (SEP Proponent)

Name of SEP Proponent: Santa Ana Watershed Project Authority

Address: 11615 Sterling Avenue, Riverside, CA 92503

Contact Name: Mark Norton, Water Resources and Planning Manager

Phone number: 951-354-4221 Fax: n/a

E-mail address: mnorton@sawpa.org

II. SEP Project Details

Name of Project: Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement

Project Summary: (include scope of work, methods and materials, water quality/environmental benefits from the project, work products, etc. You may attach the details on a separate sheet.)

The Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project ("Project") would be implemented in Reach 4 of the Santa Ana River to support the preservation of beneficial uses such as Warm Freshwater Habitat (WARM) and Wildlife Habitat (WILD) by restoring habitat within the reaches that are of critical importance to the Santa Ana sucker (*Catostomus santaanae*). Since April, 2000 the sucker has been listed as "threatened" by the U.S. Fish and Wildlife Service (USFWS). The Project will implement the *One Water One Watershed 2.0 Plan*, the Santa Ana River Watershed's adopted watershed management plan by creating several rock structures that will cover up to approximately 150 yards in the river channel and create habitat for the species surrounding these structures by increasing water velocity, creating scour and forming pools

In the USFWS' *Draft Recovery Plan for the Santa Ana Sucker* released in November 2014, the Service states that "given the substantial reduction in the range of the species, the currently occupied areas, particularly in the Santa Ana River watershed, will likely not be sufficient to

provide the resiliency and redundancy necessary for recovery." To preserve the beneficial uses of the inland reaches of the Santa Ana River where rare or endangered species exist, special control requirements are necessary to assure attainment and maintenance of particular quality criteria, which may vary slightly with the environmental needs of the particular species.

Based on the Santa Ana Riverwalk Habitat Survey, conducted annually by the Santa Ana Sucker Conservation Team since 2006, the river channel is predominantly sand substrate upstream for 18.5 miles above Prado Dam. Based on the recently released draft USFWS Plan, regularly there have been low numbers of Santa Ana suckers at locations that historically had the highest abundances (San Marino Environmental Associates, Santa Ana sucker research progress report: 2010). According to the draft Plan, over a 10-year survey period from 2001 to 2011 results indicate a decline in the annual average estimate of Santa Ana suckers (San Marino Environmental Associates, Santa Ana sucker research progress report: 2009; San Marino Environmental Associates 2010).

The Project which was initially requested by, and will be developed in conjunction with, the USFWS, will include location of rocks and boulders within Reach 4 of the Santa Ana River channel in order to increase water velocity, creating scour and forming pools. Due to the shallow depth of sand cover in parts of Reach 4 of the Santa Ana River, heavy rocks will expose gravel and cobble that are approximately 1 foot under the top layer of sand. Results from the 2014 study, *Habitat variability and distribution of the Santa Ana sucker, Catostomus santaanae, in the Santa Ana River from the confluence of the Rialto channel to the Prado Basin*, indicate that a substrate composition of cobble, gravel and boulders largely corresponds with the presence of Santa Ana Suckers.

The Project is critically important as the River downstream from La Cadena Avenue in Reach 4 fluctuates in flow, which can strand suckers in pools. The major sources of flow near La Cadena Avenue include runoff, groundwater and discharges from wastewater treatments plants. The area is also the location of a nonnative, invasive, filamentous algae outbreak, first identified in February 2014 as *Compsopogon coeruleus*. According to the *Draft Recovery Plan for the Santa Ana Sucker*, the Santa Ana sucker is not known to forage on or spawn within filamentous algae.

The Project will be implemented by:

- Working with the resource agencies and the Regional Water Board to identify the specific location of the Project within Reach 4.
- Developing an implementation plan whereby a hydrologist and/or engineer will assist in the development in the construction design of the rock structures and assess the Project site, and identifying the equipment needed to place the rocks. A biologist and/or resource conservation district will also assist in the design and provide comments on the construction specifications as needed. Specifications for onsite monitoring and species protection measures will be provided.
- Developing digital map products.
- Consulting with the major landowners, likely the flood control district, and the Army Corps of Engineers.
- Developing detailed specifications which can include the size of the rocks needed, their configuration, securing rocks and/or heavy substrate material,
- Contracting with the U.S. Army Corps of Engineers or a construction contractor to utilize equipment such as a backhoe and dump truck to place rocks in a staging area near a

site and directly into the River to form structures that will cover a surface area of up to approximately 150 yards.

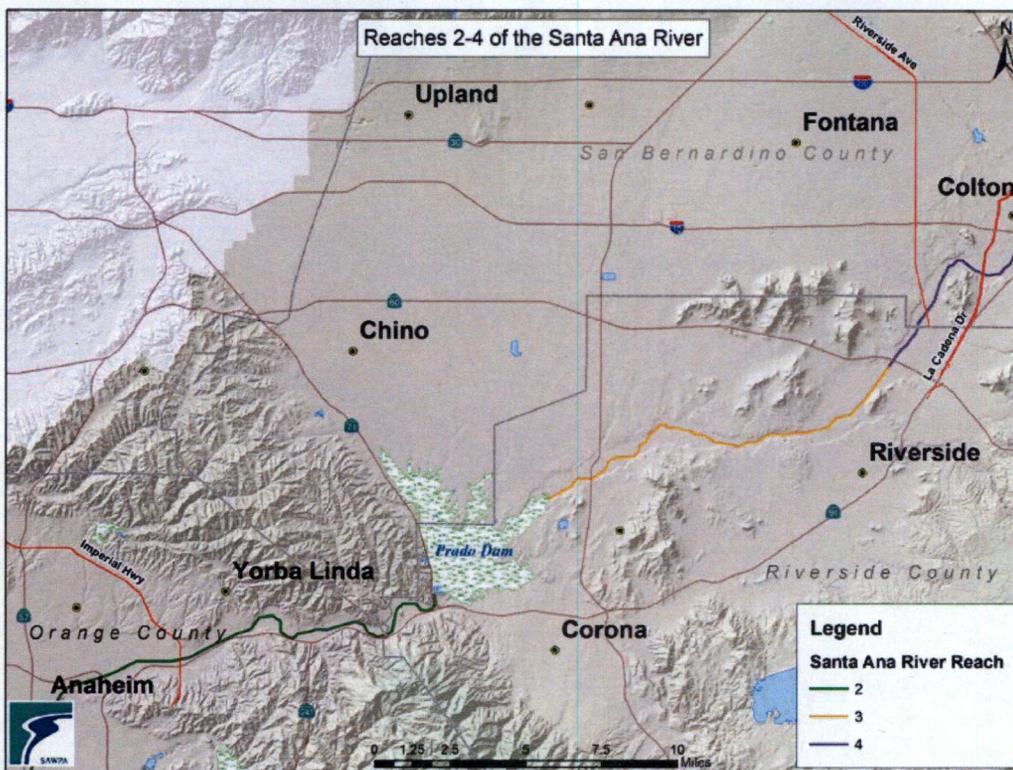
- Monitoring the ambient water quality important to the Santa Ana Sucker including temperature and dissolved oxygen,
- Collecting information related to sediment, transport and depth
- Conducting surveys of Santa Ana sucker.

Ambient water measurements will assist in maintenance of beneficial uses designations for this reach such as WARM and WILD whereby a further understanding of water quality, habitat improvements and the Santa Ana sucker's absence/presence can be drawn.

As the *Draft Recovery Plan for the Santa Ana Sucker* states, specific tolerances to water quality variables such as water temperature, dissolved oxygen, and turbidity have not been determined for Santa Ana sucker. Citizen monitoring may be enlisted in order to provide monthly measurements of riparian coverage and the size of the exposed gravel bars at the project site. The Santa Ana Sucker Conservation Team will provide press releases and summaries through member agency press offices and social media platforms to educate the public on the Project and the beneficial uses of the Santa Ana River.

Permits and certification that will be considered include a Streambed Alteration Permit from the California Department of Fish and Wildlife, 401 Certification from the Regional Water Quality Control Board, a 404 Permit from the Army Corps of Engineers and a right-of-way access permit from the Riverside County Flood Control and Water Conservation District.

Location of Project: (include watershed or waterbody, location maps, etc.):



K:\Interns\Sam\Upstairs Projects\lanProjects\Reaches2_4_ofthe_SantaAnaRiver\020215.mxd SW-2440

With the analysis of the hydrologist, and in conjunction with the USFWS, the Project will be implemented in Reach 4 of the Santa Ana River in Riverside County. The total size of the project will not exceed one acre.

Project Schedule: (include start date, expected end date, interim and final report dates [at a minimum, quarterly reporting is required by SEP Policy]):

The Project time line would begin in January 2016 and the overall estimated project deadline when all phases are complete would be up to November 30, 2018 to ensure at least a year surveying after the placement of rocks.

The Project would begin upon the proposals acceptance by the Regional Board and heavy equipment implementation will be implemented timely after the end of the sucker's spawning season (mid-March to early July) as well as after federally listed bird species have migrated out of the area (September) to provide immediate relief to the species.

Overall Project Schedule

Task/Subtask	2016			2017			2018												
	J	F	M	J	J	A	S	O	N	D	J	F	M	M	J	J	A	S	O
Project Management	[Blue shaded bar]																		
Project Management	[Blue shaded bar]																		
Contract with Regional Board	[Blue shaded bar]																		
Submittal of Quarterly Reports	[Blue shaded bar]																		
Implementation	[Blue shaded bar]																		
Project Implementation Plan	[Blue shaded bar]																		
Rock Location in River (Heavy Equipment)	[Blue shaded bar]																		
Monitoring	[Blue shaded bar]																		
Biological and Water Quality Monitoring	[Blue shaded bar]																		

Deliverables: (interim and final reports, analytical results, model runs, etc.)

- Copy of the implementation plan
- Quarterly reporting documenting progress on consultation, planning, monitoring and implementation.

EXHIBIT D

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION (Region 8)

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)
Certificate of Completion

The following certification is provided by the SEP Proponent as proof of completion of the SEP project described below.

Project Proponent: _____

Contact Person: _____

Phone: _____ E-Mail _____

Name of Project: _____

Project Summary: (you may attach a final project report or additional sheets for project summary)

Date Project Started: _____

Date of Completion: _____

SEP Money Allocated for the Project: _____

Enforcement Order No. and Name of Discharger: _____

Date the Amount Was Sent to Project Proponent: _____

Total Project Cost (including funds from other sources): \$ _____

How was the SEP Fund Used for This Project?

Overhead/Management	\$ _____
Design/Consultation	\$ _____
Construction/Implementation	\$ _____
Lab and analytical costs	\$ _____
Other expenses (explain)	\$ _____
Total Project Cost (SEP \$ only)	\$ _____

III. Total project cost and the amount of SEP money requested: (include a breakdown of project costs such as overhead/project management, design/consultation, construction/implementation, sample collection/analysis, report preparation; indicate other funding sources, if any. For other funding sources, indicate if the funds have been committed, any restrictions on the funds, and the amount.)

The project cost for this phase is \$63,247¹. Costs include project management, acquiring site access and contracts with a hydrologist and biologist. See detailed budget below.

Line Item	SEP Funding	Further Detail
Hydrologist	\$4,000	Assumes \$125/hour
Biologist	\$4,000	Assumes \$125/hour
Project Management & Access/Permit Planning	\$4,000	Assumes \$125/hour
Rock and Substrate Material	\$7,000	Assumes \$35/quarter ton (funds from other sources augment costs)
Heavy Equipment, Equipment Operators, Fuel	\$44,247	Heavy equipment may include dump truck(s), backhoe(s)
Total	\$63,247	

IV. Nexus: (Explain how the proposed SEP project benefits the watershed impacted by the discharge for which a fine was assessed. This information may not be available during the initial SEP application process and may be submitted later.)

- A. Settlement of Order R8 2015-0012, City of Beaumont: Discharge from the City of is to a tributary of San Timoteo Creek, which is tributary to the Santa Ana River. The proposed project will benefit the designated beneficial uses of the Santa Ana River. A total of \$24,000 will be provided by the City of Beaumont for this Project.
- B. Settlement of Order R8-2007-0056, City of Norco: The City of Norco stormwater discharges are to the Santa Ana River, Reach 3. The proposed project will benefit the designated beneficial uses of the Santa Ana River. A total of \$39,247, previously provided by the City of Norco to OCWD has been transferred to SAWPA for this Project.

¹ The Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP is funded by settlement of a Mandatory Minimum Penalty issued to the City of Beaumont. The City of Beaumont settled the Mandatory Minimum Penalty with the payment of \$24,000 to SAWPA for the SEP. (Order No. R8-2015-0012). The City of Norco settlement of Complaint No. R8-2007-0056 provides \$39,247 for the SEP. Total funding for the SAWPA Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement SEP is \$63,247 (\$39,247 from the City of Norco and \$24,000 from the City of Beaumont).

EXHIBIT C

Memorandum of Understanding

This shall serve as a Memorandum of Understanding by and between the Santa Ana Watershed Project Authority ("SAWPA" or "SEP Proponent") and the City of Norco ("City") for the Supplemental Environmental Project "Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project".

SAWPA commits to receive funding and serve as the implementing party for the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project, as detailed in the Settlement Agreement and Stipulated Order. SAWPA will use the SEP funds of thirty nine thousand two hundred ninety seven dollars (\$39,247) in accordance with the terms of Santa Ana Regional Water Quality Control Board Order No. R8-2016-0006. SAWPA will maintain documentation of SEP expenditures on the Habitat Management Project and will provide that documentation to the City or the Santa Ana Regional Water Quality Control Board upon request.

Agree:

SEP PROPONENT

DISCHARGER

Paul R. Nute

Signature

Signature

Water Resources & Planning Mgr., SAWPA

TITLE

TITLE

2/16/16

Date

Date

III. Total project cost and the amount of SEP money requested: (include a breakdown of project costs such as overhead/project management, design/consultation, construction/implementation, sample collection/analysis, report preparation; indicate other funding sources, if any. For other funding sources, indicate if the funds have been committed, any restrictions on the funds, and the amount.)

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V. Discharger Information: (If you are requesting SEP funds as part of a settlement for an enforcement action, include the name of the Discharger and the enforcement action; otherwise, leave it blank.)

- A. City of Beaumont, Mandatory Minimum Penalty Order No. R8-2015-0012
- B. City of Norco, ACLC Order No. R8-2007-0056

VI. Signature

I hereby accept these funds provided through the Santa Ana Regional Water Quality Control Board's Supplemental Environmental Project (SEP) program to use in accordance with the project description, schedule and budget provided above.

Mark R. Norton, Water Resources & Planning Mgr., SAWPA
Name and Title

Mark R Norton
Signature

2/16/16
Date

EXHIBIT C

Memorandum of Understanding

This shall serve as a Memorandum of Understanding by and between the Santa Ana Watershed Project Authority ("SAWPA" or "SEP Proponent") and the City of Norco ("City") for the Supplemental Environmental Project "Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project".

SAWPA commits to receive funding and serve as the implementing party for the Santa Ana Sucker Habitat Protection and Beneficial Use Enhancement Project, as detailed in the Settlement Agreement and Stipulated Order. SAWPA will use the SEP funds of thirty nine thousand two hundred ninety seven dollars (\$39,247) in accordance with the terms of Santa Ana Regional Water Quality Control Board Order No. R8-2016-0006. SAWPA will maintain documentation of SEP expenditures on the Habitat Management Project and will provide that documentation to the City or the Santa Ana Regional Water Quality Control Board upon request.

Agree:

SEP PROPONENT

DISCHARGER

Signature

V. Valenzuela

Signature

TITLE

City Manager

TITLE

Date

1-27-2016

Date



EXHIBIT D

State of California
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION (Region 8)

SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)
Certificate of Completion

The following certification is provided by the SEP Proponent as proof of completion of the SEP project described below.

Project Proponent: _____

Contact Person: _____

Phone: _____ E-Mail _____

Name of Project: _____

Project Summary: (you may attach a final project report or additional sheets for project summary)

Date Project Started: _____

Date of Completion: _____

SEP Money Allocated for the Project: _____

Enforcement Order No. and Name of Discharger: _____

Date the Amount Was Sent to Project Proponent: _____

Total Project Cost (including funds from other sources): \$ _____

How was the SEP Fund Used for This Project?

Overhead/Management	\$ _____
Design/Consultation	\$ _____
Construction/Implementation	\$ _____
Lab and analytical costs	\$ _____
Other expenses (explain)	\$ _____

Total Project Cost (SEP \$ only) \$ _____

On behalf of the Project Proponent receiving SEP funding, I certify that the entire amount of the SEP funding received has been used for the project as indicated above. I also certify that the portion of the project for which this SEP funding was earmarked has been completed. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

SIGNATURE: _____ **Date:** _____

Name: _____ **Position:** _____

(If a final copy of the report of the project is available, include a copy with this certification; provide copies of receipts, invoices, etc. to substantiate the expenses.)