

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

**In the matter of City of Laguna Beach,
November 2019 Sanitary Sewer Overflow,
Aliso Creek, Pacific Ocean, CA**

**Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order No. R9-2021-0008, Place ID 631920**

I. INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) on behalf of the San Diego Water Board Prosecution Team (Prosecution Team), and the City of Laguna Beach (City or Discharger) (collectively, Parties). This Order is presented to the San Diego Water Board for adoption as an order by settlement pursuant to Government Code section 11415.60.

II. RECITALS

1. The City operates and maintains a municipal sanitary sewer system, which transports an average of 2 million gallons of sewage every day to the Southern Orange County Wastewater Authority's (SOCWA) Coastal Treatment Plant for treatment, recycling, and disposal through the Aliso Creek Ocean Outfall. The sewage collection system serves approximately 18,000 residents and businesses and up to six million visitors a year and is comprised of approximately 9 miles of transmission mains, 86 miles of gravity sewers, and 25 lift stations.
2. The transmission system that transports sewage collected by the City to the Coastal Treatment Plant is referred to as the North Coast Interceptor (NCI). The NCI consists of two (of the 25) lift stations, three miles of trunk line on the north side of the City, and four miles of pipeline to the south. As a member of SOCWA's Project Committee No. 23 (PC 23), the City operates and maintains the NCI and related pump stations in accordance with operations and maintenance agreements with SOCWA. The NCI varies in material type, constructed of both 27-inch fiberglass reinforced pipe as well as 24-inch asbestos cement pipe. The NCI transmission pipeline currently has no redundancy to reroute sewage from the line in the event of a failure; this also limits the ability to conduct inspections and maintenance.

3. The Aliso Creek Watershed (Hydrologic Unit No. 901.13) originates in the Santa Ana Mountains and flows southwest into the Pacific Ocean in the City of Laguna Beach. The Water Quality Control Plan for the San Diego Basin (Basin Plan) designates the following Beneficial Uses for Aliso Creek: Agricultural Supply (AGR), (Potential) Water Contact Recreation (REC-1), Non-Contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). The Basin Plan designates the following Beneficial Uses for the mouth of Aliso Creek: REC-1, REC-2, WILD, Rare, Threatened or Endangered Species (RARE), and Marine Habitat (MAR), and the following Beneficial Uses for the Pacific Ocean: Industrial Service Supply (IND), Navigation (NAV), REC-1, REC-2, Commercial and Sport Fishing (COMM), Preservation of Biological Habitats of Special Significance (BIOL), WILD, RARE, MAR, Aquaculture (AQUA), Migration of Aquatic Organisms (MIGR), Spawning, Reproduction, and/or Early Development (SPWN), and Shellfish Harvesting (SHELL).
4. In accordance with Resolution No. [R9-2017-0030](#), Aliso Creek and the Pacific Ocean are considered key areas for two key beneficial use categories; recreation, and aquatic habitats and ecosystems. Discharges of untreated sewage can negatively impact both beneficial use categories.
5. From November 27, 2019 to November 29, 2019, during a rain event, a sanitary sewer overflow (SSO) event occurred and the City discharged approximately 1,270,000 gallons of untreated raw sewage into Aliso Creek, a water of the United States and tributary to the Pacific Ocean at Aliso Beach, and approximately 430,000 gallons of untreated raw sewage into the Pacific Ocean at Bluebird Beach. The cause of the SSO was the result of the corrosion and failure of a 3-inch valve stem connecting a decommissioned air vacuum relief valve (AVRV) to the NCI.
6. The City timely submitted a technical report to the California Integrated Water Quality System (CIWQS) on January 13, 2020 in accordance with the reporting requirements of *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, Order No. 2006-003-DWQ (Statewide General Order).
7. The Statewide General Order regulates all entities that own or operate a sanitary sewer system, greater than one mile in length that collects or conveys untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. Prohibition C.1 of the Statewide General Order states that “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.” Prohibition C.2 states “[a]ny SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.”

8. In addition to the Statewide General Order, the San Diego Water Board adopted *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region* (Order No. R9-2007-0005, Regional General Order). The Regional General Order establishes additional requirements beyond the minimum requirements established in the Statewide General Order. Prohibition B.1 of the Regional General Order states “[t]he discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.”
9. The City’s discharge of raw sewage from November 27, 2019 to November 29, 2019, was in violation of Clean Water Act section 301 and California Water Code (Water Code) section 13376, which prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The discharge was also in violation of Basin Plan Waste Discharge Prohibition No. 1 which states “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Codes section 13050, is prohibited” and Prohibition No. 9 which states “[t]he unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.” The discharge of raw sewage was also a violation of the Statewide General Order and the Regional General Order. For the purposes of this Stipulated Order, the San Diego Water Board is consolidating these allegations into one violation for one administrative civil liability amount.
10. The alleged violation constitutes a violation of the Water Code for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivisions (a) and (c).
11. In March 2020, the Prosecution Team and the City entered into confidential settlement negotiations to resolve the alleged violation arising from the SSO. The Parties agree to settle this matter without administrative or civil litigation by presenting this Order to the San Diego Water Board for adoption as an order pursuant to Government Code section 11415.60. Additional detail on the factors considered in determining the liability agreed upon by the Parties is discussed in Attachment A, attached hereto and incorporated by reference.
12. The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the State Water Resources Control Board’s (State Water Board) Water Quality Enforcement Policy ([Enforcement Policy](#)) methodology as discussed in Attachment A.

13. The Prosecution Team asserts that the resolution of the alleged violations is fair, reasonable, and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A except as provided in this Order, and that this Order is in the best interest of the public.

III. STIPULATIONS

The Parties stipulate to the following:

14. **Administrative Civil Liability:** The Discharger hereby agrees to pay administrative civil liability totaling **ONE MILLION FIVE HUNDRED THIRTY-FOUR THOUSAND FIFTY-EIGHT DOLLARS (\$1,534,058)**, which includes \$37,503 in staff costs associated with the investigation and preparation of this enforcement action. Within thirty (30) days of the effective date of this Order, the Discharger agrees to remit, by check, **\$785,780.50**, payable to *State Water Pollution Cleanup and Abatement Account*, and shall indicate "Order No. R9-2021-0008" on the check. The Discharger shall send the original signed check to the following address:

State Water Resources Control Board; Accounting Office
ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

The Discharger shall send a copy of the check to the Prosecution Team Party Contact at the address listed in Paragraph 17. Alternative forms of payment are acceptable if agreed upon in advance.

The remaining **\$748,277.50** in administrative civil liability will be satisfied through the complete implementation of an Enhanced Compliance Action (ECA). The total cost associated with the ECA (approximately \$1.4 million) will be referred to as the "ECA Amount" and the **\$748,277.50** will be referred to as the "Suspended Liability" of the total administrative civil liability.

15. **Due Diligence Measures:** As a result of this SSO, the Discharger has initiated measures to minimize the risk of similar violations occurring along the NCI. The Discharger has contracted for an updated assessment of the NCI, has developed a plan to generate sufficient funding for implementation of capital improvements along the NCI, and has revised its Sanitary Sewer Overflow Response Plan to adequately address the access and communication challenges with responding to SSOs along the NCI. Additionally, the ECA proposed herein is also intended to minimize the risk of similar violations occurring in the future. None of these measures are required as a condition of compliance.

16. Compliance with Applicable Laws: The Discharger understands that the payment of administrative civil liability and implementation of the ECA in accordance with the terms of this Order does not relieve the Discharger of its obligation to comply with applicable laws and new violations of the type alleged in Attachment A may subject it to further enforcement, including additional administrative civil liability.

17. Party Contacts for Communications related to the Order:

For the Prosecution Team:

Chiara Clemente
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, California 92108
Chiara.Clemente@waterboards.ca.gov
(619) 521-3371

For the Discharger:

City Manager
505 Forest Avenue
Laguna Beach, CA 92651
cmoffice@lagunabeachcity.net
(949) 497-0704

18. Enhanced Compliance Action: The Parties agree that the Suspended Liability specified in Paragraph 14 will be used to fund an ECA. For purposes of this Order, the amount associated with the ECA shall be treated as a suspended administrative civil liability at the time of ECA completion. The San Diego Water Board is entitled to recover any portion of the Suspended Liability in accordance with this Order. A detailed project description, including a budget, tasks, and deliverables, is attached hereto as Attachment B, and incorporated by this reference.

a. **ECA Description:** NCI Interconnect to Lift Station 2 Force Main:

The City proposes an interconnection to the NCI sewage line which will provide the ability to bypass either the NCI, or Lift Station No. 2 force main, along Aliso Creek. Currently, the NCI is located in Aliso Creek, adjacent to South Coast Water District's (SCWD) Lift Station No. 2 force main and conveys up to 2.5 Million Gallons per Day (MGD) of untreated sewage to SOCWA's Coastal Treatment Plant. Neither the SCWD nor the City of Laguna Beach possess a secondary conveyance facility to the Coastal Treatment Plant that could be used in the event of a line break or blockage. For this reason, sewage from the November 2019 SSO could not have been bypassed to a treatment facility while crews were implementing necessary repairs. Implementation of this ECA would allow either the City or SCWD to utilize the other's pipeline when sufficient capacity exists in an emergency situation, while repairs are being completed to the primary facilities, and would minimize the likelihood and risk of sewage entering receiving waters in case of a future SSO in this area, thereby promoting preservation of aquatic ecosystems and protecting water quality for recreation in Aliso Creek, Aliso Creek County Beach, and the Pacific Ocean, which are key areas for ecosystem health and recreation.

The ECA would leverage existing timing and funding opportunities by adding to SCWD's Lift Station No. 2 reconstruction project. Although SCWD is implementing this ECA, for the purposes of deferred liability, the City of Laguna Beach will assume responsibility for timely ECA completion and its anticipated portion of project funding.

b. Agreement for the Discharger to Fund, Report, and Guarantee Implementation of the ECA: The City represents that:

- i. The ECA conforms to the criteria identified in the Enforcement Policy and the 2017 Policy on Supplemental Environmental Projects (SEP Policy);
- ii. The ECA is unrelated in scope to the actions completed to remedy the alleged violations identified in this Order, is not otherwise required by law, and the City is not otherwise obligated to undertake;
- iii. It will fund the ECA in the amount described in this Order;
- iv. It will provide certifications and written quarterly reports detailing ECA implementation, consistent with the terms of this Order; and,
- v. It will guarantee payment by remaining liable for the Suspended Liability until the ECA is completed and accepted by the San Diego Water Board according to the terms of this Order.

- c. **ECA Completion Date:** The proposed timeline for completion of the ECA is consistent with the SEP Policy, which requires that all projects be completed within 36 months of the adoption of a stipulated order.

- d. **Representation of the Discharger:** As a material consideration for the San Diego Water Board's acceptance of this Order, the Discharger represents that it will utilize the Suspended Liability outlined in Paragraph 14 to implement the ECA in accordance with the ECA proposal as described in Attachment B. The Discharger understands that its commitment to implement the ECA in accordance with the schedule and deliverables for implementation is a material condition of this settlement of liability between the Parties.

- e. **Request for Extension of Completion Date:** If the Discharger cannot complete the ECA within 36 months following adoption of the Order (Completion Date), due to circumstances beyond the control of the City or its agents and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence, the City shall notify the San Diego Water Board Assistant Executive Officer in writing within thirty (30) days of the date that the City first knew of the event or circumstance that caused or would cause a violation of this Order. The notice shall describe the reason for the non-compliance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance. The City shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the City and its agents will be made by the Assistant Executive Officer. Where the Assistant Executive Officer concurs that compliance was or is impossible, despite timely good faith efforts, due to circumstances beyond its control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the City or its agents, a new final compliance deadline shall be established, not to exceed one year (except where the Assistant Executive Officer finds the one year extension cannot be timely met because of government directives related to emergency situations). Where the Assistant Executive Officer does not concur that compliance was or is impossible, the matter will be scheduled for hearing before the San Diego Water Board, or its delegee, and the Suspended Liability amount will not become due and payable pursuant to Paragraph 14 unless the San Diego Water Board or its delegee upholds the Assistant Executive Officer's determination.

- f. **ECA Oversight:** The Discharger agrees to oversee implementation of the ECA. The San Diego Water Board will provide additional oversight of the ECA. Pursuant to Section VIII.G of the SEP Policy, the Discharger is responsible for paying all reasonable oversight costs incurred by the San Diego Water Board to oversee the ECA. The oversight costs are in addition to the total administrative civil liability and are not credited towards the Discharger's obligation to fund the ECA. Reasonable oversight tasks to be performed by the San Diego Water Board include, but are not limited to, updating regulatory and records databases (CIWQS and ECM), reviewing and evaluating progress, conducting site inspections, reviewing the final completion report, and verifying appropriate expenditure of Suspended Liability funds. The Discharger agrees to pay **\$6,000** in oversight costs for the life of the ECA. Similar to the administrative civil liability, this payment is due to the *State Water Pollution Cleanup and Abatement Account* within 30 days of adoption of this Order by the San Diego Water Board, and under the terms articulated in Paragraph 14. If the Discharger elects to send one check to cover the administrative civil liability and the ECA oversight costs for a total of **\$791,780.50**, the Discharger will submit a cover letter with the check explaining the combined amounts and identifying the number of this Order.
- g. **Publicity:** If the Discharger publicizes the ECA or results of the ECA it will state in a prominent manner that the ECA is being undertaken as part of a settlement of a San Diego Water Board enforcement action.

- h. **Site Inspections:** The Discharger shall permit San Diego Water Board staff to inspect the ECA implementation location during normal business hours as well as review any documents associated with ECA implementation at any time without notice.
- i. **Submission of Reports:** The Discharger agrees to submit quarterly progress reports to the San Diego Water Board. Quarterly progress reports will be due on the 15th day of each of the months of April, July, October, and January, starting with the first full quarter after the adoption date of this Order, and will include information relating to the implementation progress of the ECA, including photo-documentation, and any relevant deliverables. The Discharger shall submit a Final Report within thirty (30) days of the ECA Completion Date. The reports shall be provided electronically to sandiego@waterboards.ca.gov with **CClemente:PIN#631920** included in the subject line.
- j. **Certification of Completion of ECA in Final Report:** Within thirty (30) days of the ECA Completion Date, the Discharger shall submit a certified statement of completion (Certification of Completion) as a component of the Final Report. The Discharger's authorized representative shall submit the Certification of Completion under penalty of perjury to the Party Contact listed in Paragraph 17 above. The certification shall include the following:

 - i. **Certification of Expenditures:** Certification documenting all expenditures by the Discharger must be provided to the San Diego Water Board. The expenditures may include external payments to outside vendors or contractors implementing the ECA. The expenditures may include the costs of internal management resources, provided that such expenditures are directly related to the development and implementation of the ECA. In making such verification, the official may rely upon normal company and project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental or information technology contractors or consultants. The Discharger shall provide any additional information requested by the San Diego Water Board staff which is reasonably necessary to verify ECA expenditures. The certification need not address any costs incurred by the San Diego Water Board oversight.

- ii. **Certification of Performance of Work:** Certification that the ECA has been completed in accordance with terms of this Order must be provided to the San Diego Water Board. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the San Diego Water Board to evaluate the completion of the ECA and costs incurred by the Discharger.

- iii. **Certification that Work Performed Met the Requirements of CEQA and other Environmental Laws (where applicable):** Unless a project is categorically or statutorily exempt from compliance with CEQA, the Discharger shall ensure that SCWD, before initiating construction, consult with other interested State Agencies regarding potential impacts of the ECA. Other interested State Agencies include, but are not limited to, the California Department of Fish and Wildlife. To demonstrate compliance with CEQA where necessary, the Discharger shall provide the San Diego Water Board with the following documents prior to commencing the ECA:
 - 1. Categorical or statutory exemptions;
 - 2. Negative Declaration if there are no “significant” impacts;
 - 3. Mitigated Negative Declaration if there are potential “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or,
 - 4. Environmental Impact Report if there are “significant” impacts.

- k. **Third Party Audit:** The SEP Policy requires that if a project has a direct cost of over one million dollars, the Discharger must have a third-party financial audit performed after the completion of the project. Pursuant to Section IX.I of the SEP Policy, the City shall submit an audit report prepared by an independent third party, acceptable to the San Diego Water Board, providing such party’s professional opinion that the City has expended money in the amount claimed by the City. This audit report shall be at the sole cost of the City and shall be submitted within three (3) months of the ECA Completion Date. The audit need not address any costs incurred by the San Diego Water Board for ECA oversight.

- l. **San Diego Water Board Acceptance of Completed ECA:** Upon the Discharger’s satisfaction of its obligations under this Order, the completion of the ECA and third party audit, the Discharger’s Party Contact shall request that the San Diego Water Board, or the Board’s delegee, issue a statement indicating that the ECA has been completed in satisfaction of the terms of this Order and that any remaining Suspended Liability is permanently suspended. The issuance of the statement shall terminate any further obligation of the Discharger under this Order.

- m. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved ECA:** In the event that the ECA is fully implemented but the Discharger is not able to demonstrate, through the submission of a third party audit as required by Paragraph 18.k, that the Suspended Liability amount listed in Paragraph 14 has been spent for the completed ECA, the Discharger shall pay the difference between the Suspended Liability amount and the amount the Discharger can demonstrate was actually spent on the ECA as an administrative civil liability.

- n. **Failure to Complete the ECA:** If the ECA is not fully implemented as described in Attachment B and required by this Order by the Completion Date, the San Diego Water Board shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability, or some portion thereof.

- o. **Reporting Dates:** The following is a list of required reports and respective due dates for activities presented in the preceding stipulations:

Stipulated Order Reporting Dates

| Activity | Due Date |
|---|---|
| 1 st ECA status report | July 15, 2021 |
| Remaining ECA Status Reports | 15 th day of April, July, October, and January |
| Certification of Completion | No later than 37 months after adoption of this order |
| Independent Audit Report and Request for ECA Completion Statement | No later than 39 months after adoption of this order |

19. **San Diego Water Board is Not Liable:** Neither the San Diego Water Board members nor the San Diego Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the acts or omissions by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order. Nor shall the San Diego Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this 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 this Agreement, this Order, or the ECA.

20. **Attorney's Fees and Costs:** As between the Parties, the Discharger shall bear its own attorneys' fees and costs arising from its own counsel in connection with the matters set forth herein. The San Diego Water Board shall not seek and shall bear its own fees and costs beyond the amounts paid pursuant to the Order. No staff costs calculated herein, either for prosecution of this matter or for ECA oversight, represent attorneys' fees.

21. **Covered Matters:** Upon the San Diego Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of alleged violations of the Statewide and Regional General Orders as identified in Attachment A. The provisions of this Paragraph are expressly conditioned on the payment of the administrative civil liability and the successful completion of the Project as outlined in the Attachment B and detailed above.

22. **Public Notice:** The Discharger understands that the San Diego Water Board will conduct a thirty (30) day public review and comment period prior to consideration and adoption of the Order. If significant new information is received that reasonably affects the propriety of presenting this Order to the San Diego Water Board for adoption, the Assistant Executive Officer may unilaterally declare this Order void and decide not to present it to the San Diego Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Order.

23. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the San Diego Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or San Diego Water board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.

24. **Procedural Objections:** The Parties agree that the procedure contemplated for adopting the Order by the San Diego Water Board and review of this Order by the public is lawful and adequate. In the event procedural objections are raised prior to the 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 and advisable.
25. **Interpretation:** This Order shall be construed as if the parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
26. **Modification:** This Order shall not be modified by any of the Parties by oral representation made before or after its execution. With the exception of Paragraph 18.e above, all modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board.
27. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the San Diego Water Board or is vacated in whole or in material part by the State Water Board or a final judgment of a court of competent jurisdiction, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board, on a future date after reasonable notice and opportunity for preparation, to determine whether to assess administrative civil liability 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 the settlement discussions will not be admissible as evidence in such a hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on a Complaint in this matter; or,
 - b. 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.

28. **Waiver of Hearing:** The Discharger has been informed of the rights provided by California Water Code section 13323(b), and subject to this Paragraph hereby waives its right to a hearing before the San Diego Water Board prior to the adoption of this Order.
29. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the San Diego Water Board's adoption of the Order as written for review by the State Water Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
30. **Covenant Not to Sue:** Upon adoption of the Order, the Discharger covenants not to sue or pursue any administrative civil claim(s) against any State Agency or the State of California its officers, board members, employees, representatives, agents or attorneys arising out of or relating to this Order, and the San Diego Water Board covenants not to sue or pursue any additional administrative civil claims against the Discharger for any Covered Matter.
31. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
32. **No Third Party Beneficiaries:** Except as described in this Order, the 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 Order for any cause whatsoever.
33. **Effective Date:** This Order shall be effective and binding on the Parties on the date that the San Diego Water Board adopts the Order.
34. **Counterpart Signatures:** This 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 counterpart shall together constitute one document.
35. **Severability:** The provisions of this Order are severable, and should any provision be found invalid, the remainder shall remain in full force and effect.

Order No. R9-2021-0008

IT IS SO STIPULATED

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN DIEGO
REGION, PROSECUTION TEAM

By:

KELLY DORSEY, P.G., Assistant Executive Officer

CITY OF LAGUNA BEACH

By:

JOHN PIETIG, City Manager

ATTACHMENT A: Administrative Liability Methodology Summary

ATTACHMENT B: ECA Application- NCI Interconnect to Lift Station 2 Force Main

IV. FINDINGS OF THE SAN DIEGO WATER BOARD

36. The San Diego Water Board incorporates Paragraphs 1 through 35 by reference as if set forth fully herein.
37. In accepting this settlement, the San Diego Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13385(e). The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the violations alleged herein or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers a portion of the costs incurred by the San Diego Water Board Prosecution Team for this matter.
38. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
39. The San Diego Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.
40. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
41. The attached Agreement between the Assistant Executive Officer and the Discharger is approved pursuant to Government Code section 11415.60 and is incorporated by reference into this Order.
42. The San Diego Water Board may modify the findings prior to the adoption of the Order, provided that the modifications do not change the terms of the Settlement Agreement.

Order No. R9-2021-0008

Pursuant to Water Code section 13323 and Government Code section 11415.60, IT IS HEREBY ORDERED on behalf of the California Regional Water Quality Control Board, San Diego Region.

I, David W. Gibson, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region.

DAVID. W. GIBSON
Executive Officer

Date: