

Public Comments Received From

**Carol Martin
Peter Jensen
San Diego Coastkeeper
California Department of Parks and Recreation
Los Penasquitos Lagoon Foundation**

**Comment Letter From
Carol Martin
April 6, 2013**

Stewart, Rebecca@Waterboards

From: Carol Martin <dosito2008@yahoo.com>
Sent: Saturday, April 06, 2013 4:32 PM
To: Stewart, Rebecca@Waterboards
Subject: Sewage Spill Los Penasquitos

To Whom it may concern,

I would like to comment on the mitigation funds allocated because of the Sewage spill in Los Penasquitos Lagoon. It would better serve the Health of the Lagoon to keep the funds local to the spill area to help restore what has been damaged. The mouth of the lagoon is currently clogged due to sand build up. It would be an immediate relief to use some of the funds to help pay to reopen the Lagoon Mouth. Because there was a massive fish die off due to the sewage spill it seems like common sense would dictate keeping the health of the lagoon viable so the fish population could make a come back. As it stands now there will be another fish die off because of restricted tidal water flow. Also the endangered Belding Savannah Sparrow is losing its nesting area due to the high water level being caused by the closed Lagoon mouth. So the lagoon is being impacted because the funds are not there to open the mouth.

The city of San Diego has out grown its sewage treatment facilities. Why is a permit waiver granted so sewage is only treated to stage 1 before being dumped into our ocean; when most if not all cities this large go to stage 2 treatment? The ecosystems are being thrown out of balance and too people (and their lawyers) are bending the rules to look the other way instead of dealing with and coming up with solutions. Why are so many baby seal cubs starving? Because there are not enough fish. Why are there not enough fish? Because for years there were no restrictions on fishing in and around the kelp beds, where the fish hatchery fish is. With the Los Penasquitos lagoon mouth being closed another fish hatchery location is imperiled. So my question is why is the mitigation money being sent to Sacramento for use - who knows where - when there is a need for it to be used locally in Los Penasquitos Lagoon and other coastal lagoon within San Diego County?

By the way. Thanks for putting in the generators as a back up for when the next power outage happens. Wouldn't it be a great idea to collect money from all the developers who built around the watershed of Los Penasquitos Lagoon (clear to Poway) without helping to pay for the additonal sewage being generated by all the development and people living in that vast area. A lot of which took place before sediment containment construction practices where

put into place. The end result is sediment build up within the lagoon which has changed - once again the health of the lagoon!

Thank you for your interest,
Carol A. Martin

**Comment Letter From
Peter Jensen
April 8, 2013**

Stewart, Rebecca@Waterboards

From: Peter Jensen <peterjensenwriter@gmail.com>
Sent: Monday, April 08, 2013 3:36 PM
To: Stewart, Rebecca@Waterboards
Subject: Re: DEADLINE WEDNESDAY

To: Mr. Dave Gibson, Executive Officer, California Regional Water Quality Control Board, San Diego - Region 9

Re: Comments on 2.4 Million Gallon Sewage Spill at Pump Station #64 on September 8, 2011, and Proposed Settlement

Dear Mr. Gibson:

The Torrey Pines Association on behalf of its 2500 members is grateful for the opportunity to comment on the proposed Order No. R9-2013-0032. We remain concerned that future wastewater discharges to the lagoon will occur and that the BMPs undertaken by the City (backup generators), while welcome, cannot be standalone solutions. We also are uncomfortable with the manner in which the violations were quantified. When we consider the beneficial uses affected by the spill, we estimate that closure of Torrey Pines State Beach for seven days following the spill denied approximately 30,000 visitors recreational access to the ocean. In consequence, we are recommending the City implement a monitoring program that would have a number of benefits.

We respectfully request the Board consider the following points:

-- The installation of a back-up generator at Pump Station 64 provides only one piece of the remedy to address future spills. Absent a monitoring system, there is no way to measure the effectiveness of this remedy and provide for more real-time data on the impact to the lagoon from a future spill and a more rapid and targeted clean-up response. An informed response could help restore beneficial uses in a more timely manner.

-- In addition to meeting state guidance for effectiveness assessment, the monitoring system we propose will also have multiple benefits in providing important data to support restoration of the lagoon and supporting the sediment load reduction program in the watershed through the TMDL.

Sincerely,

Peter Jensen, President
Board of Counselors
Torrey Pines Association

Peter Jensen
c/o 2243 El Amigo Road
Del Mar, CA 92014-3027
Office (land line): 858-755-7199
Mobil: 858-947-8247
Fax: none
peterjensenwriter@gmail.com

**Comment Letter From
San Diego Coastkeeper
April 8, 2013**



April 8, 2013

Via e-mail to rstewart@waterboards.ca.gov

Rebecca Stewart
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

RE: Comments on City of San Diego Sewage Spills Settlement

Dear Ms. Stewart:

San Diego Coastkeeper was actively involved in the aftermath of the City of San Diego sewage spills on September 8, 2011 after the regional power outage, identifying the area of pooled sewage and fish kill in Los Penasquitos creek, testing the water quality, and informing the public of the consequences of the spill. See Travis Pritchard, San Diego Coastkeeper Blog, Sept. 12, 2011 <http://www.sdcoastkeeper.org/blog/sick-of-sewage/item/170-when-the-lights-go-down-in-the-city-and-the-sewage-flows-into-lagoon.html>; Travis Pritchard, San Diego Coastkeeper Blog, Sept. 16, 2011 <http://www.sdcoastkeeper.org/blog/sick-of-sewage/item/175-follow-up-sewage-spill-results-are-in.html>; Travis Pritchard, San Diego Coastkeeper Blog, Sept. 26, 2011 <http://www.sdcoastkeeper.org/blog/sick-of-sewage/item/178-more-los-penasquitos-lagoon-follow-up.html>

Given our active involvement in this issue, we were disappointed to discover the Regional Board plans to give the City of San Diego a slap on the wrist for the preventable power outage sewage spills. Allowing the City to pay what amounts to 25 cents per gallon for the Los Penasquitos spill and ignoring the Sweetwater River spill is not in the best interest of the public given the severity of the spills and their environmental consequences. San Diego Coastkeeper urges the Assistant Executive Officer to unilaterally declare the Proposed Settlement and Stipulated Order void and withdraw it from consideration for the May 8, 2013 Regional Board meeting.

A. The Proposed Settlement Improperly Ignores the Spill into Sweetwater River and San Diego Bay.

The Regional Board proposes to look the other way and ignore a significant sewage spill into Sweetwater River and San Diego Bay because it occurred on the same day and had "the same underlying cause" which will be addressed by the Enhanced Compliance Action. See Proposed Settlement at 14. The staff's decision to ignore the Sweetwater River spill is not consistent with the Enforcement Policy. See State Water Resources Control Board Water Quality Enforcement Policy at 17-18.

The Enforcement Policy allows a single base violation amount to be assessed for multiple violations only in limited circumstances. None of the five specific limited circumstances apply here. See State Water Resources Control Board Water Quality Enforcement Policy at 17-18. Furthermore, the Enforcement Policy expressly prohibits grouping multiple violations under one civil liability amount where each results in a distinguishable economic benefit to the violator. See State Water Resources Control Board Water Quality Enforcement Policy at 18. In the economic benefit analysis, the staff used a feasibility study for backup generation at Pump Stations 2, 64 and 65 to calculate economic benefit from not providing backup power at Pump

TEL: 619.758.7743
FAX: 619.224.4638

ADDRESS: 2825 DEWEY ROAD, SUITE # 200
SAN DIEGO, CALIFORNIA 92106

www.sdcoastkeeper.org

IMPACT

Ms. Rebecca Stewart
Re: City of San Diego Sewage Spill Proposed Settlement
April 8, 2013
Page 2 of 5

Station 64. Since this economic benefit does not encompass backup generation at Pump Station 1 where the Sweetwater River spill occurred, there is separate economic benefit for each spill.

Further, the staff's choice to "assign no liability" for the Sweetwater River spill ignores the impacts to the river and San Diego Bay. While the CIWQS report suggests that the Sweetwater River spill totaled 193,120 gallons, the Public Utilities Department's September 22, 2011 report to the Natural Resources & Culture committee of the San Diego City Council admitted to spilling 870,231 gallons of sewage into the Sweetwater River and San Diego Bay.

A sewage spill into the Sweetwater River has serious consequences. The Sweetwater River is included on the 303(d) list as impaired for fecal coliform bacteria and enterococcus bacteria—both of which are found in spilled sewage. See http://iaspub.epa.gov/tmdl_waters10/attains_waterbody_control?p_list_id=CAR9091200020091030145725&p_cycle=&p_report_type= Similarly, San Diego bay is impaired for pathogens in multiple locations, including the shoreline at G Street pier. Spilling sewage into a waterbody already impaired for bacteria is a serious water quality violation that should not be ignored.

B. The Susceptibility to Cleanup or Abatement Score Should Have Been 1, not 0.

The Proposed Settlement assigns a score of "0" to the "susceptibility to cleanup or abatement" after rationalizing that "more than 50 percent could have been recovered had pumping operations begun immediately after the sanitary sewer overflow had begun." See Proposed Settlement at 18.

This conclusion is not consistent with reasoning in other penalty assessments. For example, in the Oceanside Administrative Civil Liability technical report dated March 13, 2013, the report states that none of that discharge was subject to recovery because "the spill was unnoticed for days." Here, the City of San Diego failed to notice that sewage had pooled in Los Penasquitos Creek for days. Had San Diego Coastkeeper water quality monitoring volunteers not discovered the spill two days later, on September 10, 2011, who knows how long it would have taken the City of San Diego to discover it.

In the La Mesa Administrative Civil Liability from March 13, 2013, staff concluded that more than 50 percent of that spill was not amenable to recovery because of the "large volumes" spilled at multiple discharge points. The "large volumes" involved in that case were approximately 1.3 million gallons of sewage, much less than involved here. Plus, if the Sweetwater River spill is taken into account, the City of San Diego was also wrangling with multiple discharge points at two distant geographic points. For these reasons, the "susceptibility to cleanup or abatement" score should have been 1.

C. The Per Gallon Assessment Should Have Been Based on a Per Gallon Factor of 0.8, not 0.6.

If the staff had properly awarded a "susceptibility to cleanup or abatement" score of 1 instead of 0, the per gallon factor would be 0.8, not 0.6. See State Water Resources Control Board Water Quality Enforcement Policy at 14.

Ms. Rebecca Stewart
Re: City of San Diego Sewage Spill Proposed Settlement
April 8, 2013
Page 3 of 5

D. The City of San Diego Should Be Held Liable for All Sewage it Spilled.

The Proposed Settlement calculates the City's liability based on a 1.5 million gallon sewage spill instead of the entire 2,431,550 gallons spilled in Los Penasquitos Creek. The Proposed Settlement suggests this reduction is appropriate because the City "recovered" 931,550 gallons of sewage by pumping over 15 million gallons of creek water mixed with sewage from the creek.

This approach ignores the impacts the total volume of the spill had on Los Penasquitos creek for the time period before less than half of the spill was recovered. Further, it ignores the harmful impact removing over 14 million gallons of water from Los Penasquitos creek had on aquatic life, the habitat, and the ecosystem as a whole.

For these reasons, the per gallon and per day assessment should have been calculated using the full discharge instead of the reduced amount.

E. The \$10 per Gallon Penalty Should Not Have Been Reduced to \$2 Per Gallon Because the Ultimate Penalty Was Inappropriately Small.

The State Water Resources Control Board's Enforcement Policy allows staff to reduce the statutory maximum from \$10 per gallon to \$2 per gallon in the case of high volume discharges. However, the policy recognizes that this adjustment may not be appropriate where it results in an "inappropriately small penalty," a higher amount "up to the statutory maximum" may be used. See State Water Resources Control Board Water Quality Enforcement Policy at 14.

Here, the City will ultimately pay only 25 cents per gallon, counting just the Los Penasquitos sewage spill. The penalty amount per gallon drops even lower when the Sweetwater River spill is added into the mix. This penalty is pathetically low and must be adjusted upwards.

F. Staff Should Not Have Reduced The City's Liability in Half from the Total Calculated Civil Liability of \$2,428,089.

The Enforcement Policy allows the staff to adjust the calculated liability as a result of the settlement considerations in consideration of hearing or litigation risks including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses. The Proposed Settlement includes six reasons for cutting San Diego's liability in half:

1. San Diego has agreed to install backup generators.
2. San Diego removed 40% of the Los Penasquitos spill by pumping for a week and a half.
3. The Regional Board in the past supported use of a redundant power grid.
4. San Diego revised its Sewer Overflow Response Plan by requiring field crew to walk the entire length of the spill to identify all spill points.
5. San Diego has reduced SSOs by approximately 90% since 2000.
6. San Diego spent over \$930 million in infrastructure improvements between 2002 and 2012.

Reason 1 is an inappropriate basis to reduce total liability since the backup generator installation project is the Enhanced Compliance Activity. By cutting the total liability in half because of this factor and then crediting half of the \$1,245,414 as coming from the Enhanced

Ms. Rebecca Stewart
Re: City of San Diego Sewage Spill Proposed Settlement
April 8, 2013
Page 4 of 5

Compliance Activity, the Proposed Settlement effectively “double counts” this project. It should either be used to reduce the base liability or be counted as an Enhanced Compliance Activity—not both. Further, the City has already committed to this project, without Proposed Settlement.

Reason 2 is inappropriate to reduce the liability because the per gallon amount was already reduced by the gallons removed. Again, staff is “double counting” the gallons removed, both in calculating the per day liability and then in calculating overall liability. This is inappropriate.

Reason 3 is inappropriate to reduce the liability because San Diego assumed the risk of not having backup generation. San Diego could not reasonably rely on the Regional Board’s endorsement of redundant power grids to escape liability for a sewage spill that occurs during a blackout. Ultimately, San Diego is responsible for properly maintaining its system and is responsible all spills from it.

Reason 4 is inappropriate to reduce the liability because having field crews walk the length of the spill path to find the final point of discharge is a common sense best management practice that should have been occurring already. San Diego should not have its liability reduced merely because it is finally implementing measures to identify the full scope of a sewage spill.

Reasons 5 and 6 are inappropriate bases for reducing the total liability because San Diego was forced to reduce sewage spills and invest in infrastructure as a result of litigation by San Diego Coastkeeper. These court-mandated improvements required because of the City’s dismal sewage spill track record should not reduce the City’s total liability amount. Furthermore, since the consent decree and its scheduled infrastructure investments are slated to end in 2013, the Regional Board cannot count on the City continuing to invest in sewer infrastructure and improvements at the same rate as the prior decade.

Since none of the six reasons listed deal with equitable factors, mitigating circumstances, evidentiary issues or other weaknesses, staff should not have reduced the total civil liability below \$2,428,089.

G. The Regional Board Should not Effectively Reduce San Diego’s Penalty to \$622,707 Just Because the City is Buying Backup Generators.

After reducing San Diego’s liability from \$2,428,089 to \$1,245,414, staff again reduced San Diego’s liability in half, allowing it to complete an Enhanced Compliance Action to further reduce its liability to \$622,707. The Proposed Settlement gives San Diego credit for a plan approved by the San Diego City Council on April 24, 2012 to spend approximately \$17 million to purchase backup generators for six locations throughout San Diego. City Council authorized the mayor to enter into a contract to purchase the new generators almost a year ago.

The Proposed Settlement suggests that San Diego should get credit for this investment it committed to almost a year ago because it was “not otherwise required by law.” See Proposed Settlement at 3. While San Diego Coastkeeper applauds this investment, it was a result of an public outcry for backup generation, not a result of settlement negotiations. This project will happen whether or not the Regional Board agrees to the Proposed Order.

Ms. Rebecca Stewart
Re: City of San Diego Sewage Spill Proposed Settlement
April 8, 2013
Page 5 of 5

H. Reducing the City's Effective Penalty to \$622,707 Makes the Per Gallon Penalty Too Low Given the Spill's Environmental Impacts.

By reducing the amount that San Diego has to contribute to the Cleanup and Abatement Account to \$622,707, the per gallon penalty drops to a paltry 25 cents per gallon—not including the Sweetwater River spill. Adding the Sweetwater River spill in to the mix, the per gallon penalty plummets even further. For the recent La Mesa sewage spill Administrative Civil Liability, the penalty was 72 cents per gallon. Likewise, an Administrative Civil Liability issued against Santa Margarita Water District in 2011 for a 2.29 million gallon spill was 75 cents per gallon.

A higher spill per gallon amount is appropriate given the drastic impacts that the sewage spill had on Los Penasquitos Creek and lagoon. San Diego's spill caused a fish kill in the creek, temporarily eliminating the creek and lagoon's "wildlife habitat" beneficial uses. While San Diego monitored water quality parameters between September 13th and September 26th when "most"—not all—parameters were below action limits and/or Basin Plan water quality objectives, there is no evidence that San Diego undertook any sort of bioassessment to determine the spill's impact on the creek and lagoon habitat and to identify when the creek and lagoon actually recovered from the spill.

Not only did this spill cause a fish kill, but it closed popular swimming and surfing beaches for days. The Del Mar Surf Dog Surfathon, a charity event to raise money to care for orphaned dogs, had to be rescheduled. These sewage spills significantly impacted public health and the environment, all because the City of San Diego took the risk that a regional power outage would never happen and then failed to properly identify the full scope of the spill. The City should be held accountable for these risky choices and their consequences.

Conclusion

The Proposed Settlement is not in the best interest of the public, nor does it fulfill the Regional Board's deterrence enforcement objective. San Diego Coastkeeper welcomes the opportunity to engage in discussions with the Regional Board and the City of San Diego to reach a fair and reasonable resolution to these violations. You can reach me by e-mail at jill@sdcoastkeeper.org or by phone at 619-758-7743.

Sincerely,



Jill M. Witkowski
Waterkeeper

**Comment Letter From
California Department of Parks and Recreation
April 8, 2013**



DEPARTMENT OF PARKS AND RECREATION
San Diego Coast District
4477 Pacific Highway
San Diego, CA 92110

Major General Anthony L. Jackson, USMC (Ret), Director

April 8, 2013

Rebecca Stewart
Sanitary Engineering Associate
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Re: Order No. R9-2013-0032 (Proposed)

Dear Ms. Stewart,

Thank you for the opportunity to comment on the Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order pertaining to the discharge of untreated sewage to Los Penasquitos Creek, Los Penasquitos Lagoon, and the Pacific Ocean on September 8, 2011.

California State Parks (CSP) is the land manager for most of the Estuary as part of Torrey Pines State Natural Reserve (Reserve). While we understand that the September 8 spill was accidental, we remain frustrated with the number and frequency of spills that occur in the watershed and the discharger's responses to them. We support the installation of a more robust system (for example, a diesel backup generator at Pump Station No. 64) to prevent future sewage spills caused by the loss of electrical power. In addition to this contingency it is imperative that a more responsive monitoring system be implemented to provide earlier detection of spills and to provide a better assessment of their effects and the efficacy of any cleanup efforts. In absence of this information it is very difficult, if not impossible, to measure the effects of a spill on water quality and the associated biota in an objective manner. Given the amount of infrastructure (potable water mains, sewer mains, storm water systems, power lines, railways, and telecommunication lines) within and surrounding Los Peñasquitos Marsh, inadvertent discharges and their impacts are inevitable. As such, these problems can't be solved by one-stop solutions but rather an integrated management system. The most important step in this system is a monitoring program capable of assessing significant changes of ambient water quality from critical locations within the marsh. CSP would strongly encourage that such a system be developed and maintained as a consequence of this and future settlements with dischargers.

Please feel free to contact me or Darren Smith (619) 952-3895 if you have questions or comments regarding this comment letter.

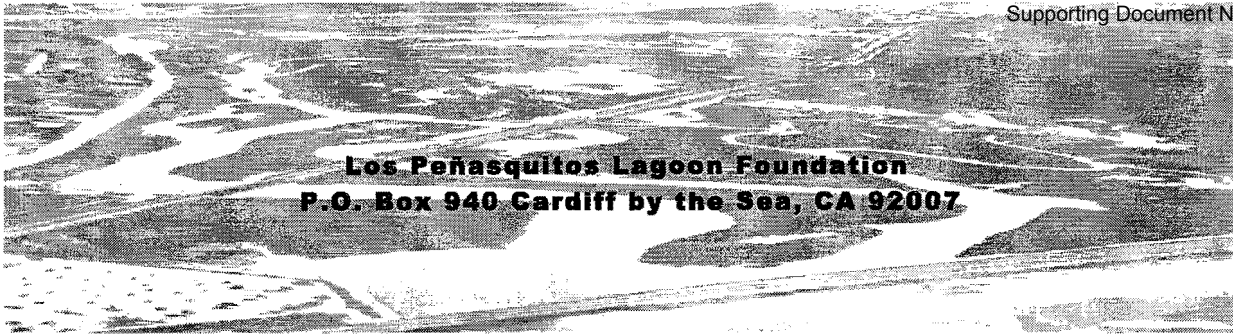
Sincerely,

A handwritten signature in black ink, appearing to read "Clay Phillips".

Clay Phillips, San Diego Coast District Superintendent

cc: Darren Smith, Acting District Services Manager
Robin Greene, North Sector Superintendent
Cindy Kimmel, San Diego Coast CEQA Coordinator
Reading File

**Comment Letter From
Los Penasquitos Lagoon Foundation
Undated**



Dave Gibson, Executive Officer
California Region Water Quality Control Board
San Diego – Region 9
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Subject: Response to the 2.4 Million Gallon Sewage Spill from Pump Station #64 on 9/8/11 and Proposed Settlement

Dear Mr. Gibson,

On behalf of the Los Peñasquitos Lagoon Foundation (LPLF), I would like to extend my appreciation for the ability to review and comment on the proposed Order No. R9-2013-003. This proposed order contains a Settlement Agreement and Stipulation for Entry of Order pertaining to the discharge of 2,431,550 gallons of untreated sewage directly into Los Peñasquitos Creek on September 8, 2011 that occurred unabated for approximately 5 hours (5:50 pm to 10:52 pm). LPLF understands that this spill was accidental in nature and feels the proposed Order No. R9-2013-003 is a step in the right direction to prevent future spills of untreated sewage into Los Peñasquitos Lagoon and its tributaries. We respectfully request that you consider the following points provided below as you make your recommendation to the members of the San Diego Water Board regarding the proposed settlement recommended by the Water Board's Prosecution Staff.

LPLF does not support the Water Board's Prosecution Staff belief that the proposed resolution of the alleged violations is fair and reasonable for the impacts sustained to the beneficial uses of Los Peñasquitos Lagoon, its tributaries and the five miles of coastline closed by the spill. Nor does LPLF believe that "the Investigative Order and that this Stipulation Order is in the best interest of the public" as described in proposed Order No. R9-2013-003. LPLF also regrets that the City of San Diego (City) did not offer to perform a Supplemental Environmental Project (SEP) that could have directly mitigated some of the impacts to the receiving water body and surrounding areas affected by the sewage spill. LPLF had provided a list of candidate projects to the City's Public Utilities Department shortly after the spill and offered to coordinate efforts with staff from the City, Water Board, and California State Parks to reduce costs associated with their implementation and management.



Los Peñasquitos Lagoon is a Marsh Preserve given the highest level of protection within the State of California and considered a Critical Coastal Habitat by the National Oceanic and Atmospheric Administration. The Lagoon is also considered an impaired water body under the Clean Water Act Section 303(d), making the restoration and long-term protection of its beneficial uses both a federal and State priority. These protective measures have been instituted, in part, on the basis that the Lagoon's habitats and inhabitants are highly valued but extremely vulnerable local, regional and state resources and their protection paramount. However, this value is not adequately captured in the Enforcement Policy calculation of discretionary penalties under CWC section 13385(h)(1) and (2) used in the proposed Order No. R9-2013-003. LPLF understands the need to quantify violations using a standardized method and requests the following adjustments to the Enforcement Policy calculations used in proposed Order No. R9-2013-003:

- Raise the amount of the fine to \$10.00/gallon. LPLF believes that Water Board's Prosecution Staff failed to accurately value the beneficial uses of Los Peñasquitos Lagoon and its adjacent water bodies. This is reflected in the reduction of the statutory maximum of \$10.00/gallon to \$2.00/gallon without an adequate description. LPLF requests that the fine amount be adjusted to \$10.00/gallon to reflect the value of Los Peñasquitos Lagoon, its tributaries, and the five miles of coastal area affected by the spill that closed beaches from Solana Beach to La Jolla Shores.
- Raise the Adjustment for Culpability Multiplier to 1.5. LPLF requests that the Adjustment for Culpability be raised to the multiplier of 1.5. LPLF justifies this request given the City's history of non-compliance with regard to Pump Station #64 and knowledge, before the spill, that their redundant power source at this pump station would be ineffective in the event of a large power outage.
- Raise the Adjustment of Cleanup and Cooperation Multiplier to 1.5. LPLF also requests that Adjustment of Cleanup and Cooperation be raised to the multiplier of 1.5. We feel this increase is justified since the City failed to identify and respond to the spill in a timely manner while cognizant of the implications of a region-wide black out on Pump Station #64 and vulnerability to receiving waters that included Los Peñasquitos Lagoon. The City also failed to implement an effective Sewer Overflow Response Plan and "on more than one occasion Respondent failed to identify and remove raw sewage remaining in receiving waters until instructed to do so by the San Diego Water Board staff."
- Raise the Adjustment for History of Violations Multiplier to 1.5. Given the history of this facility, the minimum multiplier of 1.1 is not warranted, especially when the City failed to implement a separate back up power source (e.g. generator) at this problematic pump station while knowing

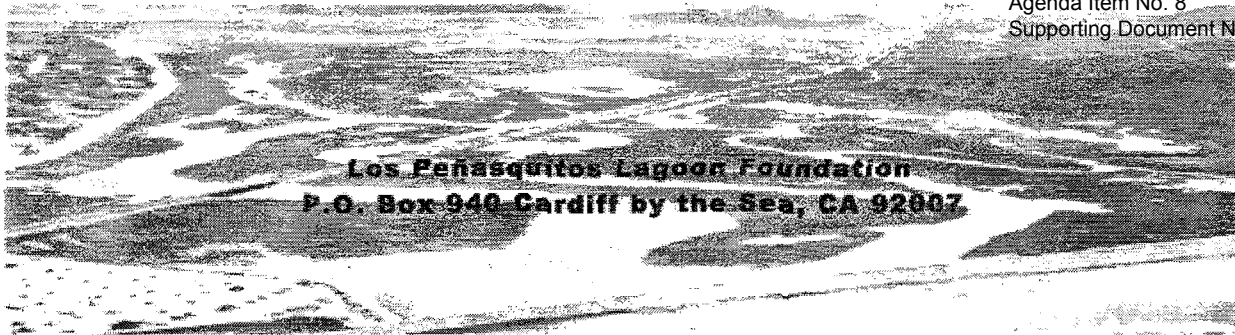


that its redundant power supply would fail during a large scale blackout. Pump Station #64 has a history of non-compliance as evidenced in "several enforcement actions against Respondent relating to discharges of sewage from Pump 64."

- Recalculate the Determination of Total Base Liability Amount. LPLF requests that the total base liability amount be recalculated with the aforementioned revisions to accurately reflect the true cost of the sewage spill using the Enforcement Policy calculation.

LPLF also feels that the monitoring of impacts to Los Peñasquitos Lagoon conducted by the City failed to accurately describe water quality within the Lagoon with regard to the sewage spill and perceived recovery of Lagoon's beneficial uses. The lack of quality baseline data in southern channels of the Lagoon precludes the City from accurately characterizing the impacts of the spill, ambient conditions within the Lagoon and perceived recovery of biological and chemical indicators. The City's monitoring efforts only included two sampling locations (Monitoring Stations LAG and LAG1) located within the southern channel of Los Peñasquitos Lagoon (see attached graphic). Sampling efforts at Station LAG were discontinued after 4 sampling events. Monitoring station LAG1 was located near the inlet and susceptible to the influence of tidal mixing, which could have influenced monitoring results based on tidal flow, elevation and mixing. Upon review of the City's monitoring efforts, I did not see the use of any additional monitoring stations within the Lagoon that would have been useful in differentiating between ambient conditions and possible effects of the sewage spill when the samples were taken, as well as the effects of residence time within each segment of the Lagoon's channels. Since IBI scores are consistently poor in areas monitored by the City for compliance with their NPDES permit, a more robust attempt at monitoring water quality within the lagoon should have been performed to capture the impacts and recovery of conditions after the spill. Furthermore, a chemical analysis of lagoon sediments should have been performed to assess the possible contributions of industrial pollutants since Pump Station #64 serves a wide area of industry that includes Sorrento Valley, Mira Mesa and Poway. It is our understanding from communication with the City of San Diego that there had not been any monitoring performed to measure levels of industrial contaminants potentially released during the spill, only inferences based on data collected under standard operating procedures at Pump Station #64. Furthermore, the City's monitoring efforts were also confounded by an estimated 3.5 inches of rain that fell after the spill and could have influenced the accuracy of the monitoring effort in describing impacts and subsequent improvements to water quality.

LPLF understands that the City's portion of the proposed settlement has been reduced under Enhanced Compliance Activity for the purchase and future installation of back up generators. We applaud this effort

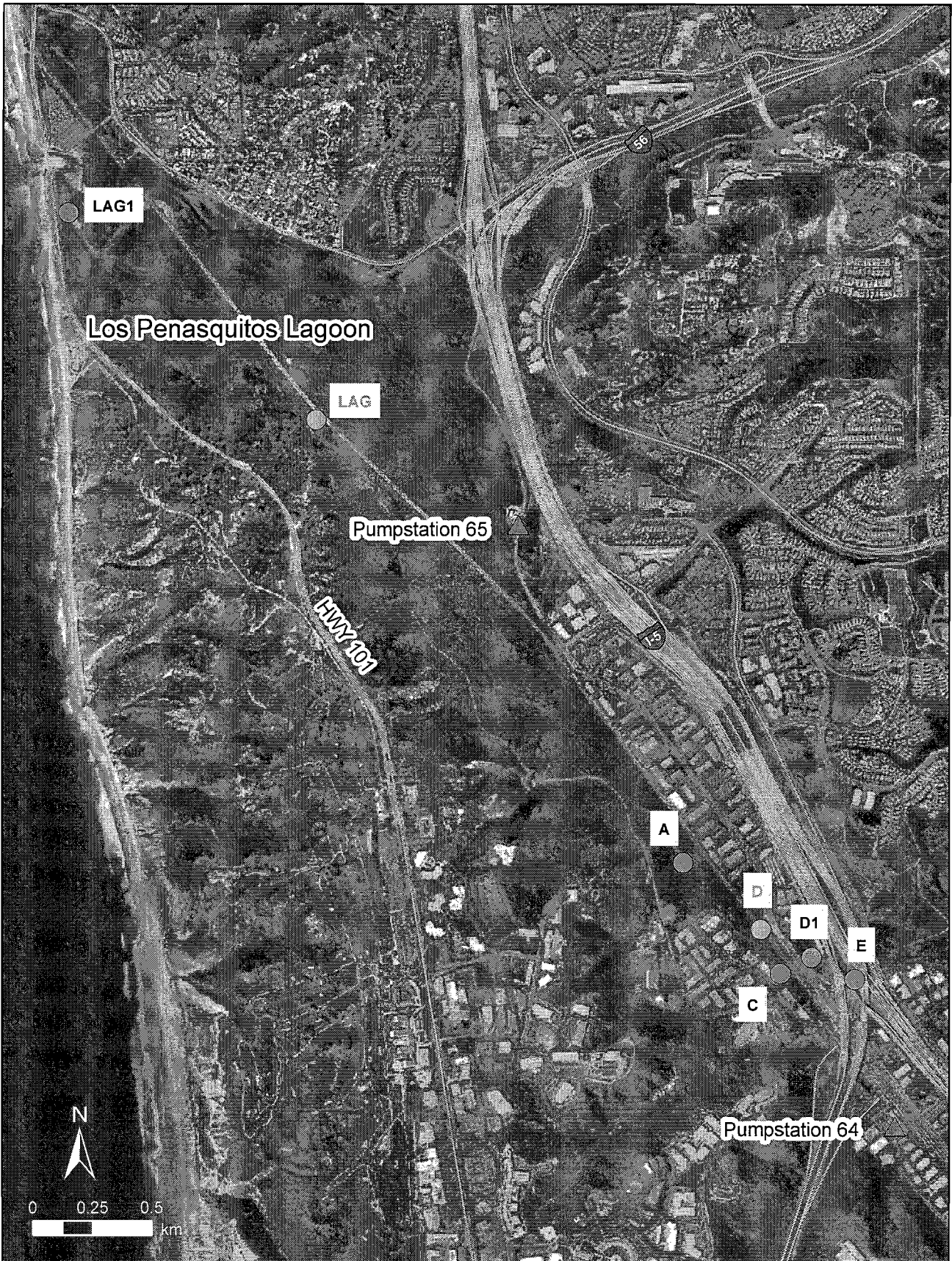


to reduce the possibility of another large spill should another region-wide power outage occur. However, LPLF believes that a Supplemental Environmental Project (SEP) should have been included as part of the proposed settlement. We understand that a SEP can only occur if proposed by the City and that the State Water Board cannot impose or recommend a SEP. LPLF had provided the City with candidate projects for consideration under a SEP and offered to facilitate their implementation and management. These candidate projects included improvements to tidal circulation and flushing within Lagoon channels, as well as improvements to monitoring of the lagoon aquatic environs to improve response efforts for future spills and help ensure the long-term protection of the beneficial uses of Los Peñasquitos Lagoon. LPLF feels that a SEP may have been included in the proposed settlement had the interpretation of liability under the Enforcement Policy more accurately captured the value of Los Peñasquitos Lagoon (e.g. its role as a Critical Coastal Habitat, State Preserve, a 303(d)-listed waterbody); the impacts generated by the direct discharge of 2,431,550 gallons of untreated sewage; and the City's "history of non-compliance" with regard to Pump Station #64. LPLF feels strongly that including a SEP in proposed Order No. R9-2013-003 would be in the best interest of the State Water Board, City of San Diego and the public for protecting the beneficial uses afforded by Los Peñasquitos Lagoon and its tributaries. A SEP would also greatly benefit the long-term protection of beneficial uses afforded by the nearshore environs adjacent to Los Peñasquitos Lagoon that include the heavily used beaches of Del Mar, Torrey Pines, and La Jolla Shores, as well as San Diego's only Areas of Special Biological Significance - La Jolla Shores State Marine Conservation Area (ASBS No. 29) and San Diego-Scipps State Marine Conservation Area (ASBS No. 31).

If you have any questions, please contact me at (760) 271-0574 or at mikehastings1066@gmail.com.

Regards,

Mike Hastings, Executive Director
Los Peñasquitos Lagoon Foundation



Attachment C12.1

Map of stations sampled as part of the continued monitoring program for Investigative Order No. R9-2011-0070.