

State of California  
Regional Water Quality Control Board  
San Diego Region

ENFORCEMENT SUMMARY REPORT  
September 14, 2011

- ITEM: 6
- SUBJECT: Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, Santa Margarita Water District, Plano Force Main Sanitary Sewer Overflow. Settlement to resolve, by consent, violations of Order Nos. 2006-0003-DWQ and R9-2007-0005, Section 301 of the Clean Water Act, and California Water Code (Water Code) section 13376, set forth in Complaint No. R9-2011-0023. The Settlement proposes liability of \$890,000, of which \$445,000 in liability would be paid to the State Water Resources Control Board's Cleanup and Abatement Account, \$140,000 in liability would be suspended to fund a Supplemental Environmental Project, and \$305,000 in liability would be suspended to fund an Enhanced Compliance Action. (Tentative Order No. R9-2011-0057) (*Bruce Posthumus*)
- PURPOSE: The San Diego Water Board will consider accepting a settlement agreement by adopting Tentative Order No. R9-2011-0057 (Supporting Document Nos. 2, 3 and 4) to resolve, by consent, all alleged violations set forth in Complaint No. R9-2011-0023 for Administrative Civil Liability (ACL) against the Santa Margarita Water District. If the San Diego Water Board decides not to accept the settlement agreement, the matter may be rescheduled to a future public hearing at which time the San Diego Water Board will receive evidence and testimony and consider assessment of liability based upon ACL Complaint No. R9-2011-0057.
- PUBLIC NOTICE: Notice of the Proposed Settlement, the San Diego Water Board's planned consideration of the Tentative Order, the amount of the proposed settlement, and the opportunity for public comment was posted on the San Diego Water Board's website and sent to known

interested parties on July 1, 2011.

DISCUSSION:

The Santa Margarita Water District (SMWD) is required to operate and maintain its sanitary sewage collection system in compliance with State Water Resources Control Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.

As stipulated by the Parties, SMWD discharged 2.293 million gallons of untreated sewage into waters of the United States due to a rupture of the Plano Force Main (see location map, Supporting Document 1). The discharge occurred between March 23 and 26, 2010 and resulted in closure of Doheny State Beach, Capistrano County Beach, and Capistrano Bay Community Beach from March 23 to 29, 2010.

On March 10, 2011, the San Diego Water Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R9-2011-0023 in the amount of \$1,731,970 to SMWD for alleged violations of Order Nos. 2006-0003-DWQ and R9-2007-0005, section 301 of the Clean Water Act, and section 13376 of the California Water Code. The details of these alleged violations are set forth in Complaint No. R9-2011-0023 for Administrative Civil Liability (Supporting Document 5) and accompanying Technical Analysis to Administrative Civil Liability Complaint No. R9-2011-0023 (Supporting Document 6).

The San Diego Water Board Prosecution Team has reported that during settlement negotiations, SMWD presented evidence that justified lowering the recommended liability amount from the \$1,731,970 specified in the Complaint to \$890,000 (including staff costs). Based on the negotiations and this evidence, the Prosecution Team has prepared Tentative Order No. R9-2011-0057 (Supporting Document 2) for the San Diego Water Board to consider for adoption.

If adopted, Tentative Order No. R9-2011-0057 would

impose a total civil liability of \$890,000 against SMWD and would resolve, by consent and without further administrative proceedings, all alleged violations as set forth in Administrative Civil Liability Complaint No. R9-2011-0023. Under the terms of the proposed settlement, SMWD would pay a total of \$445,000 to the State Water Resources Control Board's Cleanup and Abatement Account. The remaining \$445,000 in liability would be suspended upon the satisfactory completion of a Supplemental Environmental Project (SEP) costing no less than \$140,000 and an Enhanced Compliance Action (ECA) costing no less than \$305,000.

The details of the proposed SEP, *Invasive Control, Restoration, Monitoring, and Education at Audubon Starr Ranch Sanctuary*, are described in Attachment A to Tentative Order No. R9-2011-0057, (Supporting Document 3).

The details of the proposed ECA, *Plano Force Main Realignment Project*, are described in Attachment B to Order No. R9-2011-0057 (Supporting Document 4).

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Location Map
2. Tentative Order No. R9-2011-0057, Settlement Agreement and Stipulation for Order and Administrative Civil Liability Order, Santa Margarita Water District
3. Attachment A to Tentative Order No. R9-2011-0057, Supplemental Environmental Project (SEP) Information, Budget & Milestones
4. Attachment B to Tentative Order No. R9-2011-0057, Enhanced Compliance Action (ECA) Summary
5. Complaint No. R9-2011-0023 for Administrative Civil Liability
6. Technical Analysis to Administrative Civil Liability Complaint No. R9-2011-0023

RECOMMENDATION: The Advisory Team will be available to answer questions and may provide a recommendation to the San Diego Water Board for action on Tentative Order No. R9-2011-0057.