

STATE WATER RESOURCES CONTROL BOARD

In the matter of: )  
)  
**Douglas Emmett** )  
**Management, LLC** ) **Order No. WQ-2011-0019-EXEC**  
**Warner Center Tower 3** )  
)  
**Administrative Civil Liability** ) **Settlement Agreement and Stipulation**  
**Complaint No. OE-2010-0034** ) **for Entry of Order; Order**  
\_\_\_\_\_ )

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulation” or “Stipulated Order”) is entered into by and between the Director of the Office of Enforcement of the State Water Resources Control Board (“State Water Board”), on behalf of the State Water Board Prosecution Staff (“Prosecution Staff”), and Douglas Emmett Management, LLC (“Discharger”)(collectively “Parties”) and is presented to the State Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. The Discharger formerly operated a groundwater dewatering system for the Plaza 3, Warner Center facility (facility) located at 21650 Oxnard Street, Woodland Hills, California. The Discharger, in order to protect the foundation of its building and for the health and safety of the building occupants, collected and discharged groundwater seepage to a storm water collection system that flows to Arroyo Calabazas, a Los Angeles River tributary – upstream of Sepulveda Flood Basin, a navigable water of the United States. Discharger did not add any pollutants or materials to the collected water at any time. On or about December 7, 2010, Discharger ceased the discharge to the storm water collection system by directing the seepage water collected to a sanitary sewer system.
2. On June 23, 2004, the Executive Officer of the Los Angeles Regional Water Quality Control Board (“Regional Board”) determined that the waste discharges from the Discharger’s facility met the conditions to be enrolled under Order No. R4-2003-0111 (General NPDES Permit No. CAG994004) *Waste Discharge Requirements for Discharges of Groundwater from Construction Dewatering to Surface Waters*, adopted by the Regional Board on August 7, 2003.
3. NPDES Order No. R4-2003-0111 (Effluent Limitations E.1 and E.2) contains effluent limitations for settleable solids and pH. Attachment B.7.a. to the NPDES Order contains an effluent limitation for total dissolved solids (TDS) for the Los Angeles River and Tributaries – upstream of Sepulveda Flood Basin.

A. Effluent Limitations E.1 states:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Settleable Solids	ml/L	0.3	0.1

B. Effluent Limitations E.2 states:

"The pH of the discharge shall at all times be within the range of 6.5 and 8.5."

C. Attachment B.7.a. to the NPDES Order states:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Total Dissolved Solids (TDS)	mg/L	950	---

4. On October 8, 2010, the Executive Officer of the Regional Board determined that the waste discharges from the Discharger's facility met the conditions to continue enrollment under Order No. R4-2008-0032 (General NPDES Permit No. CAG994004) *Waste Discharge Requirements for Discharges of Groundwater from Construction Dewatering to Surface Waters* adopted by the Regional Board on June 5, 2008. Effective October 8, 2010, NPDES Order No. R4-2008-0032 and its corresponding Monitoring and Reporting Program superseded previous requirements under NPDES Order No. R4-2003-0111, except for enforcement purposes.

5. NPDES Order No. R4-2008-0032 (Effluent Limitations and Discharge Specifications V.1 – V.7) contains effluent limitations for settleable solids and pH. Attachment B.7.a. to the NPDES Order contains an effluent limitation for total dissolved solids (TDS) for the Los Angeles River and Tributaries – upstream of Sepulveda Flood Basin.

A. Effluent Limitations and Discharge Specifications V.1 – V.7 states:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Settleable Solids	ml/L	0.3	0.1

B. Effluent Limitations and Discharge Specifications V.1 – V.7 states:

"The pH of the discharge shall at all times be within the ranges of 6.5 and 8.5."

C. Attachment B.7.a. to the NPDES Order states:

Constituent	Unit of Measure	Discharge Limitations (Daily Maximum)	Discharge Limitations (Monthly Average)
Total Dissolved Solids (TDS)	mg/L	950	--

6. Monitoring and Reporting Program No. 7792 contains requirements to submit monitoring reports to the Regional Board by the dates in the following schedule:

<u>Reporting Period</u>	<u>Report Due</u> (NPDES Order No. R4-2003-0111) Reporting Requirements I.A	<u>Report Due</u> (NPDES Order No. R4-2008-0032) Reporting Requirements I.X.B.3 – Table 2
January – March	May 15	May 15
April – June	August 15	August 14
July – September	November 15	November 14
October – December	February 15	February 14

7. On September 9, 2010, the Director of the Office of Enforcement issued Administrative Civil Liability Complaint No. OE-2010-0034 for mandatory minimum penalties in the amount of \$48,000.

8. Complaint No. OE-2010-0034 alleged one (1) effluent limit violation of NPDES Order No. R4-2003-0111 as being subject to mandatory minimum penalties, seven (7) effluent limit violations of NPDES Order No. R4-2008-0032 as being subject to mandatory minimum penalties, and eight (8) late reporting violations for submitting the monitoring reports for the 1<sup>st</sup> and 2<sup>nd</sup> Quarter 2006 and 3<sup>rd</sup> Quarter 2008 after the required deadline.

9. Subsequent to issuing Complaint No. OE-2010-0034, the Prosecution Team dismissed six (6) late reporting violations associated with the 2<sup>nd</sup> Quarter 2006 report because the Discharger provided corroborating evidence that the 2<sup>nd</sup> Quarter 2006 report was timely submitted by the required deadline. The Prosecution Team dismissed one (1) additional late reporting violation associated with the 3<sup>rd</sup> Quarter 2008 report as that violation was included in the Complaint in error.

10. Additional alleged effluent limit violations not previously included in Complaint No. OE-2010-0034 are included in this Stipulated Order to bring the Discharger up to date on all outstanding violations that would be subject to mandatory minimum or other penalties.

11. The Parties have engaged in discussions concerning the Prosecution Staff's allegations and agree to settle the matter without administrative action or resorting to civil litigation by presenting this Stipulated Order to the State Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that this resolution is fair and reasonable and fulfills its requirement to impose mandatory and other penalties under the California Water Code. Therefore, no further action is warranted. The Discharger believes the allegations are inaccurate, inappropriate, unfair and in many instances in error and generally and specifically denies the allegations and admits none. The Discharger is willing, however, to enter into this Stipulated Order to avoid the cost and uncertainty of further administrative action or civil litigation.

### **Section III: STIPULATIONS**

The Parties incorporate Paragraphs 1 through 11 by this reference as if set forth fully herein, stipulate to the entry of this Stipulation as set forth below, and the Prosecution Staff recommends that the State Water Board or its delegee issue the Stipulated Order to effectuate the settlement. The Parties hereby stipulate to the following:

12. **ADMINISTRATIVE CIVIL LIABILITY** Discharger shall be subject to administrative civil liability in the amount of \$27,000 in mandatory minimum penalties.

13. **STATE WATER BOARD IS NOT LIABLE** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order. The Discharger covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint or this Stipulated Order.

14. **COMPLIANCE WITH APPLICABLE LAWS:** The Discharger understands that compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in Attachment A may subject it to further enforcement, including additional administrative civil liability.

15. **Party Contacts for Communications related to Stipulated Order:  
For the State Water Board:**

Mayumi E. Okamoto  
Office of Enforcement  
1001 I Street, 16<sup>th</sup> Floor  
Sacramento, CA 95816  
MOkamoto@waterboards.ca.gov

**For the Respondents:**

Malcolm C. Weiss, Esq.  
Hunton & Williams, LLC  
550 South Hope Street, 20<sup>th</sup> floor  
Los Angeles, CA 90071  
mweiss@hunton.com

- 16. ATTORNEY'S FEES AND COSTS:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
- 17. MATTERS ADDRESSED BY STIPULATION:** Upon the State Water Board's adoption of this Stipulated Order, this Stipulation covers all alleged violations subject to mandatory minimum penalties ("Covered Matters") and represents a final and binding resolution and settlement of any and all claims for civil liability the State Water Board or Regional Board has or may have against the Discharger arising from or relating to the alleged violations in Attachment A. Attachment A is attached hereto and incorporated herein by reference.
- 18. PUBLIC NOTICE:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board, or its delegee. The Prosecution Staff will promptly notify the Discharger of any comments received during the 30-day public review period and will promptly communicate those comments to the Discharger. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order. If significant new information is received during the 30-day public review and comment period that reasonably affects presenting this Stipulated Order to the State Water Board, or its delegee, for adoption, the Director of the Office of Enforcement may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board, or its delegee.
- 19. ADDRESSING OBJECTIONS DURING PUBLIC COMMENT PERIOD:** In the event procedural objections regarding the adequacy of the State Water Board's adoption of the settlement are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
- 20. NO WAIVER OF RIGHT TO ENFORCE:** The failure of the Prosecution Staff or State Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Stipulated Order. The failure of the Prosecution Staff or State Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
- 21. MODIFICATION:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the State Water Board.
- 22. IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulated Order does not take effect because it is not approved by the State Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before a Hearing Officer of the State Water Board

to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter. The Parties agree to waive any and all objections related to laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

**23. ADMISSION OF LIABILITY:** In settling this matter, the Discharger does not admit to the alleged violations identified in Attachment A. This Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13385.

**24. WAIVER OF HEARING:** The Discharger has been informed of the rights provided by CWC section 13323(b), and hereby waives its right to a hearing before the State Water Board prior to the adoption of the Stipulated Order.

**25. WAIVER OF RIGHT TO PETITION:** The Discharger hereby waives its right to appeal the adoption of the Stipulated Order to a California Superior Court and/or any California appellate level court.

**26. COVENANT NOT TO SUE:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

**27. AUTHORITY TO BIND:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.

**28. NO THIRD PARTY BENEFICIARIES:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

**29. EFFECTIVE DATE:** This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Board, or its delegee, enters the Stipulated Order.

**30. COUNTERPART SIGNATURES:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**IT IS SO STIPULATED.**

State Water Resources Control Board Prosecution Staff

By: David Boyers  
David M. Boyers  
Acting Director, Office of Enforcement

Date: October 29 / 2011

Approved as to form:

Mayumi E. Okamoto  
Mayumi E. Okamoto  
Counsel to the Prosecution Staff

By: Allan Golad  
Allan Golad  
Senior Vice President, Property Management  
Douglas Emmett Management, LLC

Date: October 15, 2011

Approved as to form:

Malcolm C. Weiss  
Malcolm C. Weiss  
Counsel to Douglas Emmett, LLC

**HAVING CONSIDERED THE ALLEGATIONS IN THE PARTIES' STIPULATIONS, THE STATE WATER BOARD FINDS THAT:**

**31.** The Discharger is hereby ordered to remit a check (made payable to the State Water Pollution Cleanup and Abatement Account referencing this Stipulated Order No.) in the amount of \$27,000 within 30 days from the date of receipt of written notice that this Stipulated Order is entered.

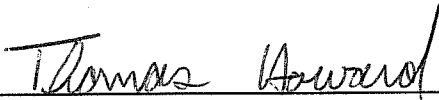
**32.** The Executive Director of the State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Stipulated Order.

**33.** Fulfillment of the Discharger's obligations under the Stipulated Order constitutes full and final satisfaction of any and all claims for civil liability the State Water Board or Regional Board has or may have against the Discharger arising from or relating to the violations listed in Attachment A.

34. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

35. The terms of the foregoing stipulation are fully incorporated herein and made part of this Stipulated Order of the State Water Board.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the State Water Resources Control Board.

  
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Thomas Howard, Executive Director

Date: 12/7/11



Douglas Emmett, LLC --- Warner Center, Tower Three  
 CI # 7792

Attachment A to Settlement Agreement and Stipulation for Entry of Order

*Effluent Limitation Violations Requiring Mandatory Minimum Penalties*

#	Violation Number	Violation Date*	Parameter	Pollutant Group	Limitation Period	Limit	Result/Average	Units	% Over Limit	Date 180 Days Prior <sup>a</sup>	Effluent Violations in 180 Days**	Serious*** Violation?	Exempted from MMP?	Mandatory Fine?	Penalty
1	876308	12/4/06	pH	OE	Instantaneous	6.5	6.098	pH units	n/a	7-Jun-2006	1	No	No	No	\$0
2	762381	12/4/07	Total Dissolved Solids, DM	I	Daily	950	980	mg/L	3	7-Jun-2007	1	No	No	No	\$0
3	812037	1/29/08	Total Dissolved Solids, DM	I	Daily	950	1040	mg/L	9	2-Aug-2007	2	No	No	No	\$0
4	812038	2/26/08	Total Dissolved Solids, DM	I	Daily	950	1040	mg/L	9	30-Aug-2007	3	No	No	No	\$0
5	812040	3/31/08	Total Dissolved Solids, DM	I	Daily	950	1030	mg/L	8	3-Oct-2007	4	No	No	Yes	\$3,000
6	877059	7/29/08	Total Dissolved Solids, DM	I	Daily	950	1120	mg/L	18	31-Jan-2008	3	No	No	No	\$0
7	814755	12/31/08	Total Dissolved Solids, DM	I	Daily	950	970	mg/L	2	4-Jul-2008	2	No	No	No	\$0
8	831162	1/30/09	Total Dissolved Solids, DM	I	Daily	950	970	mg/L	2	3-Aug-2008	2	No	No	No	\$0
9	831503	3/31/09	Total Dissolved Solids, DM	I	Daily	950	970	mg/L	2	2-Oct-2008	3	No	No	No	\$0
10	876319	6/3/09	pH	OE	Instantaneous	6.5	6.497	pH units	n/a	5-Dec-2008	4	No	No	Yes	\$3,000
11	841186	6/3/09	Total Dissolved Solids, DM	I	Daily	950	1450	mg/L	53	5-Dec-2008	5	Yes	No	Yes	\$3,000
12	841187	6/3/09	Settleable solids, DM	I	Daily	0.3	0.4	ml/L	33	5-Dec-2008	6	No	No	Yes	\$3,000
13	841188	6/30/09	Settleable Solids, Monthly AVG	I	monthly	0.1	0.4	ml/L	300	1-Jan-2009	6	Yes	No	Yes	\$3,000
14	849309	8/28/09	Total Dissolved Solids, DM	I	Daily	950	965	mg/L	2	1-Mar-2009	6	No	No	Yes	\$3,000
15	849311	9/30/09	Total Dissolved Solids, DM	I	Daily	950	970	mg/L	2	3-Apr-2009	6	No	No	Yes	\$3,000
16	868735	12/3/09	Total Dissolved Solids, DM	I	Daily	950	980	mg/L	3	6-Jun-2009	4	No	No	Yes	\$3,000
17	880023	6/2/10	Total Dissolved Solids, DM	I	Daily	950	960	mg/L	1	4-Dec-2009	1	No	No	No	\$0

**Total Penalty: \$24,000**

\* Violation occurs on sample date or last date of averaging period.

\*\* Includes violations occurring on 'day zero' of the past 180 days.

\*\*\* For Group I pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 40%.

For Group II pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 20%.

**Violation period ending the last day of June 2010**

Group I Violations Subject to MMPs:	15
Group II Violations Subject to MMPs:	0
Other Effluent Violations Subject to MMPs:	2
Total Violations Subject to MMPs:	17
Violations Exempt from MMPs:	0
Total Effluent Violations:	17

Group I Violations Assessed MMP:	7
Group II Violations Assessed MMP:	0
Other Effluent Violations Assessed MMP:	1
Total Violations Assessed MMP:	8

effective date of coverage under R4-2006-0032

Mandatory Minimum Penalty = (2 Serious Violations + 6 Non-Serious Violations) x \$3,000 = \$24,000

Douglas Emmett, LLC --- Warner Center, Tower Three  
CI # 7792  
Attachment A to Settlement Agreement and Stipulation for Entry of Order

**Report Violations Requiring Mandatory Minimum Penalties**

#	Violation Number(s)	Report Description	Report Due Date	Received/Current Date	Days Late	30-Day Periods Late	Mandatory Penalty
1	659661	1Q2006 SMR	15-May-2006	3-Jul-2006	48	1	\$3,000

**Total Penalty:** \$3,000