

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

ENFORCEMENT SUMMARY REPORT

JUNE 9, 2021

ITEM 8

SUBJECT

Tentative Order: Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order in the Matter of the City of Laguna Beach, November 2019 Sanitary Sewer Overflow to Aliso Creek and the Pacific Ocean. (Tentative Order No. R9-2021-0008) (*Chiara Clemente*)

STAFF RECOMMENDATION

The Prosecution Team recommends adoption of Tentative Order No. R9-2021-0008 (**Supporting Document 1**) if the proposed Enhanced Compliance Action (ECA) can be completed without impeding future restoration opportunities for Aliso Creek.

KEY ISSUES

Adoption of Tentative Order No. R9-2021-0008 (Tentative Order) would approve the terms of the settlement agreement between the Prosecution Team and the City of Laguna Beach (City) to resolve the alleged violations described in the Tentative Order.

As a condition of the Tentative Order, the City would pay \$785,780.50 to the State Water Board's Cleanup and Abatement Account (CAA) and would direct another \$748,277.50 in suspended liability to implement an ECA that would minimize the risk of a similar sanitary sewer overflow occurring in the area. The proposed ECA is tied to South Coast Water District's (SCWD) larger Lift Station 2 Reconstruction Project (LS2RP). Written comments received noted that the proposed permanent road alignment in the LS2RP could preclude future relocation of the Aliso Beach east parking lot, which is part of a conceptual restoration plan for the estuary being developed by the Laguna Ocean Foundation (LOF).¹

Should the San Diego Water Board decide not to adopt the Tentative Order as drafted, the Prosecution Team may either take no action, re-open settlement discussions with the City, or proceed with a contested evidentiary hearing at a future meeting before the San Diego Water Board.

PRACTICAL VISION

The San Diego Water Board's regional enforcement priorities align with the Practical Vision by focusing on violations that affect one or more key beneficial use categories in a key area for that use. This enforcement action is a response to a large sewage spill into key areas for wildlife and recreational beneficial uses. The areas affected include State marine protected areas and areas of high recreational use.

¹ <https://www.lagunaoceanfoundation.org/aliso-creek-estuary-restoration/>

DISCUSSION

From November 27-29, 2019, the City discharged an estimated 1,270,000 gallons of raw sewage to Aliso Creek and the Pacific Ocean, and another 430,000 gallons of raw sewage from the Bluebird SOCWA lift station to the Pacific Ocean in order to bypass the impacted infrastructure and conduct the necessary repairs. The two spill locations, totaling approximately 1.7 million gallons, are considered one sanitary sewer overflow (SSO) event. The cause of the SSO was determined to be a faulty Air Vacuum Relief Valve (AVRV) along the North Coast Interceptor (NCI).

In March of 2020 the Prosecution Team and the City initiated confidential settlement negotiations to resolve the alleged violations. This enforcement action was initiated because a large amount of untreated sewage was discharged into Aliso Creek and the Pacific Ocean. Aliso Creek is considered a key area for habitats and ecosystems, and the Pacific Ocean is a key area for fish and shellfish consumption, recreation, and habitats and ecosystems. More specifically, the Laguna Beach State Marine Conservation Area and the Laguna Beach State Marine Reserve are both areas of special importance for habitats and ecosystems. Discharges of untreated sewage into these key areas can negatively impact all three key uses and enforcement is therefore a priority through the lens of the Practical Vision.

Prosecution staff met biweekly with City staff to investigate the SSO and discuss appropriate penalties and corrective actions. The focus of the Prosecution Team's investigation included understanding the cause of the SSO, what could have been done to prevent it, validating flow estimates, evaluating the City's sewer-related Capital Improvement Projects and expenditures along with its due diligence related to replacement and/or redundancy along the NCI, and determining impacts to receiving waters based on available data. Based on the evidence identified through these discussions, the parties reached a settlement in concept in September 2020, which is detailed in the Administrative Liability Methodology Summary (**Supporting Document 2**) and is the basis for proposed Tentative Order R9-2021-0008. The total liability was determined by applying the [2017 State Board Water Quality Enforcement Policy](#) methodology.

Under the terms of the settlement, the City agrees to a total administrative civil liability of \$1,534,058, which includes \$37,503 in staff costs associated with the investigation and preparation of the enforcement action. Within thirty days of the effective date, the City agrees to remit \$785,780.50, plus an additional \$6,000 for ECA oversight costs, to the CAA. The remaining \$748,277.50 in administrative civil liability will be satisfied through the successful implementation of the proposed *NCI Interconnect to Lift Station 2 Force Main* ECA (**Supporting Document 3**). The total cost associated with the ECA is approximately \$1.4 million, with the City contributing approximately \$1,118,280 and South Coast Water District (SCWD) contributing the remainder. Although SCWD is the lead agency for the ECA, the City remains responsible for its timely completion as a settlement condition. If the ECA is not completed in accordance with the terms of the Tentative Order, the City would be required to pay the suspended liability to the CAA.

At the close of the written comment period, on March 12, 2021, the San Diego Water Board timely received 8 comment letters. All comments timely received are included in **Supporting Document 5**. A Response to Comments document addressing relevant comments received (**Supporting Document 6**) was provided to commenting parties on May 10, 2021.

Most comments received focused on the proposed ECA. The Prosecution Team believes the ECA conforms to the criteria in the [Enforcement Policy](#) and the [Policy on Supplemental Environmental Projects \(SEP Policy\)](#), and is the most appropriate project proposed by the City considering the limitations of the Policies. Some of the written comments received noted that the proposed ECA is tied to a project (LS2RP) that could preclude future relocation of the Aliso Beach east parking lot. The LOF has developed a conceptual design that relocates the Aliso Beach overflow parking to the north side of Aliso Creek (which is within the LS2RP footprint) in order to accommodate the estuary restoration. Since the close of written comments, the City, SCWD, LOF, and other stakeholders have initiated discussions to determine whether a) the LS2RP could be modified to accommodate future restoration, and b) the LOF conceptual design could be modified to accommodate the needs of the stakeholders. The Prosecution Team understands that SCWD is open to modifying the road alignment later, if a design that is agreeable to all stakeholders can be developed. The City of Laguna Beach will discuss this issue during its presentation to the Board.

LEGAL CONCERNS

None.

PUBLIC NOTICE

A draft of the Tentative Order with a notice of 30-day comment period (**Supporting Document 4**) was emailed to the "Penalty Assessment Notice" email list subscribers on February 5, 2021, and subsequently noticed on the San Diego Water Board website on February 9, 2021.

The agenda notice for today's meeting was posted on the San Diego Water Board's website and sent to subscribers to the email list for Board meetings. This satisfies the Bagley-Keene Open Meeting Act requirements to publish the meeting notice and agenda.

SUPPORTING DOCUMENTS

1. Tentative Order No. R9-2021-0008
2. Tentative Order No. R9-2021-0008 Attachment A, Administrative Liability Methodology Summary
3. Tentative Order No. R9-2021-0008 Attachment B, City of Laguna Beach ECA Application; NCI Interconnect to Lift Station 2 Force Main
4. Notice of Written Comment Period for Tentative Order R9-2021-0008
5. Comment Letters Timely Received
6. Prosecution Team Response to Comments Received on Tentative Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R9-2021-0008
7. Approximate Locations of Spill Discharge to Pacific Ocean