

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

TENTATIVE

**ORDER NO. R9-2008-0004
IN SETTLEMENT OF
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2007-0099
ISSUED TO CITY OF VISTA AND
CITY OF CARLSBAD**

The San Diego Regional Water Quality Control Board (hereafter Regional Board), having received an offer from the City of Vista and the City of Carlsbad (hereafter Dischargers) to waive their right to a hearing regarding violations alleged in Complaint No. R9-2007-0099, dated September 28, 2007, (Complaint) and to settle their potential civil liability for violations alleged therein by accepting imposition of Civil Liability in the amount of \$1,095,000, and having provided public notice thereof and not less than thirty (30) days for public comment on the settlement offer, and having considered the settlement offer, finds as follows:

1. The Dischargers are required to operate and maintain their sewage collection systems to prevent sanitary sewer overflows and spills in compliance with requirements of State Water Resources Control Board (SWRCB) Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.
2. The Dischargers jointly own and operate a 24-inch diameter polyethylene encased ductile iron pipe (DIP) force sewer main that conveys sewage from the Buena Vista Pump Station to the Encina Wastewater Authority's treatment plant in Carlsbad. The Buena Vista Pump Station is located on Jefferson Street south of Highway 78 within the City of Carlsbad.
3. From March 31, 2007, to April 3, 2007, a total of 7.3 million gallons of untreated sewage discharged from this force sewer main into Buena Vista Lagoon in violation of Prohibition C.1 contained in SWRCB Order No. 2006-0003-DWQ. The Buena Vista Lagoon, a water of the U.S., is located near the intersection of Interstate 5 and Highway 78, within the City of Carlsbad and City of Oceanside.
4. Liability in the amount of \$1,095,000 is based on application of the factors prescribed in Water Code Section 13327. The terms of this Settlement are in the public interest and are consistent with the State Water Resources Control Board Enforcement Policy guidance for violations of this nature, and with liability imposed for similar violations by the Regional Board in other cases that have been settled.
5. By accepting the settlement offered by the Dischargers 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 requested by the Dischargers.
6. The terms of this Settlement are sufficient to deter the Dischargers from future non-compliance, and should act as a deterrent to non-compliance by others.
 7. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.) in accordance with section 15321, Chapter 3, Title 14, California Code of Regulations.
 8. The Regional Board incurred costs totaling \$97,727 which includes investigation, preparation of enforcement documents, and communication with the discharger and interested parties regarding the enforcement action.
 9. The Dischargers and the Regional Board do not fully agree on all points of fact regarding the discharge nor do they agree that they constitute all of the facts relevant to the Complaint or the liability to be assessed hereunder. The Dischargers and Board have agreed to settle the Complaint as provided in this Order.
 10. In any further judicial or administrative hearing or proceeding, this Order or any portion of it, or any compliance with this Order, shall not be construed in any manner as an admission of liability or wrongdoing by the Dischargers, or any of their city council members, officers, agents or employees.

IT IS HEREBY ORDERED that:

1. Civil liability assessment is imposed upon the City of Vista and City of Carlsbad (hereafter Dischargers) in the amount of \$1,095,000. The assessment shall include the following:
 - a. The amount of \$595,000 is due to the State Water Resources Control Board (State Board) for deposit into the Waste Discharge Permit Fund Abatement Account. \$200,000 of that amount is to be paid by the Dischargers within 30 days from adoption of this Order by the Regional Board. Payment of the remaining \$395,000 is suspended pending submittal by the Cities to the Regional Board of official documents, including resolutions and contracts confirming commitment to the funding, design, and timely construction and completion of the Buena Vista sewer main upgrade. If, however, these documents are not timely submitted the suspended liability is due and payable. In that case, the sum of \$395,000 will be paid to the State Board for deposit into the Waste Discharge Permit Fund within 30 days following notification to the Dischargers by the Regional Board Executive Officer that the Cities have failed to comply with this portion of the Order.

- b. The amount of \$500,000 shall be made available by the Dischargers for expenditure as either a single Supplemental Environmental Project (SEP) or multiple SEP's in accordance with these terms:
- i. SEPs shall be proposed by the Dischargers that are mutually agreeable to the Dischargers and the Regional Board and comply with the State Board Enforcement Policy:
 - ii. The Dischargers intend to submit a proposal to fund an 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. In the event that this SEP is not acceptable to the Regional Board and the Dischargers, then the Dischargers will consider submitting alternative SEP proposals in accordance with subsections iii through vi, below.
 - iii. All SEPs must be fully developed and provided to the Regional Board Executive Officer within 60 days of adoption of this Order by the Regional Board.
 - iv. All SEPs must provide an internal means of accepting immediate and full funding and internal management of funds without the need for additional oversight on the part of the Regional Board or the Dischargers;
 - v. Upon receipt of the proposed SEPs, the Regional Board Executive Officer will conduct an initial review to assure that they meet the requirements of this Order. The Executive Officer shall not unduly withhold concurrence that the SEPs meet the criteria set forth in this Order.
 - vi. At a Regional Board meeting following submission of the SEPs the Executive Officer shall provide the SEPs to the Regional Board for its approval or rejection.
- c. In the event that the Dischargers fail to submit SEPs acceptable to the Executive Officer as set forth in Section 1.b, above, any remaining SEP funds that have not been committed to approved SEPs shall be made payable to the State Board for deposit into the Waste Discharge Permit Fund. Such payment shall be made within 30 days following notification by the Executive Officer that the Dischargers have failed to submit acceptable SEPs.

2. This Order entirely disposes, resolves and settles all liability for violations alleged in Complaint No. R9-2007-0099 related to compliance with requirements in SWRCB Order No. 2006-0003-DWQ and is not subject to being reopened for any reason.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on March 12, 2008.

 Tentative
JOHN H. ROBERTUS
Executive Officer