

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2016-0030**

TO ACCEPT THE COUNTY OF SAN DIEGO'S PROPOSED REPLACEMENT PROJECTS
FOR BREACH OF AGREEMENTS FOR GRANT AGREEMENTS 03-264-559-2
AND 06-135-559-0

WHEREAS:

1. The County of San Diego Department of General Services (County) was awarded \$1,400,000 and \$1,500,000, pursuant to the State Water Resources Control Board (State Water Board) [Resolution No. 2004-0003](#) and [Resolution No. 2006-0060](#), in 2006 and 2007, respectively. The County was approved per Agreement Nos. 03-264-559-2 and 06-135-559-0 (Agreements) to construct structural best management practices (BMPs) to improve storm water quality in the San Diego River watershed through the County's "Porous Pavement and Model Municipal Operation Center Project – Phase I and II" (Project);
2. The County agreed per the terms of the above referenced Agreements to construct structural BMPs, which would have treated approximately 2.1 acre feet per year (AFY) of storm water runoff. The structural BMPs would have improved water quality in the San Diego River watershed through Project completion plus twenty (20) years (including operation, maintenance, and continuous use);
3. The San Diego Regional Water Quality Control Board (San Diego Regional Water Board) staff, on May 10, 2013, observed 118,000 square feet of porous pavement, which was installed pursuant to the above referenced grant agreements, had been or was in the process of being demolished;
4. On August 16, 2013, San Diego Regional Water Board staff issued a notice of Breach of Agreements letter to the County finding that the County's actions violated the terms of the Agreements and constituted a breach of those Agreements;
5. The State Water Board concurs with the San Diego Regional Water Board's findings that the County breached the Agreements;
6. The County responded to the Breach of Agreement for both agreements by proposing the three replacement projects to remove or reduce coarse sediment, trash, fine particles and dissolved particles and infiltrate approximately 11.6 acre-feet per year of water;
7. State Water Board and San Diego Regional Water Board staff concur that the proposed replacement projects will provide equivalent or greater performance in pollutant removal and increased infiltration compared to the original Project;
8. In general, a breach of agreement can result in the recipient of the grant funds paying the State of California (State) back all funds received for the Project in addition to paying applicable interest and penalties;
9. The State Water Board finds that completion of the replacement Projects and maintenance of those Projects for the equivalent remaining useful life of the original Project, in lieu of repayment of grant funds, is in the best interest of the State; and

10. The State Water Board finds that a penalty is appropriate given: a) the County's failure to inform and receive concurrence from the San Diego Regional Water Board and State Water Board of its intent to terminate the Project prior to the end of its useful life; b) the County's action resulted in an increase in runoff and discharge of pollutants from the Project site; c) the San Diego Water Board and State Water Board have expended and must expend significant staff resources to maintain oversight of the replacement Projects; and d) the need to deter other Grantees from taking actions that render ineffective projects funded by the people of the State.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Authorizes the Deputy Director of the Division of Financial Assistance (Deputy Director) to negotiate, approve, and execute the tentative settlement agreement ([Attachment 1](#)) or otherwise resolve the violations in a manner the Deputy Director deems fit. Additionally, the Deputy Director is authorized to perform all acts and to do all things necessary and convenient to implement any such settlement agreement, and resolve any disputes or violations of the settlement agreement;
2. Authorizes the Deputy Director to make any necessary adjustments to the scope of work of the replacement projects to ensure the cumulative benefit of those projects equals or exceeds the benefits of the original Project;
3. Retains repayment authority of the original grant amounts plus penalties and interest, if the County fails to implement and maintain the replacement Projects consistent with the settlement agreement; and
4. Imposes a \$25,000 fine, payable to the Cleanup and Abatement Account, as a penalty for breach of the original agreements, in addition to providing staff oversight costs, as described in the tentative settlement agreement.

CERTIFICATION


The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 7, 2016.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore
Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: None



Jeanine Townsend
Clerk to the Board