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Item No. 9 Doc. No. 15

TO: John H. Robertus
Executive Officer and Regional Board Advisory Team Member

FROM: Frank T. Melbourn *FTM*
Water Resource Control Engineer
Compliance Assurance Unit and Prosecution Team Member

DATE: August 27, 2008

SUBJECT: Reasons to Adopt Proposed Order No. R9-2008-0072 (March 31, 2007, Buena Vista Lagoon Sewage Spill Settlement)

The purpose of this memorandum is to support the adoption of the Proposed Order, which implements a settlement agreement between the Cities of Carlsbad and Vista and the Regional Board staff advocating prosecution of ACL Complaint No. R9-2007-0099. The Prosecution Team supports adoption of the Proposed Order for the following reasons:

1. The settlement would direct \$595,000 to the State Board's Waste Discharge Permit Fund. This represents a substantial increase from the \$200,000 offered in an earlier settlement agreement on March 12, 2008, that the Regional Board rejected.
2. The liability amount is substantial and sufficient enough to deter the Cities of Carlsbad and Vista from future non-compliance, and should act as a deterrent to others.
3. The liability amount is consistent with liability amounts imposed by the Regional Board for similar sewage spills.
4. The settlement identifies a specific Supplemental Environmental Project (SEP) that would be immediately implemented with no additional action by the Regional Board. The previous settlement agreement did not identify a specific SEP and required a Regional Board review and approval at a later date.
5. The SEP provides \$500,000 for the California Department of Fish & Game and U.S. Fish & Wildlife Service to plan and design the long term restoration of the affected water body, Buena Vista Lagoon.
6. The current settlement removes a previous agreement component that would have waived \$395,000 of the Cities liability if they agreed to fund a Compliance Project to upgrade the conveyance system that failed. The Cities of Carlsbad

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and Vista have completed the initial engineering design to upgrade the conveyance system, and have approved the funding for the project.

7. It is consistent with the State Board Enforcement Policy; and
8. The Regional Board will conserve valuable staff resources that would have been allocated to preparation for hearing and responding to any administrative or judicial review that may be requested by the Dischargers.

The following table compares the March 12, and September 10, 2008, versions of the settlement:

Settlement Terms	March 12, 2008 Agreement	September 10, 2008 Agreement
Liability to State Board Fund	\$200,000	\$595,000
Supplemental Environmental Project (SEP)	\$500,000 Selection delayed to later date	\$500,000 Buena Vista Lagoon Restoration – Engineering Studies and Analyses
Compliance Project (CP)	\$395,000 In conveyance system upgrades	Not applicable*

* As detailed in Reason No. 6 above, the Cities of Carlsbad and Vista have committed to complete the conveyance system upgrades by completing the engineering design and approving funding for the project.

Attachment: Significant Sewage Spill Liability Comparison