

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

ORDER NO. R9-2009-0003

ASSESSING

ADMINISTRATIVE CIVIL LIABILITY

FOR VIOLATIONS OF

Order No. 99-72 (NPDES No. CA0107981) and

Order No. R9-2003-0394 (NPDES No. CA0108944)

TO

City of Escondido

This Order is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R9-2005-0265, dated December 30, 2005 ("Complaint") which proposed to assess a total of \$1,335,000 in mandatory minimum penalties and \$462,250 in discretionary liability, for a recommended civil liability of \$1,797,150 against the City for certain alleged violations of effluent limitations prescribed in Order No. 99-72 (NPDES No. CA0107981) and Order No. R9-2003-0394 (NPDES No. CA0108944).

The City submitted an original settlement offer to the Regional Board on September 13, 2006. On October 11, 2006, the Regional Board adopted Settlement Order No. R9-2006-0095 which imposed civil liability in the amount of \$1,162,150. Of that amount, the Settlement Order required the City to deposit \$690,000 in the State Water Board Cleanup and Abatement Account and provided that \$462,150 shall be suspended and waived if the City submits a final copy of two technical studies. This Settlement Order was challenged in a Petition by The Escondido Creek Conservancy and San Diego Coastkeeper. On October 2, 2007, the State Water Resources Control Board issued an Order vacating ACL Order No. R9-2006-0095 and remanded the matter back to the Regional Board. According to the remand, the amount of liability must be no less than the minimum liability required by Water Code section 13385 (\$1,335,000), based on the factual determinations of the Regional Board.

The parties to this proceeding are the **Regional Water Quality Control Board, San Diego Region's ("Regional Board") Prosecution Team** and the **City of Escondido**. The **Escondido Creek Conservancy** and the **San Diego Coastkeeper** were granted party status to this proceeding in accordance with

ATTACHMENT E

Title 23, California Code of Regulations section 648.1, but are not parties to the Settlement Agreement.

The Regional Board has been presented with a proposed settlement of the claims alleged in the Complaint that has been developed during negotiations between the City and Prosecution Team representatives. The Escondido Creek Conservancy and the San Diego Coastkeeper are not parties to the Settlement. The proposed Settlement represents a mutually agreed-upon resolution of the Prosecution Team's claims through the payment of an administrative civil liability in the amount of \$1,335,000 but recognizes that the Regional Board may decide to direct a part of the assessment to a Supplemental Environmental Project. The Settlement Agreement is attached hereto as **Attachment A**. The City and the Prosecution Team recommend that the Regional Board issue this Order to effectuate their proposed Settlement. Having provided public notice of the proposed settlement and not less than thirty (30) days for public comment, **the Regional Board finds that:**

1. During the settlement negotiations between all four parties, the City proposed a Supplemental Environmental Project (SEP) involving the purchase of two parcels of land near Escondido Creek. The SEP is supported by The Escondido Creek Conservancy and the San Diego Coastkeeper. The Prosecution Team, however, has determined that the SEP does not meet criteria necessary under the Enforcement Policy for reasons summarized in the Settlement Agreement, and, therefore recommends against adoption of the SEP for various reasons described in the Settlement Agreement.
2. The City supports the SEP as proposed. The City, therefore, supports an Order that provides payment of \$660,000 of the total assessment to the State Water Resources Control Board's Cleanup and Abatement Account and \$675,000 to the SEP.
3. The Escondido Creek Conservancy and the San Diego Coastkeeper also support the SEP as proposed. The Escondido Creek conservancy and the San Diego Coastkeeper support an Order that provides payment of \$660,000 of the total assessment to the State Water Resources Cleanup and Abatement Account and \$675,000 to the SEP.
4. The SEP is within the public interest and substantially complies with all essential requirements as set forth in the State Board's Enforcement Policy for SEP's.
5. In accepting the proposed Settlement, in particular, with respect to the elimination of the discretionary liability, the Regional Board has considered each of the factors prescribed in California Water Code §13385(e). The Regional Board's consideration of these factors is based upon information obtained by the Regional Board in investigating the Claims or otherwise provided to the Regional Board, including the

information presented at the noticed proceeding before the Board. In addition to these factors, the administrative civil liability recovers the costs incurred by the staff of the Regional Board in evaluating the Claims and preparing the Complaint and related documents which totals \$111,479.

6. A notice of the Settlement and Assessment of civil liability was published in the San Diego Union Tribune on or before January 9, 2009 notifying the public of a 30-day review period and soliciting public comments on the terms of the settlement. The proposed settlement supports the total assessment of administrative civil liability in the amount of \$1,335,000 for the Claims and is in the public interest. This Order provides for the full and final resolution of each of the Claims.
7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*) in accordance with section 15321, Chapter 3, Title 14, 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.

IT IS HEREBY ORDERED that:

1. Administrative civil liability under California Water Code Section 13385(c) is imposed upon the City in the amount of \$1,335,000 consisting of a payment of \$660,000 to the Cleanup and Abatement Account and implementation of the proposed SEP with the City's payment in the amount of \$675,000.
2. Within 30 calendar days of receiving written notice from the Regional Board Executive Officer that this Order has become final and is no longer subject to challenge by any party or member of the public, the City shall pay the sum of \$660,000 to the State Water Resources Control Board, Cleanup and Abatement Account. Further, within 30 days of such notice, the City shall commence implementation of the proposed SEP as provided in the SEP proposal attached hereto, as Attachment B.
3. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement if the City fails to comply with paragraphs 1 and 2.
4. Fulfillment of the City's obligations under this Order constitutes full and final satisfaction of any and all liability for each Claim in the Complaint.

I, _____, 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 _____, 2009.

TENTATIVE
John Robertus
Executive Officer