

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

**TENTATIVE**

**ORDER NO. R9-2008-0142**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY  
FOR  
MANDATORY MINIMUM PENALTIES  
AGAINST  
SAN DIEGO COUNTY WATER AUTHORITY  
SAN VICENTE PIPELINE PROJECT  
LAKESIDE, CALIFORNIA  
GROUNDWATER DEWATERING PROJECT  
FOR  
VIOLATIONS OF ORDER NO. 2001-96, NPDES NO. CAG919002**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), having considered in a public meeting on November 12, 2008 comments on the issuance of liability against the San Diego County Water Authority regarding violations alleged in Amended Complaint No. R9-2007-0014, having provided public notice thereof and not less than thirty (30) days for public comment, and on the recommendation for administrative assessment of Civil Liability in the amount of \$135,000, finds as follows:

1. The San Diego County Water Authority's discharge of extracted groundwater to a tributary to the San Diego River is subject to numeric effluent limitations contained in Order No. 2001-96, NPDES Permit No. CAG919002, *General Waste Discharge Requirements for Groundwater Extraction Waste Discharges from Construction, Remediation, and Permanent Groundwater Extraction Projects to Surface Waters within the San Diego Region Except for San Diego Bay*.
2. Order No. 2001-96 established effluent limitations for instantaneous maximum concentrations of total nitrogen at 1.0 mg/L. San Diego County Water Authority reported thirty four violations of the total nitrogen instantaneous maximum effluent limitation between January 2006 and January 2007 that are subject to mandatory minimum penalties pursuant to Water Code Section 13385(h) and (i).
3. Order No. 2001-96 established average monthly effluent limitation (AMEL) concentrations of total nitrogen at 2.0 mg/L. San Diego County Water Authority reported fourteen violations of the total nitrogen AMEL between January 2006

and January 2007 which are subject to mandatory minimum penalties pursuant to Water Code Section 13385(h) and (i).

4. San Diego County Water Authority reported two violations of the total nitrogen effluent limitations that occurred on December 13, 2005. Prior to January 2006, violations of effluent limitations for discharges that occurred while regulated by NPDES permits that do not contain specific information about the point of discharge, such as this Regional Board's general extraction discharge permit, were not subject to mandatory minimum penalties. Therefore, mandatory minimum penalties do not apply to the two violations of effluent limitations for total nitrogen that occurred prior to January 2006.
5. California Water Code (CWC) section 13385 requires that a mandatory minimum penalty of \$3,000 be imposed for each serious violation. CWC section 13385 subdivision (h)(2) defines a 'serious' violation, as any waste discharge that violates an effluent limitation contained in waste discharge requirements (applying to surface water discharges) for a Group I pollutant by 40 percent or more or for a Group II pollutant by 20 percent or more.
6. On October 2, 2008 the Regional Board issued Amended Complaint No. R9-2007-0014 to the San Diego County Water Authority to add five additional serious total nitrogen violations that were reported after the original Complaint was issued. The Amended Complaint added \$15,000 in mandatory minimum penalties (at \$3,000 per violation) bringing the total violations of Order No. 2001-96 to forty five and the mandatory minimum penalties to the amount of one hundred thirty five thousand dollars (\$135,000).
7. On October 6, 2008, San Diego County Water Authority proposed to resolve the allegations outlined in the amended Complaint by paying \$60,000 to the State Water Resources Control Board's Water Pollution Cleanup and Abatement Account and to provide \$75,000 to the San Diego River Conservancy to fund Supplemental Environmental Projects.
8. California Water Code section 13385(l) allows the Regional Board to direct a portion of mandatory minimum penalties toward implementation of Supplemental Environmental Projects. The proposed projects satisfy the provisions of Section IV, Part D of the State Water Resources Control Board Water Quality Enforcement Policy (Resolution 96-030 as amended).
9. Issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) pursuant to section 15321(a)(2), Chapter 3, Title 14 of the California Code of Regulations. This action is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) of Chapter 3, Title 14 of the California Code of Regulations because

it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

10. The Regional Board incurred costs of \$8,500 to prosecute the enforcement action. The costs include investigation, preparation of enforcement documents, communicating with the Discharger and preparation of materials for public review and hearing.

**IT IS HEREBY ORDERED** pursuant to section 13385 of the California Water Code, that:

1. Civil Liability is imposed on San Diego County Water Authority in the amount of \$135,000 to be paid as follows:
  - a. The San Diego County Water Authority shall provide evidence to the Regional Board of payment in the amount of \$60,000 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of adoption of this Order; and
  - b. The amount of \$75,000 shall be paid to the San Diego River Conservancy to be used by the Conservancy as follows: to provide funding in support of the Supplemental Environmental Projects known as River Blitz (\$7,500), Clean and Green Volunteers (\$24,000), and San Diego River Watershed Data Collection and Restoration Program (\$40,000). The San Diego County Water Authority shall provide evidence to the San Diego Regional Board of payment in full to the San Diego River Conservancy within 30 days from the date of this Order. Failure to pay the full amount within 30 days from the date of this Order will result in the full amount being immediately due and payable to the State Water Resources Control Board for deposit in to the Cleanup and Abatement Account; and
  - c. If the San Diego County Water Authority publicizes the Supplemental Environmental Projects or the results of the Projects, it will state in a prominent manner that the Project is being undertaken as part of the resolution of an enforcement action by the Regional Board; and
  - d. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if the San Diego County Water Authority fails to comply with paragraphs 1 or 2.
2. Fulfillment of the San Diego County Water Authority's obligations under this Order constitutes full and final satisfaction of any and all liability for each allegation in Amended Complaint No. R9-2007-0014.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on November 12, 2008.

**TENTATIVE**

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JOHN H. ROBERTUS  
Executive Officer