

State of California
Regional Water Quality Control Board
San Diego Region

ENFORCEMENT SUMMARY REPORT
August 9, 2017

ITEM: 8

SUBJECT: Tentative Order: Settlement of Administrative Civil Liability against the City of San Diego for Alleged Violations of the Municipal Separate Storm Sewer System (MS4) Permit (Tentative Order No. R9-2017-0056) (*Rebecca Stewart*).

PURPOSE: To consider adoption of tentative settlement agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2017-0056.

RECOMMENDATION: The Prosecution Team recommends adoption of Tentative Order No. R9-2017-0056 and asserts that the proposed resolution of the alleged violations is fair, reasonable, fulfills the San Diego Water Board's enforcement objectives, is in the best interest of the public, and that no further action is warranted concerning the alleged violations.

KEY ISSUES: Adoption of the tentative Settlement Order will approve the terms of the settlement agreement to resolve past violations of MS4 Order No. R9-2007-0001. Should the San Diego Water Board decide not to adopt the tentative Settlement Order, the Prosecution Team may either take no action, re-open settlement discussions with the City of San Diego (City), or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board to determine if the Board will assess administrative civil liabilities against the City for the alleged violations.

PRACTICAL VISION: This enforcement action was selected due to its broad effects on the receiving waters. A programmatic failure throughout the City of San Diego can impact habitats and ecosystems in multiple key areas, and is therefore a priority

through the lens of the Practical Vision. More specifically, the discharge of excess sediment throughout the City has the potential to negatively affect lagoons, estuaries, and sensitive stream systems therein, including those already impaired due to sediment discharges.

DISCUSSION:

As a Copermittee regulated under the San Diego Water Board's municipal storm water permit (Order No. R9-2007-0001) the City is required to develop and require implementation of storm water standards that reduce pollutants in storm water discharges from construction sites into its MS4 to the maximum extent practicable. The City's Storm Water Standards for construction sites include implementation of erosion and sediment control best management practices (BMPs) similar to those required for construction sites enrolled in the State Water Board's construction storm water general permit.

During routine compliance inspections of construction sites within the City, San Diego Water Board staff encountered numerous sites that did not adequately implement the City's Storm Water Standards including erosion and sediment control BMPs. Many of the sites inspected by the San Diego Water Board discharge to sediment-impaired waters including Los Peñasquitos Lagoon and the Tijuana River Estuary.

Further investigation revealed that City inspectors were performing inspections and finding storm water BMPs to be adequate whereas San Diego Water Board inspectors observed no BMPs at all at the same sites. A subsequent audit of the two City departments responsible for construction storm water oversight revealed that the City's construction management program structure, responsibilities, and staffing were inadequate to implement the construction component of the municipal storm water permit, and that the City was in violation of its MS4 permit.

The Assistant Executive Officer issued ACL Complaint No. R9-2016-0155 on July 18, 2016, recommending the

assessment of administrative penalties in the amount of \$4,614,868 to recover the estimated economic benefit derived by the City from the alleged violations of Order No. R9-2007-0001.

In October 2016 the Prosecution Team and the City entered into settlement negotiations to resolve the alleged violations of the construction component of the municipal storm water permit. The parties came to a tentative agreement as summarized below.

The City provided additional information that supports reducing the economic benefit amount to \$2,927,877 and provided information indicating that it was already implementing improvements to all operational areas addressed in the complaint as deficient. In light of these improvements, the parties agreed to reduce the “Cleanup and Cooperation” factor from 1.2 to 1.0, thereby settling the stipulated penalty at the mandatory Economic Benefit, plus 10 percent (i.e. \$3,220,664).

In accordance with the Enforcement Policy, the parties have agreed that \$1,610,332 of the total liability will be suspended upon completion of the following four Supplemental Environmental Projects (SEPs):

1. Los Peñasquitos Lagoon Inlet Restoration
2. San Diego River Restoration and Arundo Removal
3. Restoring and Protecting Our Waterways:
Bioassessment Tools and Priorities for Action
4. Chollas Creek Restoration Opportunities Assessment

Attachment C of Tentative Order No. R9-2017-0056 describes the SEPs.

The City shall pay the remaining \$1,610,332 to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of adoption of the Stipulated Order.

The tentative settlement agreement was publicly noticed on the San Diego Water Board website with a 30-day comment period that ended on May 15, 2017. Four comment letters,

all in support of the SEPs, were received and are included in today's agenda package as Supporting Document No. 2. The Tentative Order under consideration contains no changes from the publicly noticed Tentative Order. Supporting Document No. 1 provides a signed version of the Tentative Order.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS: 1. Tentative Settlement Order No. R9-2017-0056
2. Letters of Support for the proposed SEPs from:
Groundwork San Diego
Los Peñasquitos Lagoon Foundation
California State Parks and Recreation
The San Diego River Park Foundation

PUBLIC NOTICE: Notice of the proposed settlement, the amount of the proposed settlement, details of the proposed SEPs, and the opportunity for public comment were posted on the San Diego Water Board website on April 13, 2017, and shared with subscribers of the Lyris "Penalty Assessment Notice" email list. The public was provided 30 days to submit written comments to the San Diego Water Board.

Notice of the San Diego Water Board's planned consideration of the Tentative Settlement Order was provided with the agenda notice.