

ENFORCEMENT SUMMARY REPORT
March 12, 2008

- ITEM: 6
- SUBJECT: Proposed settlement of Administrative Civil Liability (ACL) Complaint against the Cities of Vista and Carlsbad for the discharge of 7.3 million gallons of untreated sewage from March 31 to April 3, 2007 from a 24-inch diameter sewer main at the Buena Vista Pump Station to Buena Vista Lagoon, San Diego County. The Regional Board will consider a proposed settlement of violations alleged in Complaint No. R9-2007-0099. The settlement includes :(1) payment of \$200,000 to the State Water Resources Control Board; (2) payment of \$500,000 to fund a Supplemental Environmental Project; and (3) the suspension of \$395,000 in liability when the Cities complete specified actions to the satisfaction of the Regional Board. (Tentative Order No. R9-2008-0004) (Eric Becker)
- PURPOSE: The Regional Board will consider adoption of Tentative Order No. R9-2008-0004 (Attachment 2), implementing the proposed settlement. If the Regional Water Board rejects the proposed settlement, the matter will be scheduled for a public hearing at a subsequent Regional Board meeting.
- PUBLIC NOTICE: On February 4, 2008, Tentative Order No. R9-2008-0004 and Notice of Public Hearing (Attachment 3) were posted on the Regional Board's website and made available at the Regional Board's office for review. On February 5, 2008, the Notice of Public Hearing was published in North County Times and San Diego Union Tribune. (Attachment 4)
- DISCUSSION: On September 28, 2007, ACL Complaint No. R9-2007-0099 (Complaint) was issued recommending that the Regional Board impose a civil liability in the amount of \$1,095,000 (Attachment 5) for the discharge of 7.3 million gallons of untreated sewage into Buena Vista Lagoon. The Complaint recommended assessment of liability based on a rate of \$0.15 per gallon. The maximum liability pursuant to Water

Code Section 13350 is \$5,000 per day of violation or up to \$10 per gallon discharged.

A public hearing on this matter was scheduled for the Regional Board's December 12, 2007 meeting. The Regional Board staff report which provides the evaluation of the factors needed to impose liability recommended in the Complaint is included as Attachment 6 to this ESR. Other supporting documentation and background information for the Complaint is available for review at <http://www.waterboards.ca.gov/sandiego/rb9board/Dec-07.html>.

Prior to the scheduled hearing, Regional Board Prosecution staff (Northern Core Regulatory and Compliance Assurance Units), with assistance from the State Board's Office of Enforcement, began settlement discussions with representatives of the City of Vista and City of Carlsbad (Dischargers). The hearing, scheduled for December 12, was postponed to allow an opportunity to continue settlement discussions. On December 11, 2007, the two parties reached an agreement in principle to settle the matter.

Tentative Order No. R9-2008-0004 formalizes the settlement agreement. The settlement agreement has been noticed in local newspapers and the regional Board website, for at least 30 days prior to today's meeting, and the public has been provided the opportunity to provide written comments. Written comments are due by March 5, 2008.

The settlement includes:

- (1) Payment of \$200,000 to the State Water Resources Control Board;
- (2) Payment of \$500,000 to fund a Supplemental Environmental Project that complies with criteria established in the State Board's Enforcement Policy. The Dischargers intend to submit a proposal to fund a SEP project entitled "Buena Vista Lagoon Restoration—Engineering Studies and Analyses" to be submitted by the Natural Resource Co-Trustees, U.S. Fish & Wildlife Service and California Department of Fish and Game in the amount of \$500,000. The Dischargers have 60 days from the date of adoption

of the settlement order to submit a proposal. Any portion of the \$500,000 that does is allocated to a SEP will revert to the State for deposit into the Waste Discharge Permit Fund, managed by the State Board; and

- (3) The suspension of \$395,000 in liability when the Cities completes the design and commit to the upgrade of the Buena Vista sewer main upgrade for the purpose of reducing the likelihood of future sewage spills from this sewer main into the Buena Vista Lagoon.

The proposed settlement should be approved because:

1. There is a substantial monetary penalty. The proposed payment is sufficient to deter the Dischargers from future non-compliance, and should act as a deterrent to non-compliance by others. It is consistent with liability imposed by the Regional Board for similar sewage spills. A comparison of liability imposed by the Regional Board for significant sewage spills is attached (Attachment 7).
2. It provides significant funding for a project that will be used for the restoration of water quality in Buena Vista Lagoon and/or other supplemental environmental projects to enhance water quality.
3. It includes funding and commitment from the Dischargers to repair and upgrade the pipeline facility that was the source of the spill. The Dischargers have already begun work to satisfy this condition of the settlement.
4. It is consistent with the State Board Enforcement Policy.
5. The Regional Board will conserve valuable staff resources that would have been allocated to preparation for hearing and responding to any administrative or judicial review that may be requested by the Dischargers.

The Dischargers have committed significant resources and begun work to upgrade the affected force sewer main. On September 11, 2007, the City of Carlsbad appropriated \$500,000 to prepare a preliminary design report for the Buena Vista Force main Improvement Project (Attachment 8). On January 15, 2008, the City of Carlsbad reached an agreement and allocated funds to a technical consultant, Brown & Caldwell, to complete this preliminary engineering and design report on the force main upgrade. (Attachment 9) The documentation provided satisfies the requirements of Section 1.a of Tentative Order No. R9-2008-0004, and therefore \$395,000 of the civil liability is vacated.

In a February 20, 2008 letter, the U.S. Fish and Wildlife Service and California Department of Fish & Game indicated full support for the proposed settlement and requested the Regional Board accept their Buena Vista Lagoon Restoration—Engineering Studies and Analyses SEP. (Attachment 10)

LEGAL CONCERNS: None.

SUPPORTING
DOCUMENTS:

1. Location Maps
2. Tentative Order No. R9-2008-0004
3. Notice of Public Hearing (February 4, 2008)
4. Proof of Newspaper Publication (February 5, 2008)
5. ACL Complaint No. R9-2007-0099
6. Staff Report for ACL Complaint No. R9-2007-0099
7. Comparison of Previous Regional Board Sewage Discharge Enforcement Actions
8. City of Carlsbad Agenda & Resolution Approving \$500,000 for Buena Vista Forcemain Improvement Project (September 11, 2007)
9. City of Carlsbad Agenda & Resolution Approving \$455,156 Agreement With Brown & Caldwell for Preliminary Design Report for Buena Vista Forcemain Improvement Project (January 15, 2008)
10. U.S. Fish & Wildlife and California Department of Fish & Game Letter (February 20, 2008)
11. Coastal Conservancy Letter of Support (February 22, 2008)

RECOMMENDATION: Adoption of Tentative Order No. R9-2008-0004 is recommended.

If this item is removed from the consent calendar, the Executive Officer will provide a recommendation at the conclusion of the item.