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9 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
10 CENTRAL COAST REGION

11 In the Matter of:

12 ) ACLC No. R3-2012-0030

13 ) SOUTH SAN LUIS OBISPO COUNTY  
14 ) SANITATION DISTRICT,  
15 ) ADMINISTRATIVE CIVIL LIABILITY  
16 ) COMPLAINT NO. R3-2012-0030

17 ) PROSECUTION TEAM'S BRIEF,  
18 ) CASE IN CHIEF

19 ) July 27, 2012  
20 )  
21 )  
22 )  
23 )  
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25 **I. Introduction**

26 In the Technical Report and accompanying Appendices (collectively, "Technical Report")  
27 provided with the Administrative Civil Liability Complaint ("ACLC") on June 19, 2012, the  
28 Prosecution Team set forth the basis for its recommended penalty and determination of discharge  
volume calculation of the sanitary sewer overflow ("SSO") that occurred on December 19-20, 2010  
as a result of an electrical pump failure at the South San Luis Obispo County Sanitation District  
("District" or "Discharger") wastewater treatment plant (WWTP) in Oceano, California.<sup>1</sup> In this

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<sup>1</sup> A few minor corrections to the Technical Report should be noted, none of which affect the recommended penalty. There were some typographical errors in some of the tables in including an incorrectly stated economic benefit figure in Table 1 and an incorrect number of days listed in Table 7: 766 days should be 401 days; also the due date should have read 1/30/11 rather than 1/30/10. The maximum penalty in Tables 1 and 8 should be increased by \$20,000 to account for the \$10,000 per day penalty in addition to recovery of \$10.00 per gallon of material discharged. Also, the dates in Table 2 should obviously be 12/19/10 and 12/20/10 rather than 12/29/10 and 12/30/10.

1 opening brief, the Prosecution Team provides greater detail about why it chose its method for  
2 calculating the discharge volume, why the Discharger's preferred method is inappropriate and  
3 unreliable, and why the proposed penalty is appropriate given other completed sewer overflow  
4 cases in the state, and provides further details about the considerable staff costs expended to bring  
5 this matter to hearing.

## 6 **II. The Prosecution Team's Methodology Is Conservative, Reliable, and Appropriate**

### 7 **A. Circumstances Leading to SSO on December 19-20, 2010**

8 As is discussed *infra*, the District failed to address previously known risks of equipment  
9 failure risks prior to the sewer overflow.<sup>2</sup> Surrounding the sewer overflow event, approximately 5  
10 inches of rain fell over two days, which caused localized flooding. Initially, the District reported  
11 that the sewer overflow was caused from floodwater that entered an electrical conduit leading into  
12 pump motor controls, which resulted in a power failure and shut down all four influent pumps at  
13 the WWTP. The resulting loss of power of all four influent pumps caused untreated sewage being  
14 conveyed into the WWTP to back up, or "surcharge," into sewer collection system pipes upstream  
15 of the plant, reportedly causing sanitary sewer overflows from manholes owned by the District and  
16 Oceano Community Services District and mixed with localized floodwaters in the area. In October  
17 2011, the Discharger experienced and reported another electrical failure of all four influent pumps  
18 due to water entering an electrical conduit tripping the motor control power "shunt switch" located  
19 inside the influent pump station headworks. Although this October 2011 failure did not result in a  
20 sewer overflow, this indicates that the original reported problem was not corrected.

21 The simultaneous shutdown of all four influent pumps caused the influent sewage and  
22 contaminated floodwaters to rapidly fill the headwork's wet well and caused the influent flow to  
23 surcharge in sewer lines upstream of the District's WWTP. When the District attempted to use its  
24 diesel-powered emergency standby pump to divert influent sewage around the failed pump station  
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26  
27 <sup>2</sup> A Main Budget Item for the District indicates for Fiscal Year 2004-2005, an electrical wiring project could have  
28 addressed the problem that was experienced during the SSO. A similar entry was contained in the District's Fiscal Year  
2010-2011 budget. See Prosecution Team Evidence Exhibit 2.

1 for treatment, it discovered that the pump's discharge valve was inadvertently closed, which could  
2 have been prevented if standard operating procedures were in place. The plant operators were  
3 unable to fully open the pump's discharge valve due to the rising flood/sewage waters entering the  
4 headworks. The Prosecution Team's Technical Report outlines a timeline and primary actions  
5 undertaken by the District during the sewer overflow incident. Residents interviewed by  
6 Prosecution Team investigators stated that the rain had ended by early afternoon on December 19,  
7 2010, which is consistent with reports from the District, and that most of the contaminated  
8 floodwater had receded by the evening of December 19<sup>th</sup>. The Discharger also reported an  
9 additional sewer overflow on the morning of December 20<sup>th</sup> attributable to the same primary cause.

### 10 **B. Volume Estimates of the Sewer Overflow**

11 The Technical Report and Appendix A provides an analysis of the methods used to estimate  
12 the sewer overflow and discusses the information evaluated. In sewer overflow cases, the  
13 discharger typically submits a report describing the events, before, during, and after the sewer  
14 overflow, including discharge volume estimation and possible causes.

15 The Prosecution Team has selected the most conservative and reliable method to determine  
16 the discharge volume. The Prosecution Team estimated the sewer overflow discharge volume by  
17 modeling the flow conveyed, treated, and discharged from the District's WWTP had the influent  
18 pumps not failed. The Prosecution Team used the calibrated effluent flow data to estimate the  
19 sewer overflow. The Discharger's preferred method of estimating the sewer overflow discharge  
20 volume is referred to as the hydraulic grade line<sup>3</sup> ("HGL") method, and is a very different approach.  
21 The HGL method attempts to estimate the flow out of each discharge point (e.g., each manhole)  
22 upstream of the District's WWTP. The HGL method relies on oversimplified assumptions to  
23 describe a very complex process and used equations and visual observations to estimate the sewer  
24 overflow.

### 25 **C. The Prosecution Team's Method For Calculating Sewer Overflow Volume**

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27 \_\_\_\_\_  
28 <sup>3</sup> Hydraulic grade line is an estimate of the pressure in the sewer lines.

1 To estimate the flow that would have been discharged from the District's WWTP had the  
2 influent pumps not failed, the Prosecution Team examined historic flow data that establish a daily  
3 flow pattern. Different daily flow patterns exist for dry and wet periods. The main difference  
4 between dry and wet period flows is the additional flow, known as "inflow and infiltration" or "I/I"  
5 that enters into the sewer system because of a storm event. The Prosecution Team used historical  
6 flow data from both the "influent" flow meter and "effluent" flow meter to compare the inflow and  
7 infiltration volumes during the sewer overflow event. The Prosecution Team determined that the  
8 inflow and infiltration volume using the "effluent" flow meter is more conservative and reliable  
9 because the flow meter was fully operational during the sewer overflow event which recorded  
10 effluent flow data every two minutes. After establishing when the flow through the treatment plant  
11 stopped because of the influent pump failure, the Prosecution Team used the wet weather daily  
12 flow pattern to estimate the amount of sewage that escaped the collection system upstream of the  
13 District's WWTP while the pumps were not in operation. When the pumps shut down, flow  
14 through the WWTP stopped and incoming sewage started to back up and spill from the collection  
15 system. All flow that does not go through the WWTP is an illegal discharge.

16 The next step to calculate the spill volume is to determine the start and stop times of the  
17 overflow. In this step, the Prosecution Team used conservative starting and ending times.  
18 Although the Discharger estimates that the sewer overflow began at 11:00 am, for purposes of  
19 estimating the sewer overflow volume, the Prosecution Team assumed the sewer overflow  
20 commenced at 12:00 pm. The Prosecution Team felt it was more appropriate and fair to average  
21 the hourly flow patterns to establish the volume. The Prosecution Team estimated 3,262,701  
22 gallons would have entered the District's WWTP if the influent pumps did not fail from 12:00 pm  
23 to 10:00 pm.

24 The Prosecution Team's conservative selection of start and stop times is beneficial to the  
25 Discharger because it drastically underestimates the likely volume of sewer overflow. For  
26 example, from 11:00 am to 12:00 pm, the Prosecution Team estimates that 366,347 gallons would  
27 have exited the treatment plant during this one hour time period. During this time period, the  
28 Discharger had only begun its efforts to divert the flow around the failed pumps and only managed

1 to get 59,250 gallons around the failed pumps and into the treatment plant. This means that  
 2 307,097 gallons of sewage overflowed, but was not included in the Prosecution Team's overflow  
 3 estimate. The reason the Prosecution Team used conservative start and stop times was to account  
 4 for uncertainties in I/I.

5 The final steps in arriving at the Prosecution Team's sewer overflow estimate are to take the  
 6 estimated amount of flow that came into the plant and subtract the flows that were diverted around  
 7 the failed pumps. As cited above, this indicates the volume of an illegal discharge. This includes  
 8 the 1,945,076 gallons, as recorded by the effluent meter, that bypassed the failed pumps from 12:00  
 9 pm to 10:00 pm and the 180,000 gallons diverted to sludge storage. Adding the 2,200 gallons of  
 10 sewage that overflowed the next day, the Prosecution Team estimated 1,139,825 gallons of sewage  
 11 discharged.

12 **D. Discharger's Method(s) For Calculating Sewer Overflow Volume**

13 The Discharger has offered various statements as to how it would calculate the volume of  
 14 the sewer overflow, but no method is as reliable as the Prosecution Team's method, using all  
 15 available data, and the Discharger's methods are either based on unproven and self-serving  
 16 assumptions or are internally inconsistent with the facts of the spill, and assume the spill ended  
 17 much earlier than it did.

18 **Table 4 – Summary of Discharger's Methods and Estimates of Sewer Overflow Volume<sup>4</sup>**

19

CALCULATION METHODOLOGY	CALCULATED SEWER OVERFLOW VOLUME
#1 reported HGL	417,298 gallons*
#2 Influent Flow Data	661,000 gallons
#3 Chief Plant Operator's Report	2,250,000 to 3,000,000 gallons

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21  
22  
23  
24 \*Final sewer overflow volume reported by Discharger (response to NOV and 13267 Letter dated May 31, 2011)

25  
26  
27 <sup>4</sup> Repeated from Technical Report, page 11.  
28

1 The HGL method is the District's preferred approach, and it relies on uncalibrated equations  
2 and visual observations to estimate the sewer overflow. The available evidence shows that the  
3 HGL method vastly underestimates sewer overflow.

4 The main underlying assumption of the HGL method is that after the initial pump failure,  
5 the hydraulic grade line reached equilibrium as the upstream flow accumulating in the sewer system  
6 matched the flows being discharged through the manholes upstream of the WWTP and the flows  
7 diverted around the fail pumps into the WWTP. In calculating the discharge from the manholes,  
8 the Discharger assumed the system was in equilibrium from 11:00 am to 5:00 pm, before slowly  
9 lowering the grade line (and thus the flows into and out of the system) in steps until 10:00 pm.  
10 (District's May 31, 2011 NOV Response) However, the system clearly was not in equilibrium  
11 during this time period. The flows entering the sewer system were increasing when the pumps  
12 failed. Also, as the Discharger brought in more pumps to divert the flow around the failed influent  
13 pumps, the sewage being diverted around the failed influent pumps had dramatic flow variations.<sup>5</sup>

14 The Discharger also assumes that the hydraulic grade line at the plant is the same for all the  
15 discharge points and uses this assumption to determine which manholes discharged. Using this  
16 method, the Discharger reported in CIWQS<sup>6</sup> that 21 manholes overflowed. However, due to the  
17 localized flooding, the sewer system is considered an "open" system. All possible locations where  
18 sewage could have escaped the collection system are not known (e.g., sewer relief valves designed  
19 to allow sewage to escape the collection system, holes/cracks in sewer lines, service lateral  
20 connection cleanouts, etc.). In addition, the Discharger reported six residential homes that  
21 experienced sewer backups<sup>7</sup> (although the Prosecution Team alleges that number is at least 8 based  
22 on site interviews with additional homeowners<sup>8</sup>). Furthermore, sewage flowing through the sewer  
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24 <sup>5</sup> See charts in Prosecution Team's Appendix A to Technical Report, submitted as Exhibit 1.

25 <sup>6</sup> "CIWQS" stands for California Integrated Water Quality System, available to the public at  
26 [https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso\\_main](https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso_main)

27 <sup>7</sup> The information that six homes had been inundated by sewage during the SSO was certified by the Discharger in  
28 CIWQS on March 6, 2012.

<sup>8</sup> See Prosecution Team Exhibit 8.

1 system affects the hydraulic grade line thus invalidating the simplistic assumption the hydraulic  
2 grade line is the same for all locations.

3 To estimate the flow from each manhole, the Discharger used uncalibrated equations and  
4 unreliable visual observations. There are many site-specific factors to determine the flow out of  
5 lifted manholes and manhole pick holes. These include cover geometry, weight, installed grade,  
6 pick hole size, etc. The Discharger did not adjust its flow estimates from the manholes to take into  
7 account these factors specific for the District's sewer system. The use of uncalibrated equations  
8 and observations to estimate the sewage discharged from the overflow structures is not suitable or  
9 reliable enough to support a finding from the Regional Board.

10 The available evidence shows that the HGL method vastly underestimates sewer overflow.  
11 The Discharger estimates that total 12-hour sewage discharge as determined by the HGL for  
12 December 19, 2010 was 415,098 gallons. However, using the flow data for the treatment plant, the  
13 Prosecution Team estimates that for just the first two hours of the overflow (from 11:00 am to 1:00  
14 pm), 727,385 gallons of sewage would have entered the treatment plant had the pumps not failed.

15 The Discharger used a second method, similar to the Prosecution Team's, but which  
16 presumed the different flow rates than the Prosecution Team did, and that the sewer overflow  
17 ended at 5:00 p.m.<sup>9</sup> For this estimate, the Discharger estimated the sewer overflow from 11:00 am  
18 to 5:00 pm and had a total overflow volume of 661,000 gallons. This method is not reliable based  
19 on either the likely flow information and the Discharger's own statements that the overflow ended  
20 at 10:00 p.m. (page 8 of NOV response).

21 A third method was proposed by the Discharger's former Chief Plant Operator (CPO)  
22 actually overestimates the total volume of the SSO, in the opinion of the Prosecution Team. This  
23 method is based on maximum plant flow, and results in an approximate volume of 3,000,000  
24 gallons.<sup>10</sup> The District later tried to disavow this estimate.

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27 <sup>9</sup> See District May 31, 2011 NOV Response, Prosecution Team's Exhibit 6.

28 <sup>10</sup> See Prosecution Team Exhibit 19.

1           **III. Employee Issues with District**<sup>11</sup>

2           The investigation into the District's compliance with water quality regulations commenced  
3 before the SSO event on December 19-20, 2010. Former employees reported violations and  
4 inappropriate activities by the District to the State Water Board Office of Enforcement. Some of  
5 these violations and inappropriate activities contributed to the SSO event on December 19-20,  
6 2010. In addition, all three "whistleblower" employees have left their positions with the District.  
7 Before 2006 a grading project at the plant involving the electrical pull box was done improperly.  
8 Water would still accumulate, pond and overflow into the headworks. Jeff Appleton provided an  
9 email to Water Board staff in January 2011, stating, "If memory serves me correctly the main motor  
10 leads for the influent pumps run through this pull box. The current condition of the grading in this  
11 area presents a significant risk to the operations of the plant during wet weather conditions."<sup>12</sup> Mr.  
12 Appleton, the Certified Plant Operator at the time of the December 19-20, 2010 spill, also provided  
13 information to the Regional Water Quality Control Board, Central Coast Region, stating that he felt  
14 pressured by John Wallace, the President of the Wallace Group, which is the District  
15 Administrator, to certify a much lower discharge volume than Appleton's own calculation. While  
16 the Prosecution Team recognizes that Mr. Appleton's estimate may be too high, his version of  
17 events has remain consistent since the overflow event, which is more than can be said of the  
18 District.

19           **IV. Other Statewide Sewage Spill Enforcement Cases**

20           In a June 20, 2012 press release responding to the issuance of the ACLC, the District stated  
21 that "while it was anticipated that the Water Board would fine the District for this accidental spill,  
22 the excessive dollar amount exceeding \$1.3 million is unfair, is based on flawed Water Board  
23 calculations and methodology and is drastically inconsistent with fines levied in other communities  
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26 <sup>11</sup> The Prosecution Team has asserted certain privileges over documents to date, including Evidence Code sections  
27 1040 sections et seq. and Government Code 6254(f). To the extent that documents are being produced with the  
28 Prosecution Team's evidentiary submission, those privileges are waived as to the produced documents only.

<sup>12</sup> See Prosecution Team Exhibit 20.



1 for similar types of events.”<sup>13</sup> This statement is incorrect because Prosecution Team’s spill volume  
2 estimate is reasonable and defensible, and our resulting penalty calculation is consistent with other  
3 Regional Board cases. The basis for the Prosecution Team’s recommended penalty is described in  
4 detail in the Technical Report, submitted on June 19, 2012 with the ACLC. The Prosecution Team  
5 also compared its recommended penalty with other SSO penalties, reached either through  
6 settlements or adjudicated hearings, utilizing the penalty methodology under the Enforcement  
7 Policy effective as of May 2010. The proposed penalty for the District, at \$1.21 per gallon, is not  
8 the highest amount per gallon compared to other cases. Other recent sewage spill cases have higher  
9 penalties, such as Redwood City, a matter addressed by an ACLC, and Oakland, a matter which  
10 settled after an ACLC was issued in Region 2, at \$1.67 and \$1.88, respectively, and North Tahoe  
11 Public Utility District in Region 6, at \$1.79 a gallon.<sup>14</sup> The Prosecution Team did not assign a  
12 “major” deviation in the “deviation from requirement” category, as almost all of the other cases  
13 did, which would have increased the proposed penalty. Also, although not required, we exercised  
14 our discretion to lower the penalty and use the \$2.00 per gallon figure because it was a large  
15 volume spill rather than the \$10.00 per gallon statutory maximum. Using the \$10.00 per gallon  
16 maximum, the penalty would be over \$11 million dollars.

17 It is the Prosecution Team’s position that, contrary to the Discharger’s allegation, that the  
18 recommended penalty is both rational and fair. While describing the storm as “fierce,” and the spill  
19 as “accidental,” and “isolated,” the facts simply do not bear out the District’s version of events.<sup>15</sup>

## 20 **V. Previous History at Facility**

21 The Prosecution Team expects the Discharger to argue for a reduction in its penalty for  
22 previous compliance with water quality regulations. However, the District oversees both a  
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24 <sup>13</sup> See Prosecution Team Exhibit 10.

25 <sup>14</sup> The North Tahoe ACLC came before Region 6 at a hearing on July 11-12, 2012, wherein the Regional Board  
26 increased the penalty above staff’s recommendation. While the Order has not been finalized, it is our estimation that  
the resulting discharge volume calculation is increased to approximately \$1.81 per gallon.

27 <sup>15</sup> These quotations are from the District’s June 20, 2012 Press Release, issued in response to the issuance of the ACLC.  
28 See Prosecution Team Exhibit 10.

1 collection system and a wastewater treatment system, and there is a long history of non-discharge  
2 violations, including effluent violations and lab irregularities.<sup>16</sup> These violations have resulted in  
3 mandatory minimum penalties. The Water Board's Enforcement Policy is not restricted to similar  
4 types of violations.

5 The current CIWQS report contains more than 60 non-discharge violations. In January  
6 2010, the District discharged 170,000 gallons of unchlorinated effluent to the Pacific Ocean.  
7 Therefore, the spill that is the subject of this enforcement action is not an isolated event or an  
8 anomaly, but is simply the most significant violation among many others to date.

9 Furthermore, it should be noted that this facility came under investigation in part because of  
10 current and former employees who felt pressure from District management to alter laboratory  
11 sampling data prior to submitting it to the Regional Board and other violations listed in an NOV  
12 dated July 21, 2010.<sup>17</sup> One employee, Devina Douglass, has received \$50,000 in settlement for the  
13 resolution of her claims against the District. Another employee, Scott Mascolo, continues to  
14 litigate with the District. The integrity of the self-reporting permitting process is crucial in  
15 allowing the Regional Boards to respond quickly and completely to water quality threats.

16 Simply obtaining correct information about the spills and the extent of the problem was  
17 difficult in this matter. The sewage overflow caused by the District also resulted in 1,200 gallons  
18 of sewage to reportedly back-up into residential homes through private sewer service lateral pipe  
19 connections upstream of the District's WWTP. However, onsite investigation by the Prosecution  
20 Team discovered that two additional residential homes experienced sewer backups caused by the  
21 District's sewer overflow that were never reported or certified by the District in CIWQS. Further,  
22 the District failed to report and certify each of the 6 (of the 8 that the Prosecution Team knows of)  
23 sewer backups in CIWQS as required under the Sanitary Sewer Order Amended Monitoring and  
24 Reporting Program (Order No. 2008-0002-EXEC), until March 6, 2012 (401 days late for each  
25 reported sewer backup).

26 \_\_\_\_\_  
27 <sup>16</sup> See Prosecution Team Exhibit 24.

28 <sup>17</sup> See Prosecution Team Exhibit 11.

1 **VI. Significance of Rain Event**

2 The storm that occurred on December 18 – 19, 2010, was a large event that caused flooding  
3 near the wastewater treatment plant. December 18 had 2.87 inches of rain and December 19 had an  
4 additional 1.73 inches for a total of 4.6 inches over the two days. According to precipitation  
5 frequency estimates from the National Weather Service<sup>18</sup>, the return period for this storm ranges  
6 from 10 years for a one-day event to less than 25 years for a two-day event. This means that a  
7 storm this size is expected to occur every 10 to 25 years.

8 The Standard Provisions of Order No. R3-2009-0046 requires that the facilities shall be  
9 adequately protected from a 100-year frequency flood. The Discharger failed to meet these  
10 requirements since the return period for this storm was less than 25 years.

11 **VII. Staff Costs**

12 This is an enforcement action which has taken considerable effort. As is proper under both  
13 Water Code section 13385 and the Enforcement Policy, staff costs should be added to any  
14 recommended penalty. “The costs of investigation and enforcement are ‘other factors as justice  
15 may require’ and should be added to the liability amount.” Enforcement Policy, p. 19. The costs  
16 include in this case investigating the violations, participating in more than a year of settlement  
17 discussions, preparing the ACLC and Technical Report, interviewing witnesses, and now preparing  
18 for the hearing. As stated in the Enforcement Policy, which was approved by the Office of  
19 Administrative Law, costs include the entire prosecution staff, including legal costs that are  
20 reasonably attributable to the enforcement action. Staff costs were estimated at \$50,000 at the time  
21 the ACLC was issued, and will continue through the hearing. Staff time is routinely valued at \$150  
22 an hour.<sup>19</sup>

23

Date	Description of Task; <i>Participating Staff</i>	Staff Hours
March 1-2, 2011	Pre-inspection file review	4

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26 <sup>18</sup> See Prosecution Team Exhibit 16.

27 <sup>19</sup> See Prosecution Evidence Exhibit 17, which is a Billing Cost Explanation for the Site Cleanup Program which  
28 recovers staff costs from Dischargers on a daily basis and which we have used in enforcement cases.

<b>Date</b>	<b>Description of Task; <i>Participating Staff</i></b>	<b>Staff Hours</b>
March 6-8, 2011	Travel and site inspection of SSO sites • <i>Leo Sarmiento, Jim Fischer, Julie Berrey</i>	80
March 9, 2011	Inspection de-brief/case development meeting • <i>Leo Sarmiento, Jim Fischer, Mark Bradley</i>	8
May 10, 2011	Case development meeting • <i>Leo Sarmiento, Jim Fischer, Mark Bradley, Julie Macedo</i>	10
May 31-June 10, 2011	Draft NOV/13267 Investigative Order to Discharger • <i>Leo Sarmiento, Jim Fischer</i>	20
August 17, 2011	Case development meeting • <i>Leo Sarmiento, Jim Fischer, Mark Bradley, Julie Macedo</i>	2
August 29, 2011	Conference call with John Wallace • <i>Jim Fischer</i>	2
October 20, 2011	Case development meeting • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Mark Bradley</i>	8
October 26, 2011	In person settlement meeting with Wallace Group (Sacramento) • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Mark Bradley</i>	24
October 27, 2011	October 26, 2011 meeting de-brief, case development meeting • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Mark Bradley</i>	8
November 14, 2011	Case development meeting • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Mark Bradley</i>	8
November 15, 2011	Case development meeting • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Mark Bradley</i>	8
December 20, 2011	In person settlement meeting with Wallace Group (Sacramento) • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Mark Bradley</i>	24
February 23, 2012	Travel to brief Region 3 staff on case and investigate private sewage backups • <i>Leo Sarmiento, Jim Fischer</i>	10
February 29, 2012	Case development meeting • <i>Leo Sarmiento, Jim Fischer, Cris Carrigan, Julie Macedo</i>	8
March 1, 2012	In person settlement meeting with Wallace Group (Sacramento) • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Cris Carrigan, Mark Bradley</i>	30
April 26, 2012	Travel/in-person briefing for Region 3 staff; in person settlement meeting with Wallace Group (SLO) • <i>Leo Sarmiento, Jim Fischer, Julie Macedo, Cris Carrigan, Matthew Buffleben</i>	15
May 16, 2012	Travel/briefing for Regional Water Board staff • <i>Leo Sarmiento, Jim Fischer</i>	20
May 17-June 19, 2012	Development and issuance of ACLC package, including Technical Report • <i>Leo Sarmiento, Jim Fischer, Matthew Buffleben, Julie Macedo</i>	160

The total staff costs reflected in the above table are \$63,000, and do not include any of the staff

1 time for the Prosecution Team members from the Regional Water Quality Control Board, Central  
2 Coast Region, who have assisted with this case, mainly Michael Thomas, Harvey Packard, and  
3 Katie DiSimone. In addition, significant time was spent to prepare the Prosecution Team's  
4 evidentiary submission, and costs are expected to continue through hearing. An updated staff cost  
5 tally will be given with the Prosecution Team's rebuttal submission, and a final staff cost estimate  
6 will be given to be incorporated into any final Board order.

#### 7 **VIII. Ability to Pay Analysis and Economic Benefit Received by the District**

8 The Prosecution Team has reviewed publicly available documents regarding the District's  
9 finances. To the extent that the District plans to pass any administrative penalty on to its  
10 ratepayers,<sup>20</sup> it does have the ability to pay the proposed penalty. To the extent that there have  
11 been improprieties in the way that the Wallace Group has overseen its obligations at the District  
12 that caused or contributed to the spill, perhaps the penalty should not be passed on to the  
13 ratepayers. The Prosecution Team has requested additional financial information from the District  
14 in discovery, and expressed to the District that penalties are not based on budgeted "reserves" but  
15 on factors enumerated in Water Code section 13385(e).

16 The District has received an economic benefit of at least \$177,209, which arises from the  
17 delay in capital costs from upgrading wiring since at least 2006. The District's own press release  
18 admits that high water entered the electrical system. Mr. Appleton, the former CPO at the District,  
19 has stated that he expressed concerns to John Wallace relating to grading issues and the headworks  
20 floodwall relating to grading and retaining walls, but was told such issues would be too expensive  
21 to be addressed. Economic benefit represents the financial gains that a discharger accrues by  
22 delaying and/or avoiding expenditures to meet mandated pollution control requirements. Funds not  
23 spent on environmental compliance are available for other profit-making activities or, alternatively,  
24 a discharger avoids the costs associated with obtaining additional funds for environmental  
25 compliance. Economic benefit represents the amount by which a discharger is financially better off

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28 <sup>20</sup> As is stated in the District's press release, see Prosecution Team Exhibit 10.


1 from not having complied with environmental requirements within the specified timeframe. The  
2 appropriate economic benefit calculation should represent the amount of money that would make  
3 the violator indifferent between compliance and non-compliance. Economic benefit does not  
4 represent compensation to the enforcement agency, but instead is the minimum amount by which  
5 the violator must be penalized so as to return it to the financial position it would have had it  
6 complied with all applicable regulations.

7 The Wallace Group oversees the District capital improvement projects, and is responsible  
8 for implementing and correcting projects. In fact, such projects are usually handled by the Wallace  
9 Group directly. The Prosecution Team has submitted exhibits 2, 18, 19, and 20 which contain  
10 budget items where wiring projects were considered but not implemented (Exhibit 2), emails by  
11 Jeff Appleton wherein he describes issues at the plant with both wiring and grading issues, both of  
12 which may have contributed to the sewer overflow, the amount that was discharged, and the  
13 District's ability to effectively respond (Exhibits 19 and 20). Exhibit 18 is the State Water Board's  
14 "BEN Analysis" based on based on principles developed by the U.S. Environmental Protection  
15 Agency.

#### 16 **IX. Conclusion**

17 The sanitary sewer overflow of December 19-20, 2010 was a significant spill that went  
18 directly into the Pacific Ocean, and affected dozens of residents in the community near the  
19 District's treatment facility. After evaluating the District's response to the overflow, all available  
20 and reliable data, and considering the Enforcement Policy calculation methodology based on the  
21 factors embodied in Water Code section 13385(e), the Prosecution Team issued an ACLC that is  
22 fair and supported by substantial evidence. We hope that the Board will enter an Order adopting  
23 the Prosecution Team's recommended penalty in an effort to improve water quality at the District's  
24 facility and deter similar violations in the future.

25 Signed this 27th day of July 2012.

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27 \_\_\_\_\_  
28 Julie Macedo,  
Senior Staff Counsel  
Prosecution Team