

SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:
**San Bernardino International Airport
Authority**

ORDER R8-2019-0072 (Proposed)
SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Santa Ana Region (Regional Board), on behalf of the Regional Board Prosecution Team (Prosecution Team), and San Bernardino International Airport Authority (Discharger) (collectively known as the Parties) and is presented to the Regional Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. During January and February of 2018, the Discharger hired a contractor LA Construction that was to begin demolition of trapezoidal concrete side panels and remove sediment that accumulated over the years within City Creek Bypass Channel, a water of the United States. The Discharger allowed the contractor to work within the channel as well as stockpile concrete debris within the channel.
3. On January 24, 2018, LA Construction began work within the Channel. On January 25, 2018, U.S. Army Corps of Engineers observed work being performed in the channel and informed Regional Board staff. According to the scope of work provided to Regional Board staff by SBIAA, the work was to involve demolition of trapezoidal concrete side panels and removal of sediment in approximately 5280 ft of channel.
4. As alleged in Attachment A, hereby incorporated by reference, SBIAA violated Water Code section 13376 and Clean Water Act section 301 by discharging sediment and concrete debris into waters of the United States without first filing a report of waste discharge or obtaining a Clean Water Act section 404 permit. The discharge of sediment and concrete debris occurred on January 24, 25, 31, 2018 and February 1, 2, 5, 6, 7, 8, and 9, 2018.

5. Pursuant to Water Code section 13376, "The discharge of pollutants ... except as authorized by waste discharge requirements or dredge or fill material permits, is prohibited."
6. Under Clean Water Act section 301, it is unlawful for any person to discharge any pollutant into waters of the United States without authorization under specific provisions of the Clean Water Act, including those for NPDES and dredged and fill permits. (33 U.S.C. § 1311.)
7. Water Code section 13385, subdivision (a) states, in relevant part:

A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376...

(5) A requirement of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the federal Clean Water Act (33 U.S.C. Sec. 1311, 1312, 1316, 1317, 1318, 1341, or 1345), as amended.

8. Water Code section 13385, subdivision (c) states, in relevant part:

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(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.

9. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of civil liability, the Regional Board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

10. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
11. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Discharger in the amount of sixteen thousand five hundred dollars (\$16,500). The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

12. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
13. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **sixteen thousand five hundred dollars (\$16,500)** to the Regional Board to resolve the violations specifically alleged in this Stipulated Order. No later than 30 days after the Regional Board, or its delegee, signs this Order, the Discharger shall submit a check for **sixteen thousand five hundred dollars (\$16,500)** made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Order, and mail it to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via email to the State Water Resources Control Board, Office of Enforcement (Kailyn.Ellison@waterboards.ca.gov) and the Regional Board (Chuck.Griffin@waterboards.ca.gov).

14. Compliance with Applicable Laws and Regulatory Changes: The Discharger understands that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. Party Contacts for Communications Related to Stipulated Order:

For the Regional Board:

Chuck Griffin, PE
Senior WRCE, Enforcement Coordinator
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501
(951) 782-4996
Chuck.Griffin@waterboards.ca.gov

For the Discharger:

James Harris
Manager of Capital Projects
San Bernardino International Airport Authority
1601 E. 3rd Street, Suite 100
San Bernardino, CA 92408
(909) 382-4100, ext. 152
jharris@sbdairport.com

16. Attorneys' Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

17. Public Notice: The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.

18. **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.
19. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional 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 Team or Regional 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. The Regional 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.
20. **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 Regional Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
21. **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.
22. **Modification:** This Stipulated 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 the Regional Board or its delegee.
23. **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.
24. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess an 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 and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. 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 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 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.
25. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Board, hereby waives its right to a hearing before the Regional Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Board or State Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
26. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Board, the Discharger hereby waives the right to petition the Regional Board's adoption of the Stipulated Order as written for review by the State Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
27. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
28. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.

29. **Necessity for Written Approvals:** All approvals and decisions of the Regional Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
30. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
31. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
32. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
33. **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. Further, 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.

Stipulated ACLO R8-2019-0072
San Bernardino International Airport Authority

IT IS SO STIPULATED.

California Regional Water Quality Control Board, Santa Ana Region Prosecution Team

By: Original Signed by Jayne Joy
Jayne Joy
Assistant Executive Officer

Date

Stipulated ACLO R8-2019-0072
San Bernardino International Airport Authority
San Bernardino International Airport Authority

By: Original Signed by Michael Burrows _____

Michael Burrows
Executive Director

Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

Original Signed by Hope Smythe _____

Hope Smythe
Executive Officer
Santa Ana Regional Water Quality Control Board

Date

Attachment A: Specific Factors Considered