

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

**ORDER NO. R9-2021-0119  
ASSESSING ADMINISTRATIVE CIVIL LIABILITY**

**In the Matter of  
Baldwin & Sons, Inc. et al.  
Portola Center South Construction Site**

**City of Lake Forest  
County of Orange**

The California Regional Water Quality Control Board, San Diego Region (San Diego Water Board or Board), having held a public hearing on November 9 and 10, 2021, to hear evidence and comments on the allegations contained in Administrative Civil Liability Complaint No. R9-2020-0006, and having considered and deliberated on the evidence received in the public hearing and in the record, and having considered all comments received, orders Baldwin & Sons, Inc.; Sunranch Capital Partners, LLC; Sunrise Pacific Construction, Inc.; SRC-PH Investments, LLC; Baldwin & Sons, LLC; Shawn M. Baldwin; Randall G. Bone, and; Jose Capati (collectively, “Dischargers”<sup>1</sup>) to pay civil liability in the amount of **\$9,085,932** and finds as follows:

**BACKGROUND**

1. On September 2, 2009, the State Water Resources Control Board (State Water Board) adopted Order No. 2009-0009-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Storm Water Permit). The Construction Storm Water Permit became effective on July 1, 2010, and was amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ. The Construction Storm Water Permit authorizes discharges of storm water associated with construction activity so long as the dischargers comply with all requirements, provisions, limitations, and prohibitions in the permit. Pursuant to federal statutes and regulations, Construction Storm Water Permit section V.A.2. requires the implementation of the best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce or eliminate pollutants in storm water runoff and

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<sup>1</sup> The term “Dischargers” as used throughout the Complaint, Technical Analysis, and this Order refers to the entities and individuals that are found liable for the violations herein. Often, it refers collectively to the entities and individuals identified in the introductory paragraph.

imposes additional requirements necessary to implement applicable water quality standards.

2. Entities that have obtained coverage under the Construction Storm Water Permit (dischargers) are required to implement controls, structures, and management practices<sup>2</sup> (a.k.a. Best Management Practices or BMPs) to comply with the Construction Storm Water Permit's requirements. Based upon each site's sediment transport and receiving water risk level (Risk Level) the Construction Storm Water Permit requires different BMPs, and monitoring and reporting to achieve and demonstrate BAT and BCT.
3. Dischargers identify the appropriate Risk Level and are required to have a State-certified Qualified SWPPP Developer (QSD) prepare a site-specific Storm Water Pollution Prevention Plan (SWPPP) prior to construction (Construction Storm Water Permit, Sections VIII and XIV, A.). The Construction Storm Water Permit requires Qualified SWPPP Practitioners (QSPs) to implement BMPs required by the Construction Storm Water Permit. (Construction Storm Water Permit, Section VII, B.3.)
4. Sites identified as a "Risk Level 2" or "Risk Level 3" must implement heightened requirements under the Construction Storm Water Permit due to an increased risk to water quality. (See Construction Storm Water Permit, Attachments D and E).
5. Sites that fail to implement one or more of the requirements contained in Attachments C, D, or E, as applicable, are not in compliance with BAT and BCT requirements. Discharges of storm water or non-storm water from sites where BMPs have not been implemented to achieve BAT and BCT, as required by the Construction Storm Water Permit, are unauthorized discharges.
6. The Portola Center South Construction Site (Site) is a 95-acre residential construction project located just south of the intersection of Glenn Ranch Road and Saddleback Ranch Road in the City of Lake Forest (City), County of Orange, California.

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<sup>2</sup> Best Management Practices are "schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of 'waters of the United States.' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage." (40 C.F.R. § 122.2.)

## CHRONOLOGY

7. On October 2, 2014, Gary Berger, on behalf of Sunranch Capital Partners, LLC filed a Notice of Intent (NOI) to comply with the Construction Storm Water Permit as a Risk Level 2 discharger and was issued Waste Discharge Identification (WDID) No. 9 30C371181 for the Site.
8. While ownership of the Site was transferred from Sunranch Capital Partners, LLC to SRC-PH Investments, LLC in July of 2015, a Notice of Termination (NOT) was not filed by Sunranch Capital Partners, LLC, as required by the Construction Storm Water Permit, and a new NOI was not filed by SRC-PH Investments, LLC, as required by the Construction Storm Water Permit. The related Grant Deed states that "Grantors & Grantees are comprised of the same parties who continue to hold the same proportionate interest in the property." The latter was the property owner until November 12, 2015.
9. On September 23, 2015, SRC-PH Investments, LLC, and Landsea Holding Corporation entered into a Purchase and Sale Agreement for the majority of the Site. Landsea Holding Corporation assigned the Purchase Agreement to LS-OC Portola, LLC (Landsea) at the close of escrow. SRC-PH Investments, LLC did not file a Change of Information (COI), which would have been required if it had enrolled under the Construction Storm Water Permit. Landsea and Sunrise Pacific Construction, Inc. entered into a General Contractor Agreement, Guaranteed Maximum Price Contract (GMAX Contract), whereby Sunrise Pacific Construction, Inc. would act as general contractor on the Site. The GMAX Contract and the grant deed were effective when the sale was completed, and the grant deed was recorded on November 12, 2015.
10. The City issued a Notice of Violation (NOV) and Citation to Jose Capati c/o Joe Giedeman of "Baldwin & Sons" on October 6, 2015, for failing to implement adequate erosion and sediment control BMPs required by City Ordinance and the NPDES storm water program on September 15, 2015, that resulted in an unauthorized discharge of sediment laden storm water runoff from the Site into Aliso Creek. Despite this warning by the City, the Dischargers failed to bring the Site into compliance and on October 9, 2015, the City issued another NOV and citation for continued BMP violations at the Site to Gary Berger of Sunranch Capital Partners, LLC.
11. After receiving a request from the City to assist it with improving compliance at the Site on December 10, 2015, the San Diego Water Board staff inspected the Site on January 19, 2016, and documented violations of the Construction Storm Water Permit. Additionally, the San Diego Water Board staff conducted storm water inspections and drive-by visual inspections of the Site on March 14, 2016, and March 21, 2016. Based upon the Construction Storm Water Permit violations documented during the San Diego Water Board inspections, the San Diego Water Board issued an NOV to Jose Capati, Baldwin & Sons, and

Sunranch Capital Partners, LLC on May 23, 2016. The NOV identified numerous different and distinct violations of the Construction Storm Water Permit and warned the Dischargers that a liability of up to \$10,000 could be imposed for each day of violation.

12. The City issued an NOV, Citation, and Stop Work Order to Gary Berger on behalf of “Sunranch Capital Partners, LLC/Baldwin & Sons” on January 21, 2016, for BMP violations that resulted in an unauthorized discharge of sediment and sediment laden storm water runoff from the Site into Aliso Creek on January 5, 2016.
13. The City issued an NOV and Citation to Jose Capati on behalf of “Baldwin & Sons” on February 5, 2016 for continued BMP violations and conducting construction activities in violation of an active Stop Work Order. On February 10, 2016, the City issued a Cease and Desist Order and Notice to Abate Nuisances to Jose Capati of Baldwin & Sons, LLC.
14. The City issued a Stop Work Order on March 17, 2016, which halted grading activities based on the “[dischargers] failure/refusal to implement appropriate BMPs.”
15. Landsea and Sunrise Pacific Construction, Inc. had disputes under the GMAX Contract, and Landsea provided a Notice of Default to Sunrise Pacific Construction, Inc. in February 2016, and ultimately obtained possession of the Site with the right of entry and general contractor responsibilities on August 12, 2016.
16. On November 14, 2016, the Prosecution Team issued Order No. R9-2016-0212 pursuant to Water Code section 13267, an Investigative Order to Landsea and Sunranch Capital Partners, LLC, seeking information about the volume of an October 24, 2016, discharge. The Prosecution Team also issued investigatory subpoenas to Landsea, Sunranch Capital Partners, LLC and USA Portola Properties, LLC regarding general construction activities, and sought similar documents informally from the City. Upon receipt of the investigatory subpoenas, the entities objected to the production of financial documents and other materials that detail how the companies and individuals’ financial assets are distributed. The entities offered to produce documents pursuant to a protective order, but no terms could be reached that were acceptable to the Prosecution Team, consistent with California law, and that allowed the documents to be used in an enforcement proceeding.
17. Thereafter, the Prosecution Team elected to refer the matter to the Office of the Attorney General for enforcement of the investigatory subpoenas. The matter was first heard on December 20, 2018. An Order by the San Diego Superior Court was entered on February 11, 2019, which compelled production of most of the Prosecution Team’s requests, except for the tax returns.

18. On January 10, 2020, the San Diego Water Board Prosecution Team issued ACL Complaint No. R9-2020-0006 in the amount of \$9,085,932 (inclusive of \$96,594 identified for recovery of staff investigatory costs) for violations of the Construction Storm Water Permit, Water Code Section 13376, the Water Quality Control Plan for the San Diego Basin, and Clean Water Act Section 301.
19. The Fourth District Court of Appeals affirmed the San Diego Superior Court Order that the San Diego Water Board Prosecution Team has a legitimate and important interest in obtaining Dischargers' financial documents. *State Water Resources Control Board, Baldwin & Sons, Inc. et al.* (2020) 45 Cal.App.5th 40. In December 2020 and January 2021, the San Diego Water Board Prosecution Team issued administrative subpoenas to Dischargers as well as other entities and individuals. Pursuant to a stipulation entered by the Parties and approved by the Executive Officer on May 5, 2021, the subpoenas were withdrawn, and a number of entities and individuals were dismissed from the Complaint. In addition, the Dischargers affirmed their ability to pay the proposed liability.
20. Evidence in the record provides a basis for naming the entities identified in this Order. The San Diego Water Board may impose direct liability against operators that participate in the activities of the Site. (*U.S. v. Bestfoods* (1998) 524 U.S. 51; See *In re: Original Sixteen to One Mine, Inc.* (SWRCB 2003) Order No. WQO 2003-0006, pp. 6-7; *In re: Mr. Kelly Engineer/All Star Gas* (SWRCB 2002) Order No. WQO 2002-0001, p. 5.) Operators include those persons that direct the workings of, manage, or conduct the affairs at the Site. (*U.S. v. Bestfoods* (1998) 524 U.S. 51.)
  - (a) Baldwin & Sons, Inc. operated and directly participated in day-to-day activities at the Site. Baldwin & Sons, Inc. contracted for erosion control and BMP work at the Site with subcontractor Tom Bistline Construction, Inc. Baldwin & Sons, Inc. also contracted for grading work at the Site with subcontractor Varner Construction, Inc. While these contracts were later amended to replace Baldwin & Sons, Inc. with Sunrise Pacific Construction, Inc., Baldwin & Sons, Inc. was the contractor for a significant period of time leading up to, and during, the Violation Period (August 20, 2015 through March 31, 2016). This type of engagement in operations at the Site, and particularly those operations that caused or the violations, goes far beyond the regular oversight of an affiliated entity. Furthermore, Baldwin & Sons, Inc. corresponded with both the City of Lake Forest and San Diego Water Board staff regarding storm water noncompliance. Baldwin & Sons, Inc. employees regularly represented the Site during enforcement inspections. Accordingly, Baldwin & Sons, Inc. is an operator liable for the violations.
  - (b) Baldwin & Sons, LLC operated and directly conducted the day-to-day activities at the Site. Cameron Mann, in his capacity as an employee of Baldwin & Sons, LLC served regularly as a Site representative during

inspections with the City of Lake Forest and with the San Diego Water Board. He corresponded with San Diego Water Board staff regarding Rain Event Action Plans (REAPs), rain event inspection reports, and BMP and Sampling and Monitoring Reports and was responsible for conducting these activities. Cameron Mann in his capacity as Site Safety & BMP Compliance Officer and QSP of Baldwin & Sons, LLC, corresponded with subcontractors regarding preparation for rain events and regarding storm water violations. Cameron Mann corresponded with San Diego Water Board staff regarding storm water runoff estimations and conducted visual inspections at the Site. Accordingly, Baldwin & Sons, LLC is an operator liable for the violations.

- (c) Sunrise Pacific Construction, Inc. operated and directly conducted the day-to-day activities at the Site. Sunrise Pacific Construction, Inc. entered into the GMAX Contract at the Site and served as a general contractor during a significant portion of the violation period. Sunrise Pacific Construction, Inc. replaced Baldwin & Sons, Inc. as the contractor to subcontractors Tom Bistline Construction, Inc. and Varner Construction, Inc. and served as such during a significant portion of the violation period. Sunrise Pacific Construction, Inc. controlled the scope of work of the subcontractors and issued numerous change orders authorizations. Sunrise Pacific Construction, Inc. corresponded with subcontractors discussing environmental violations and eventually terminated Varner Construction, Inc. Sunrise Pacific Construction, Inc. hired environmental consultant Geocon, Inc. to prepare an opinion regarding the construction of a temporary water quality basin. Accordingly, Sunrise Pacific Construction, Inc. is an operator liable for the violations.
- (d) SRC-PH Investments, LLC operated and directly conducted the day-to-day activities at the Site. SRC-PH Investments, LLC had the authority to alter the scope of work of subcontractor Varner Construction, Inc. and did so by authorizing change orders. SRC-PH Investments, LLC also hired environmental consultant Geocon Inc. to prepare an opinion regarding the construction of a “temporary water quality basin.” Accordingly, SRC-PH Investments, LLC is an operator liable for the violations. In addition, SRC-PH Investments, LLC was also eligible as a Legally Responsible Person (LRP) and should have obtained coverage under the Construction Storm Water Permit once it acquired the Site from Sunranch Capital Partners, LLC. Had SRC-PH Investments, LLC filed the required NOI, it would have been the LRP during a significant portion of the violation period. On this basis, SRC-PH Investments, LLC is also liable for the violations.
- (e) Sunranch Capital Partners, LLC operated and directly conducted the day-to-day activities at the Site. Sunranch Capital Partners, LLC identified itself as the contractor/developer in the NOI for the Site. Sunranch Capital Partners, LLC solicited proposals from subcontractors for storm water

work at the Site. Accordingly, Sunranch Capital Partners, LLC is an operator liable for the violations. In addition, Sunranch Capital Partners, LLC was the LRP during a significant portion of the violation period and, as such, is also liable for the violations.

21. Evidence in the record provides a basis for naming the individuals identified in this Complaint. The responsible corporate officer doctrine states, in general, that a person is liable for a violation committed by a company if: (1) the individual is in a position of responsibility that allows the person to influence company policies or activities; (2) there is a nexus between the individual's position and the violation in question such that the individual could have influenced the company's unlawful actions; and (3) the individual either took actions that facilitated the violations or through inaction failed to prevent the violations. (*People v. Roscoe* (2008) 169 Cal.App.4th 829, 839; See *In re: Original Sixteen to One Mine, Inc.* (SWRCB 2003) Order No. WQO 2003-0006, pp. 6-7; *In re: Mr. Kelly Engineer/All Star Gas* (SWRCB 2002) Order No. WQO 2002-0001, p. 5.)
- (a) Jose Capati is liable for the violations pursuant to responsible corporate officer doctrine. He is in a position of responsibility that allows him to influence the policies of Baldwin and Sons, Inc., Baldwin & Sons, LLC and of Sunrise Pacific Construction, Inc., which are entities that operated at the Site. Jose Capati has a high level of authority within Baldwin & Sons, Inc.—he is authorized to execute and deliver consulting agreements, contracts, and subcontracts up to a value of \$500,000, may execute subdivision agreements, maps, performance bonds, notices of completion and any other documents necessary to entitle real property or involving construction work being performed on Company property. On the Site NOI, Jose Capati identified himself as the Vice President of Site Development and Chief Construction Executive for Sunranch Capital Partners, LLC. Jose Capati was listed as the contact in the GMAX Contract and corresponded with LS-OC Portola, LLC representatives regarding problems with the storm water controls and grading schedule, and the implementation of REAPs. Multiple NOVs, citations, and a cease and desist order from the City of Lake Forest and NOVs from the San Diego Water Board for violations at the Site were addressed to Jose Capati, and Jose Capati corresponded and met with regulators regarding the violations. Jose Capati acted as the client representative during Site visits and met with regulators and consultants. Jose Capati signed change order authorizations with grading subcontractors at the Site modifying their scope of work during the violation period. Jose Capati corresponded with subcontractors regarding storm water violations and controls, and regarding termination. Given Jose Capati's authority, he could have taken actions to prevent the violations.
- (b) Shawn Baldwin is liable for the violations pursuant to responsible corporate officer doctrine. He is in a position of responsibility that allows

him to influence the policies of Sunranch Capital Partners, LLC, Sunrise Pacific Construction, Inc., Baldwin & Sons, LLC, and Baldwin & Sons, Inc., which are entities that operated at the Site. Shawn Baldwin is the Responsible Managing Officer for Sunrise Pacific Construction, Inc., the general contractor during the violation period at the Site. Shawn Baldwin is also the Vice President of Baldwin & Sons, Inc. and the Director of Baldwin & Sons, LLC. As an officer of Baldwin & Sons, Inc., Shawn Baldwin has the highest level of authority, including but not limited to, unlimited signing authority for contracts, bank accounts, wire transfers, and any and all other document deemed necessary, desirable or advisable in connection with any transaction or the day to day operations of Baldwin & Sons, Inc. Shawn Baldwin signs documents as the Vice President of Sunranch Capital Partners, LLC and as the president of Sunrise Pacific Construction, Inc. Shawn Baldwin entered into the GMAX Contract with Landsea on behalf of Sunrise Pacific Construction, Inc. and served as the contractor. Shawn Baldwin terminated subcontractor Varner Construction, Inc. Shawn Baldwin received correspondence from counsel for Landsea Portola, LLC regarding Sunrise Pacific Construction, Inc.'s failure to comply with storm water regulations at the Site, met with Landsea to discuss storm water management at the Site, and corresponded with Landsea regarding these issues. Given Shawn Baldwin's position of responsibility and authority, he could have taken actions to prevent the violations, but failed to do so.

- (c) Randall G. Bone is liable for the violations pursuant to responsible corporate officer doctrine. He is in a position of responsibility that allows him to influence the policies Sunranch Capital Partners, LLC, Sunrise Pacific Construction, Inc., and SRC-PH Investments, LLC which are entities that operated at the Site. Randall G. Bone is the manager of ASSR Pacific Investments, LLC, which is the managing member and manager of LRP and operator Sunranch Capital Partners, LLC. Randall G. Bone is also the CEO of SRC-PH Investments, LLC and the CEO of Sunranch Capital Partners, LLC. Randall G. Bone has unlimited signing authority for contracts, bank accounts, wire transfers, and any and all other document deemed necessary, desirable or advisable in connection with any transaction or the day to day operations of Baldwin & Sons, Inc. Randall G. Bone was included on correspondence with counsel for Landsea regarding Sunrise Pacific Construction, Inc.'s failure to comply with its Storm Water Pollution Prevention Plan and the Construction Storm Water Permit, which allegedly constituted a default of the GMAX Contract. This correspondence also included the summaries of the purported steps that Sunrise Pacific Construction, Inc. was taking to come into compliance, which were too few and too late. Randall G. Bone received the Notice of Default letter from Landsea counsel following violations at that Site and could have taken actions to prevent further violations. Given Randall G.



Bone's position of authority, he could have taken action to prevent the violations and failed to do so.

### PROCEDURAL AND EVIDENTIARY ISSUES

22. The Complaint for Administrative Civil Liability was issued January 10, 2020. The Evidentiary Hearing was conducted on November 9 and 10, 2021, and **DATE**. In preparation for the hearing, Parties exchanged evidence, submitted legal argument, rebuttal evidence and argument, procedural and evidentiary objections and responses. The evidence submitted by the Prosecution Team to support the alleged violations consists largely of City inspection reports (including City contractor reports), City enforcement actions, San Diego Water Board staff inspection reports and notice of violations, Dischargers' inspection reports, Contractors' documents, and corresponding photographs. The San Diego Water Board staff serving as Prosecution Team also testified at the hearing and in depositions initiated by the Discharger.
23. The Discharger's evidence consisted largely of expert reports, deposition testimony of San Diego Water Board staff, City employees and contractors, declarations of Dischargers' employees, contractors, and legal counsel, QSP reports, testimony at the hearing, and records of other San Diego Water Board enforcement complaints and orders.
24. The Discharger made procedural due process arguments and numerous objections to evidence submitted by the Prosecution Team on multiple grounds. Prehearing rulings on evidentiary and related due process arguments were issued prior to the hearing. Additional rulings were made by the San Diego Water Board Presiding Officer at the hearing. Except as noted herein, the Board affirms the prehearing rulings and rulings made during the hearing by the Presiding Officer.
25. **INSERT SPECIFIC RULINGS AS NEEDED.**

### SURFACE WATER BENEFICIAL USES

26. The Site lies within the Aliso Creek Hydrologic Subarea (HSA) (901.13) of the San Juan Hydrologic Unit. Storm water discharges from the Site flow directly into Aliso Creek and into unnamed tributaries to Aliso Creek, both waters of the United States.
27. The Water Quality Control Plan for the San Diego Basin (Basin Plan) designates the following existing and potential beneficial uses for Aliso Creek and its tributaries:
  1. Agricultural Supply (AGR);
  2. Contact Water Recreation (REC-1);
  3. Non-contact Water Recreation (REC-2);

4. Warm Freshwater Habitat (WARM); and
  5. Wildlife Habitat (WILD).
28. Aliso Creek is designated as impaired for Benthic Community Effects, Indicator Bacteria, Malathion, Nitrogen, Phosphorus, Selenium, and Toxicity pursuant to Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 et seq.) section 303(d) (33 U.S.C. § 1313).

#### **VIOLATIONS OF THE CONSTRUCTION STORM WATER PERMIT**

29. **Violation No. 1:** The Dischargers violated Water Code section 13376; Construction Storm Water Permit Discharge Prohibitions III.A. and III.B., section V.A.2. and Attachment D section A.1.b; Basin Plan Waste Discharge Prohibition No. 8; and Clean Water Act section 301 (33 U.S.C. § 1311) by discharging sediment laden storm water from the Site into Aliso Creek and tributaries to Aliso Creek on the following four days in the following amounts: September 15, 2015 (457,457 gallons); December 22, 2015 (1,208,066 gallons); January 5, 2016 (3,120,093 gallons); and January 6, 2016 (1,511,822 gallons). The discharges were unauthorized and a violation of Construction Storm Water Permit section III.B. because the Dischargers failed to reduce or eliminate the pollutants in the storm water runoff prior to discharge (i.e., to implement BMPs that achieve BAT and BCT). This finding is based on the evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, the Volume Calculation Report, on photographs in Prosecution Team (PT) Exhibits 22, 347, 25, 77, 78, 368, 80, 86, 359, 89, 88, and 95, on videos in PT Exhibit 346, references to metals in construction materials in the Construction Storm Water Permit and the Discharger's SWPPP (PT Ex. 5), deposition testimony of San Diego Water Board staff, City Citations No. 2221 (PT Ex. 30) and No. 2258 (PT Ex. 105), Dischargers Volume Calculation (PT Ex. 171), Dischargers Monitoring Results (PT Ex. 367), NOAA Rainfall Record (PT Ex. 170), Dischargers Reported Rainfall (PT Ex. 177), and San Diego Water Board NOV (PT Ex. 169).
- September 15, 2015:** The Dischargers measured and reported 2.30 inches of rain in the Site's gauge on September 16, 2015, and noted that the storm water discharged from the Site "was above the NTU limit." (PT Ex. 367 at page 9, PT Ex. 171, and PT Ex. 351.) The Dischargers reported storm water effluent sample exceedances of the Numeric Action Levels (NALs) for turbidity and pH for this storm event. (PT Ex. 367 and PT Ex. 370). The City issued Citation No. 2221 on October 6, 2015, for violations observed on September 15, 2015, stating that City staff "[o]bserved a lack of best management practice (BMP) implementation for a forecasted rain event on 9/14/2015 & 9/15/2015, which resulted in a significant discharge of sediment-laden water off site." (PT Ex. 30) Photographs Portola8AUG0008982.JPG, Portola8AUG0008983.JPG, Portola8AUG0008986.JPG, Portola8AUG0008987.JPG, and Portola8AUG0008988.JPG look to the south from the bikeway at the culvert to Aliso Creek and show sediment-laden runoff from the Site discharging into Aliso

Creek via the culvert. (PT Ex. 22) Photograph IMG\_3630.JPG shows the brown sediment laden storm water runoff from (IMG\_3629.JPG) flowing over the top of the orange silt fence and into an unnamed tributary to Aliso Creek. (PT Ex. 347) December 22, 2015: The Dischargers inspected the Site the day after the storm event and reported that there was “major erosion causing sediment discharge into offsite canyon area.” (PT Ex. 367) Dischargers Photograph IMG\_0735.JPG looks to the south from the Site at the two outfalls again demonstrating the tremendous amount of energy and volume of the discharges. Note the lack of erosion and sediment control BMPs on the surrounding slopes. (PT Ex. 78) On December 28, 2015, the City inspected the Site and reported “new evidence of discharge” under the “Sediment discharge observed?” section. (PT Ex. 92) January 5, 2016: “San Diego Water Board Inspectors observed on January 19, 2016, evidence that the Discharger[s] failed to take all reasonable steps to minimize, or prevent, the sediment and sediment-laden storm water discharges that occurred during the January 4, 2016, rain event which resulted in adverse impacts to Aliso Creek, Serrano Canyon Creek, tributaries to Serrano Canyon Creek, and offsite mitigation areas regulated under Clean Water Act section 401 Water Quality Certification No. R9-2013- 0113 (401 Certification).” (PT Ex. 169) Dischargers reported storm water effluent sample exceedances of the Numeric Action Levels (NALs) for turbidity and pH for this storm event. (PT Ex. 367 and Ex. 372) The City issued Citation No. 2258 on January 21, 2016, for violations observed on January 5, 2016, stating that there was a “[f]ailure to protect downstream mitigation areas from construction site discharges resulting in significant erosion and deposition of sediment.” (PT Ex. 105) Photographs Portola8AUG0009129.JPG, Portola8AUG0009130.JPG, and Portola8AUG0009131.JPG look to the southwest down the bikeway. Brown highly turbid sediment-laden storm water runoff from the mitigation basin can be seen flowing across the bikeway and towards Aliso Creek. (PT Ex. 86) Two videos show sediment laden runoff causing damage and erosion to the Site. IMG\_3964.MOV depicts a brown sediment laden runoff flowing off a 60-foot-tall retaining wall into an unnamed tributary to Aliso Creek in the southwest portion of the Site. The video pans to the right showing runoff cutting a channel through an earthen berm. The video continues to pan to the right and shows exposed and eroded slopes. Another video, IMG\_3969.MOV, is taken from the south of the Site and shows a brown waterfall of sediment laden runoff flowing through an earthen berm and into an open trench for a newly constructed segment of the Site’s storm water conveyance system. The runoff flows through the trench, overwhelms an orange silt fence and discharges into an unnamed tributary to Aliso Creek. (PT Ex. 346) January 6, 2016: Dischargers Photograph IMG\_0948.JPG looks to the southwest down the bikeway and demonstrates the residual sediment on the bikeway from the storm water runoff flows from the basins that discharged into Aliso Creek. (PT Ex. 89) City photographs Portola8AUG0008285.JPG, Portola8AUG0008286.JPG, Portola8AUG0009121.JPG and Portola8AUG0009122.JPG look to the southeast and was taken from the south

of the Site. Here a sediment discharge from the Site into an unnamed tributary of Aliso Creek was caused by hillside erosion from the steep slope and the high velocity discharges from the outfall overwhelmed the perimeter gravel bags. (PT Ex. 88)

30. **Violation No. 2:** Section B.1.b. of Attachment D of the Construction Storm Water Permit requires Risk Level 2 dischargers to “[c]over and berm loose stockpiled construction materials that are not actively being used (i.e., soil, spoils, aggregate, fly ash, stucco, hydrated lime, etc.)” The Dischargers violated this requirement by failing to implement material stockpile BMPs at the Site on the following 27 days: August 20, 2015; September 15, 2015; September 17, 2015; October 7, 2015; November 5, 2015; December 8, 2015; December 18, 2015; December 22, 2015; December 23, 2015; January 5, 2016; January 8, 2016; January 19, 2016; January 20, 2016; January 22, 2016; January 25, 2016; February 4, 2016; March 3, 2016; March 11, 2016; March 14, 2016; March 21, 2016; March 24, 2016; March 25, 2016; March 26, 2016; March 28, 2016; March 29, 2016; March 30, 2016; and March 31, 2016. These findings are based on the evidence in the record, including but not limited to the evidence identified in the Technical Analysis for the Complaint, Notice of Violation No. the City’s enforcement actions, and photographs in PT Exhibits 16, 22, 25, 31, 49, 65, 73, 78, 79, 86, 91, 102, 104, 109, 111, 124, 144, 150, 159, 162, 163, 164, 165, 166, 167 and 168.

August 20, 2015: City photographs Portola8AUG0004381.JPG and Portola8AUG0004381.JPG shows several uncovered and unbermed material (soil) stockpiles to the right of a green portable toilet. (PT Ex. 16)

September 15, 2015: City photographs Portola8AUG0008967.JPG and Portola8AUG0008968.JPG each show an uncovered and unbermed material (soil) stockpile. (PT Ex. 22)

September 17, 2015: Photograph Portola8AUG0004505.JPG shows three uncovered and unbermed material (soil) stockpiles to the upper left of the white water truck spraying water that appears in the center of the photograph. (PT Ex. 25)

October 7, 2015: The City issued Citation No. 2240 for Dischargers’ “lack of erosion control BMPs on disturbed areas and stockpiles.” (PT Ex. 34) City photographs Portola8AUG0008701.JPG and Portola8AUG0009278.JPG each show an uncovered and unbermed material (soil) stockpile. (PT Ex. 31)

November 5, 2015: City photograph Portola8AUG0004559.JPG shows an uncovered and unbermed material (soil) stockpile in the upper left of the photograph. (PT Ex. 49)

December 8, 2015: City photographs Portola8AUG0004586.JPG and Portola8AUG0004587.JPG display long uncovered and unbermed material (soil) stockpiles. (PT Ex. 65)

December 18, 2015: City photograph IMG\_0671.JPG shows three to four material stockpiles that are uncovered and unbermed. (PT Ex. 73)

December 22, 2015: Dischargers photographs IMG\_0707.JPG and IMG\_0715.JPG show material (soil) stockpiles that are uncovered and unbermed

during a storm event. (PT Ex. 78)

December 23, 2015: City photograph Portola8AUG0008038.JPG shows an uncovered and unbermed material (soil) stockpile. (PT Ex. 79)

January 5, 2016: The City issued Citation No. 2258 noting that “[f]ield observations made during inspections completed over several months reveal that stockpiles are not being inspected, managed and protected with an effective combination of erosion and sediment control BMPs.” (PT Ex. 105) City photograph Portola8AUG0009107.JPG shows three uncovered and unbermed material (soil) stockpiles in the center and upper center right of the photograph during a storm event. (PT Ex. 86)

January 8, 2016: City photographs Portola8AUG0004673.JPG, Portola8AUG0004674.JPG, Portola8AUG0007698.JPG, Portola8AUG0007699.JPG, Portola8AUG0007701.JPG, Portola8AUG0007703.JPG, Portola8AUG0007706.JPG, Portola8AUG0007707.JPG show an uncovered and unbermed material (soil) stockpile. (PT Ex. 91)

January 19, 2016: San Diego Water Board inspection report stated that “San Diego Water Board inspectors observed several stockpiles of loose construction materials with inadequate or missing containment such as silt fence, berms, or effective soil stabilizers” for both the Portola Center South and the Portola Center Northwest sites. (PT Ex. 101) San Diego Water Board photographs 20160119-125327.JPG, 20160119-125424.JPG, 20160119-125330.JPG, and 0160119-130842.JPG show numerous material stockpiles that are uncovered and unbermed. (PT Ex. 102)

January 20, 2016: Discharger photographs DJI\_0022.JPG and DJI\_0023.JPG display an uncovered and unbermed material (soil) stockpile. (PT Ex. 104)

January 22, 2016: City photographs Portola8AUG0004817.JPG, Portola8AUG0004818.JPG, Portola8AUG0004819.JPG, Portola8AUG0007933.JPG, Portola8AUG0007935.JPG, Portola8AUG0007936.JPG, Portola8AUG0007939.JPG, Portola8AUG0007941.JPG, Portola8AUG0007943.JPG, and Portola8AUG0007944.JPG show an uncovered and unbermed material stockpile. (PT Ex. 109)

January 25, 2016: City photograph Portola8AUG0004872.JPG shows a material stockpile located to the left of the center of the photograph that is uncovered and unbermed. (PT Ex. 111) Dischargers photograph DJI-0066.JPG displays a long unbermed material (soil) stockpile that crosses the photograph and another stockpile is in the far-right center. (PT Ex. 112)

February 4, 2016: City photographs Portola8AUG0009102.JPG and Portola8AUG0009103.JPG show several dark material stockpiles that are uncovered and unbermed in the center of the photographs. (PT Ex. 124)

March 3, 2016: City photograph Portola8AUG0005452.JPG shows a large material stockpile that is uncovered and unbermed just to the left of the center of the photograph. (PT Ex. 144)

March 11, 2016: City photographs Portola8AUG0005584.JPG and

Portola8AUG005585.JPG show a dark material stockpile that can be seen uncovered and unbermed to the right of a metal roll-off container. (PT Ex. 149)  
March 14, 2016: San Diego Water Board NOV No. R9-2016-0124 states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed stockpiles of construction materials without adequate berm or containment.” (PT Ex. 169) San Diego Water Board photographs 20160314\_123209.JPG, 20160314\_123304.JPG, 20160314\_123328.JPG, 20160314\_124150.JPG and 20160314\_124353.JPG show several uncovered and unbermed material (soil) stockpiles. (PT Ex. 150)  
March 21, 2016: San Diego Water Board NOV No. R9-2016-0124 states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed stockpiles of construction materials without adequate berm or containment.” (PT Ex. 169) San Diego Water Board photograph 20160321\_120144.JPG shows two large uncovered and unbermed material (soil) stockpiles in the far right of the photograph. Several small uncovered and unbermed material (soil) stockpiles can be seen to the far left of the photograph. Photographs 20160321\_120245.JPG, 20160321\_120342.JPG, 20160321\_120508.JPG, 20160321\_120510.JPG and 20160321\_121635.JPG show uncovered and unbermed material (soil) stockpiles. (PT Ex. 159)  
March 24, 2016: City photographs Portola8AUG004118.JPG and Portola8AUG004123.JPG show an uncovered and unbermed stockpile to the left of the heavy equipment parking lot and a set of smaller stockpiles in the center of the photograph. (PT Ex. 162)  
March 25, 2016: City photograph Portola8AUG005825.JPG shows several dirt stockpiles next to a gravel stockpile that are uncovered and unbermed in the center and left of center of the photograph. (PT Ex. 163)  
March 26, 2016: City photograph Portola8AUG005841.JPG shows several dirt stockpiles next to a gravel stockpile that are uncovered and unbermed in the center and left of center of the photograph. (PT Ex. 164)  
March 28, 2016: City photograph Portola8AUG005845.JPG shows several dirt stockpiles next to a gravel stockpile that are uncovered and unbermed in the center and left of center of the photograph. (PT Ex. 165)  
March 29, 2016: City photographs Portola8AUG004138.JPG and Portola8AUG004148.JPG show three material stockpiles and one gravel pile that are uncovered and unbermed in the center right of the first photograph and in the lower center left of the other photograph. (PT Ex. 166)  
March 30, 2016: City photograph Portola8AUG005857.JPG shows two material stockpiles that are uncovered and unbermed in the right of the photograph. (PT Ex. 167)  
March 31, 2016: City photographs Portola8AUG009342.JPG and Portola8AUG009364.JPG show several uncovered and unbermed material stockpiles. (PT Ex. 168)

31. **Violation No. 3**: Section B.3.a. of Attachment D of the Construction Storm Water Permit requires dischargers in Risk Level 2 to “[p]revent oil, grease, or fuel to leak into the ground, storm drains or surface waters.” The Dischargers

violated this requirement by failing to implement vehicle fluid leak BMPs at the Site on the following 14 days: August 20, 2015; August 31, 2015; September 17, 2015; October 7, 2015; October 8, 2015; November 3, 2015; November 23, 2015; November 30, 2015; December 9, 2015; December 10, 2015; January 5, 2016; January 7, 2016; January 19, 2016; and February 8, 2016. This finding is based on evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, City enforcement documents, Dischargers submissions, and on photographs in Exhibits 16, 18, 25, 31, 32, 46, 60, 62, 67, 68, and 102.

August 20, 2015: City photographs Portola8AUG004372.JPG, Portola8AUG004373.JPG, Portola8AUG004374.JPG, Portola8AUG004375.JPG, Portola8AUG004376.JPG, and Portola8AUG004380.JPG show areas where vehicle fluid leaks to the ground occurred and the Dischargers failed to implement BMPs during vehicle storage and maintenance to prevent vehicle fluids from discharging to the ground. (PT Ex. 16)

August 31, 2015: City photographs Portola8AUG004390.JPG and Portola8AUG004391.JPG show vehicle fluid leaks to the ground from construction equipment. (PT Ex. 18)

September 17, 2015: City photographs Portola8AUG009005.JPG, Portola8AUG009007.JPG, and Portola8AUG009014.JPG show a piece of heavy equipment being repaired without protecting the ground from vehicle fluids leaks. Photographs Portola8AUG009019.JPG, Portola8AUG009020.JPG, Portola8AUG009026.JPG, Portola8AUG009027.JPG, Portola8AUG009031.JPG, Portola8AUG009033.JPG, Portola8AUG009034.JPG, and Portola8AUG009036.JPG show various damaged and leaking kiddie pools with holes and cracks that can no longer contain vehicle fluids. (PT Ex. 25)

October 7, 2015: The City issued Citation No. 2240 to the Dischargers on October 9, 2015, for violations observed on October 7, 2015, stating that City staff observed a “lack of BMPs controlling adequately equipment drips and leaks.” (PT Ex. 34) City photograph Portola8AUG0009270.JPG shows a ten- to twelve-thousand-gallon diesel fuel tank without protection from storm water run-on or runoff. Additionally, the Dischargers failed to identify the fueling area and its associated BMPs in the Site’s SWPPP.

October 8, 2015: City photograph IMG\_1761.JPG shows a large vehicle fluid leak (approximately 3’ in diameter) underneath a parked scraper. (PT Ex. 32)

November 3, 2015: City photographs IMG\_2177.JPG and IMG\_2178.JPG show oil flowing across the soil from underneath an earth grader. Construction Storm Water Permit Attachment D, B.3.c. requires that vehicle fluid leaks are to be cleaned immediately and that leaked materials are to be properly disposed. (PT Ex. 46)

November 23, 2015: Dischargers photograph IMG\_0166.JPG shows dark stained soil (approximately 6’ by 12’) next to seven 55-gallon drums and several darkly stained five-gallon buckets indicating a discharge of vehicle fluids to the ground. (PT Ex. 60)

November 30, 2015: Dischargers photograph IMG\_0349.JPG shows dark

stained soil (approximately 6' by 12') in front of eight 55-gallon drums, two five-gallon buckets, and a cardboard box full of oily rags and plastic bottles (note the oil staining on the lower 2/3 of the box) indicating a discharge of vehicle fluids to the ground. (PT Ex. 62)

December 9, 2015: Dischargers photograph IMG\_0524.JPG shows ponding red diesel fuel on the ground (approximately 2' by 7'). (PT Ex. 67)

December 10, 2015: Dischargers photograph IMG\_0549.JPG shows several dark stained soil spots in front of several 55-gallon drums indicating a discharge of vehicle fluids to the ground. (PT Ex. 68)

January 5, 2016: On January 21, 2016, the City issued NOV/Administrative Compliance Order Citation No. 2258 for violations observed on January 5, 2016. Section 5.d. of the Citation noted that "[s]everal vehicles or pieces of equipment were observed to be out of order, leaking, and under repair." The Citation also included details of the violations observed. (PT Ex. 105)

January 7, 2016: The Dischargers reported during a visual inspection of the Site on January 7, 2016, that "puddles in Varner yard has sheen." (PT Ex. 367)

January 19, 2016: City photographs 20160119\_125854.JPG, 20160119\_125857.JPG, and 20160119\_125927.JPG show a spare motor sitting next to a scraper, and the motor stand with oil drip stains does not have secondary containment. Photographs 20160119\_131243.JPG, 20160119\_131259.JPG, 20160119\_131301.JPG, and 20160119\_131314.JPG show the poor physical condition of the kiddie pool drip pans (with cracks and holes in them). (PT Ex. 102)

February 8, 2016: On February 10, 2016, the City issued Dischargers a Cease and Desist Order and Notice to Abate Nuisances, including a matrix of violations and their status. Corrective Action 5S noted that on February 8, 2016, "some of the drip pans were the older ones that were previously observed to have been run over by the equipment/vehicles and were cracked and leaking. So, while the drip pans were capturing oil and vehicle fluids, the oil and vehicle fluids were leaking out of the drip pans onto the soil. In addition, it was observed that there were not enough drip pans to effectively capture/contain all of the leaks from the equipment/vehicles." (PT Ex. 131)

32. **Violation No. 4**: Section D.2 of Attachment D of the Construction Storm Water Permit requires dischargers in Risk Level 2 to "provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots." The Discharger violated this requirement by failing to implement erosion control BMPs in inactive areas at the Site on the following 35 days: September 17, 2015; October 1, 2015; October 6, 2015; October 7, 2015; October 9, 2015; October 12, 2015; October 13, 2015; October 19, 2015; October 20, 2015; October 23, 2015; October 26, 2015; November 12, 2015; November 19, 2015; December 1, 2015; December 7, 2015; December 8, 2015; December 21, 2015; December 23, 2015; December 29, 2015; January 4, 2016; January 7, 2016; January 8, 2016; January 12, 2016; January 13, 2016; January 14, 2016; January 19, 2016; January 20, 2016; January 21, 2016; January 22, 2016; January 26, 2016; January 27, 2016; January 29, 2016; February 17, 2016;



March 14, 2016; and March 21, 2016. This finding is based on evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, City enforcement documents, Dischargers submissions, and on photographs in Exhibits 25, 27, 35, 37, 40, 42, 52, 58, 63, 64, 65, 75, 79, 81, 90, 91, 95, 96, 97, 103, 104, 108, 109, 114, 115, 117, 137, 150, 159, and 160.

September 17, 2015: City photographs Portola8AUG0004461.JPG, Portola8AUG0004497.JPG and Portola8AUG0004510.JPG show the uncovered inactive slopes below the haul road near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road, as well as the inactive slopes that have vegetative cover that is insufficient to be effective soil cover. (PT Ex. 25)

October 1, 2015: City photograph Portola8AUG0004528.JPG shows uncovered inactive slopes and inactive slopes with vegetative cover that is insufficient to be effective soil cover. (PT Ex. 27)

October 6, 2015: The City inspected the Site and reported “no BMPs in inactive or active areas.” (PT Ex. 92)

October 7, 2015: City Citation No. 2240 issued for violations at the Site stated “lack of erosion control BMPs on disturbed areas & stockpiles for 14 days or more.” (PT Ex. 34)

October 9, 2015: City photograph Portola8AUG0004547.JPG shows an unprotected inactive slope. (PT Ex. 35)

October 12, 2015: The City inspected the Site and reported “no BMPs in inactive or active areas.” (PT Ex 92)

October 13, 2015: City photograph Portola8AUG0004548.JPG shows the uncovered inactive slopes beneath the haul road near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 37)

October 19, 2015: The City inspected the Site and reported “no BMPs in inactive or active areas.” (PT Exhibit 92)

October 20, 2015: Dischargers photographs IMG\_1895.JPG and IMG\_1896.JPG show uncovered inactive slopes. (PT Ex. 40)

October 23, 2015: City photographs Portola8AUG0004550.JPG and Portola8AUG0004553.JPG show uncovered inactive slopes. (PT Ex. 42)

October 26, 2015: The City inspected the Site and reported “no BMPs in inactive or active areas.” (PT Ex. 92)

November 12, 2015: City photograph Portola8AUG0004560.JPG shows an uncovered inactive slope. (PT Ex. 52)

November 19, 2015: City photograph Portola8AUG0004569.JPG shows uncovered inactive slopes near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 58)

December 1, 2015: City photograph Portola8AUG0004573.JPG shows uncovered inactive slopes. (PT Ex. 63)

December 7, 2015: City photograph Portola8AUG0004576.JPG shows uncovered inactive slopes. (PT Ex. 64)

December 8, 2015: City photograph Portola8AUG0004581.JPG shows uncovered inactive slopes below the haul road near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 65)

December 21, 2015: City photograph Portola8AUG0004610.JPG shows uncovered inactive slopes below the upper haul road near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 75)

December 23, 2015: City photographs Portola8AUG0008030.JPG and Portola8AUG0008038.JPG from the upper left to the upper right of center show uncovered inactive slopes. (PT Ex. 79)

December 29, 2015: City photographs Portola8AUG0007622.JPG (center of the photograph), Portola8AUG0007623.JPG (far left of the photograph), and Portola8AUG0007624.JPG (center of the photograph) show inactive slopes. (PT Ex. 81)

January 4, 2016: The City inspected the Site on January 4, 2016, and reported that erosion controls were not being implemented and maintained on inactive and active disturbed soil areas. (PT Ex. 92)

January 7, 2016: City photograph Portola8AUG0004657.JPG shows an uncovered inactive slope after a storm event. Erosion rills can be seen across the entire slope and a large gully occurred in the center indicating that there was ineffective erosion control. (PT Ex. 90)

January 8, 2016: City photograph Portola8AUG0007703.JPG shows the uncovered inactive slopes beneath the haul road near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 91)

January 12, 2016: City photographs Portola8AUG0004700.JPG (center of photograph) and Portola8AUG0004708.JPG (far left) show uncovered inactive slopes below the upper haul road. City photographs Portola8AUG0008381.JPG, Portola8AUG0008382.JPG, and Portola8AUG0008383.JPG show inactive slopes without effective erosion control as demonstrated by the erosion and erosion rills across the entire slope. (PT Ex. 95)

January 13, 2016: City photograph IMG\_1033.JPG shows uncovered inactive slopes near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 96)

January 14, 2016: City photograph Portola8AUG0004751.JPG shows uncovered inactive slopes near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road.

January 19, 2016: San Diego Water Board NOV No. R9-2016-0124 at section 8.b. states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed many areas throughout the site that appeared inactive, or could have been scheduled to be inactive, without effective soil cover or other BMPs to prevent erosion. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for inactive areas was observed throughout the site during the inspections.” (PT Ex.169) San Diego Water Board photographs 20160119\_121556.JPG, 20160119\_130311.JPG, 20160119\_130608.JPG, and 20160119\_130851.JPG show uncovered inactive slopes. (PT Ex. 102) City photograph Portola8AUG0004798.JPG shows uncovered inactive slopes near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 103)

January 20, 2016: Dischargers aerial photographs DJI\_0028.JPG and DJI\_0029.JPG show uncovered inactive slopes. (PT Ex. 104)

January 21, 2016: Dischargers aerial photograph IMG\_0003.JPG shows uncovered inactive slopes near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 108)

January 22, 2016: City photographs Portola8AUG0004802.JPG (upper half [left and center] photograph) and Portola8AUG0004807.JPG show uncovered inactive slopes. (PT Ex. 109)

January 26, 2016: Dischargers aerial photograph DJI\_0086.JPG shows an uncovered inactive slope near the Site Entrance at Saddleback Ranch Road & Glenn Ranch Road. (PT Ex. 114)

January 27, 2016: City photographs Portola8AUG0004901.JPG, Portola8AUG0004903.JPG and Portola8AUG0004918.JPG show uncovered inactive slopes. (PT Ex. 115)

January 29, 2016: City photograph Portola8AUG0004947.JPG shows uncovered inactive slopes beneath the haul road near the Site Entrance (far center left of the photograph). (PT Ex. 117)

February 17, 2016: City photographs Portola8AUG0005138.JPG, Portola8AUG0005140.JPG, Portola8AUG0005143.JPG and Portola8AUG0005166.JPG show several uncovered inactive slopes. (PT Ex. 137)

March 14, 2016: San Diego Water Board NOV No. R9-2016-0124 at section 8.b. states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed many areas throughout the site that appeared inactive, or could have been scheduled to be inactive, without effective soil cover or other BMPs to prevent erosion. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for inactive areas was observed throughout the site during the inspections.” (PT Ex. 169) San Diego Water Board photographs 20160314\_121056.JPG, 20160314\_121121.JPG, 20160314\_121147.JPG, 20160314\_123804.JPG, 20160314\_160405.JPG, 20160314\_160800.JPG, and 20160314\_160803.JPG show inactive slopes without effective soil cover. (PT Ex. 150)

March 21, 2016: San Diego Water Board NOV No. R9-2016-0124 at section 8.b. states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed many areas throughout the site that appeared inactive, or could have been scheduled to be inactive, without effective soil cover or other BMPs to prevent erosion. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for inactive areas was observed throughout the site during the inspections.” (PT Ex. 169) San Diego Water Board photographs 20160321\_111811.JPG, 20160321\_115011.JPG, and 20160321\_115355.JPG show uncovered inactive slopes. The slope in photographs 20160321\_115011.JPG, and 20160321\_115355.JPG does appear to have been sprayed with a soil binder at some point in the past; however, it is no longer

effective as evidenced by the erosion rills and sloughing off of patches of the slope. (PT Ex. 159)

33. **Violation No. 5:** Section E.3 of Attachment D of the Construction Storm Water Permit requires Risk Level 2 dischargers to “implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.” The Board’s expectation of dischargers to meet this requirement during dry weather is to have a plan in place, to be prepared to deploy BMPs should rain materialize, and to actually deploy BMPs in active areas of construction in the event of a forecasted rain event.<sup>3</sup> The Dischargers violated this requirement by failing to implement erosion control BMPs in active areas prior to a forecasted rain event at the Site on the following 12 days: September 14, 2015; September 15, 2015; October 6, 2015; October 12, 2015; October 19, 2015; October 26, 2015; December 10, 2015; December 22, 2015; January 7, 2016; February 8, 2016; February 17, 2016; and March 14, 2016. This finding is based on evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, City enforcement documents, Dischargers submissions, deposition testimony of Board staff, and photographs in Exhibits 21, 22, 68, 78, 90, 137, and 150.
- September 14, 2015: Dischargers photographs IMG\_1372.JPG, IMG\_1375.JPG and IMG\_1378.JPG show active areas that were not protected by erosion control BMPs prior to the September 15, 2015, storm event. (PT Ex. 21)
- September 15, 2015: The City issued Citation No. 2221 on October 6, 2015, for violations observed on September 15, 2015, stating that City staff “[o]bserved a lack of best management practice (BMP) implementation for a forecasted rain event on 9/14/2015 & 9/15/2015, which resulted in a significant discharge of sediment laden water off site.” (PT Ex. 30) City photographs Portola8AUG0008967.JPG and Portola8AUG0008968.JPG show large graded and exposed active areas that have no erosion control and sediment control protection during the storm event. Photographs Portola8AUG0008970.JPG, Portola8AUG0008974.JPG and Portola8AUG0008975.JPG show an unprotected steep dirt road (active area). (PT Ex. 22)
- October 6, 12, 19 and 26, 2015: The City inspected the Site on each of these days and reported for each of these days that there were “no BMPs in inactive or active areas.” (PT Ex. 92)
- December 10, 2015: Dischargers photographs IMG\_0548.JPG and IMG\_0549.JPG show the refueling/maintenance and parking area (active areas)

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<sup>3</sup> This expectation is supported by the Construction Storm Water Permit requirement recognizing that rain events can occur at any time of year and requiring a Rain Event Action Plan (REAP) “to ensure that active construction sites have adequate erosion and sediment controls *implemented* prior to the onset of a storm event, even if construction is planned only during the dry season.” (Construction Storm Water Permit, Finding 49 (emphasis added).) See also Construction Storm Water Permit Fact Sheet, p. 31, explaining that the REAP requirement is also to ensure a discharger has adequate materials, staff and time to timely implement erosion and sediment controls.

that were not protected by erosion control BMPs prior to the December 11, 2015, storm event. Additionally, in the background of photograph IMG\_0549.JPG one can see graded slopes and access roads that do not have erosion or sediment control protection. (PT Ex. 68)

December 22, 2015: Dischargers photographs IMG\_0707.JPG, IMG\_0708.JPG, IMG\_0709.JPG, IMG\_0710.JPG, IMG\_0711.JPG, IMG\_0713.JPG, and IMG\_0715.JPG show active areas that were not protected by erosion control BMPs prior to the December 22, 2015, storm event. (PT Ex. 78) The City inspected the Site and reported “no controls on inactive or active disturbed grading areas.” (PT Ex. 92)

January 7, 2016: City photographs Portola8AUG0004662.JPG and Portola8AUG0007665.JPG show steep muddy erosion-rilled roadways (active areas) with no erosion or sediment control BMPs. (PT Ex. 90)

February 8, 2016: On February 10, 2016, the City issued a Cease and Desist Order and Notice to Abate Nuisances that detailed violations for active and inactive areas and their status. Corrective Action 1S noted that remaining deficiencies on February 8, 2016, included “[d]isturbed slope(s) above the v-ditch and MSE [Mechanically Stabilized Earth] wall on southwestern area of property needs to be stabilized. Newly disturbed areas on and adjacent to the temporary sediment basin #3 needs to be stabilized. The mitigation areas need to be repaired and stabilized.” (PT Ex. 131)

February 17, 2016: City photographs Portola8AUG0005138.JPG, Portola8AUG0005140.JPG, Portola8AUG0005143.JPG and Portola8AUG0005144.JPG, show unprotected steep roads (active areas) and slopes prior to the storm event. Photograph Portola8AUG0005167.JPG shows unprotected steep roads and slopes during the storm event. (PT Ex. 137)

March 14, 2016: San Diego Water Board photographs 20160314\_121439.JPG, 20160314\_121512.JPG, 20160314\_121513.JPG, and 20160314\_121525.JPG show a steep haul road (active area) that does not have any erosion control BMPs. Photograph 20160314\_123328.JPG shows active areas where vehicles and materials were stored that were not protected by erosion control BMPs. These areas should have been protected with erosion control BMPs prior to the March 11 and 14, 2016, storm events. (PT Ex. 150)

34. **Violation No. 6:** Section E.4 of Attachment D of the Construction Storm Water Permit requires Risk Level 2 dischargers to “apply linear sediment controls along toe of slope, face of the slope, and at the grade breaks of exposed slopes to comply with the sheet flow lengths in accordance with Table 1.” The Discharger violated this requirement by failing to apply linear sediment controls at the Site on the following 53 days: September 16, 2015, September 17, 2015, October 1, 2015; October 9, 2015; October 13, 2015; October 20, 2015; October 23, 2015; November 12, 2015; November 19, 2015; November 24, 2015; December 1, 2015; December 7, 2015; December 8, 2015; December 9, 2015; December 10, 2015; December 16, 2015; December 18, 2015; December 21, 2015; December 22, 2015; December 23, 2015; December 29, 2015; January 4, 2016; January 5, 2016; January 6, 2016; January 7, 2016; January 8, 2016; January 11, 2016;

January 12, 2016; January 13, 2016; January 14, 2016, January 15, 2016; January 19, 2016; January 20, 2016, January 21, 2016; January 22, 2016, January 23, 2016; January 25, 2016; January 26, 2016, January 27, 2016; January 29, 2016; January 30, 2016; February 1, 2016; February 2, 2016; February 3, 2016; February 4, 2016; February 8, 2016; February 17, 2016; February 26, 2016; March 4, 2016; March 7, 2016; March 10, 2016; March 11, 2016; and March 14, 2016. This finding is based on evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, City enforcement documents, Dischargers submissions, deposition testimony of Board staff, and photographs in Exhibits 24, 25, 27, 35, 37, 40, 42, 52, 58, 61, 63, 64, 65, 66, 68, 71, 74, 75, 78, 79, 81, 85, 86, 88, 90, 91, 93, 95, 96, 97, 98, 99, 103, 104, 107, 109, 110, 111, 113, 115, 117, 118, 120, 121, 122, 123, 124, 129, 137, 139, 145, 146, 148, 149, and 150.

September 16, 2015: City photograph Portola8AUG0004441.JPG shows slopes (near the Saddleback Ranch Road and Glenn Ranch Road entrance to the Site) without linear sediment controls. (PT Ex. 24)

September 17, 2015: City photographs Portola8AUG0004461.JPG, Portola8AUG0004464.JPG, Portola8AUG0004508.JPG, Portola8AUG0004509.JPG and Portola8AUG0004510.JPG show slopes in the northwest portion of the Site without linear sediment controls. (PT Ex. 25)

October 1, 2015: City photograph Portola8AUG0004528.JPG show most of the slopes without linear sediment controls. (PT Ex. 27)

October 9, 2015: City photograph Portola8AUG0004547.JPG shows a slope without linear sediment controls. (PT Ex. 35)

October 13, 2015: City photograph Portola8AUG0004548.JPG shows the slopes (near the Saddleback Ranch Road and Glenn Ranch Road entrance to the Site) without linear sediment controls. (PT Ex. 37)

October 20, 2015: Dischargers photographs IMG\_1895.JPG and IMG\_1896.JPG show a slope in the upper right of the photograph without linear sediment controls. (PT Ex. 40)

October 23, 2015: City photographs Portola8AUG0004550.JPG and Portola8AUG0004553.JPG show a slope without linear sediment controls. (PT Ex. 42)

November 12, 2015: City photograph Portola8AUG0004560.JPG shows slopes on the right half of the photograph without linear sediment controls. (PT Ex. 52)

November 19, 2015: City photograph Portola8AUG0004569.JPG shows the slopes (near the Saddleback Ranch Road and Glenn Ranch Road entrance to the Site) in the lower left and center of the photograph without linear sediment controls. (PT Ex. 58)

November 24, 2015: City photograph Portola8AUG0004571.JPG show slopes on the Site without linear sediment controls. (PT Ex. 61)

December 1, 2015: City photograph Portola8AUG0004573.JPG shows slopes in the upper half of the photograph without linear sediment controls. (PT Ex. 63)

December 7, 2015: City photograph Portola8AUG0004576.JPG shows a slope just above the center of the photograph without linear sediment control BMPs.

Photographs Portola8AUG0004577.JPG, Portola8AUG0004578.JPG, Portola8AUG0004579.JPG show slopes without linear sediment controls. (PT Ex. 64)

December 8, 2015: City photograph Portola8AUG0004580.JPG shows slopes without linear sediment control BMPs. Photograph Portola8AUG0004581.JPG shows the slopes (near the Saddleback Ranch Road and Glenn Ranch Road entrance to the Site) without linear sediment controls. Photograph Portola8AUG0004589.JPG shows a slope in the upper half of the photograph without linear sediment control BMPs. Photograph Portola8AUG0004595.JPG shows a slope in the center of the photograph without linear sediment controls. (PT Ex. 65)

December 9, 2015: City photograph Portola8AUG0004601.JPG shows slopes without linear sediment controls. (PT Ex. 66)

December 10, 2015: Dischargers photograph IMG\_0546.JPG shows slopes without linear sediment controls. (PT Ex. 68)

December 16, 2015: City photograph Portola8AUG0004607.JPG shows slopes without linear sediment controls. (PT Ex. 71)

December 18, 2015: The City inspected the Site and reported that sediment controls were not being implemented and maintained on all significant slopes. (PT Ex. 92) City photograph Portola8AUG0004609.JPG shows a slope with erosion rills without linear sediment controls. (PT Ex. 74)

December 21, 2015: City photograph Portola8AUG0004610.JPG shows a multitude of slopes without linear sediment controls. (PT Ex. 75)

December 22, 2015: The City inspected the Site and reported that sediment controls were not being implemented and maintained on all significant slopes. (PT Ex. 92) Dischargers photograph IMG\_0713.JPG shows several slopes without linear sediment controls. Photograph IMG\_0715.JPG shows a slope in the center of the photograph without linear sediment controls. (PT Ex. 78)

December 23, 2015: City photographs Portola8AUG0008030.JPG, Portola8AUG0008031.JPG and Portola8AUG0008038.JPG show several slopes without linear sediment controls. (PT Ex. 79)

December 29, 2015: City photographs Portola8AUG0007622.JPG, Portola8AUG0007623.JPG and Portola8AUG0007624.JPG show slopes in the center and right of the photograph without linear sediment controls. (PT Ex. 81)

January 4, 2016: The City inspected the Site and reported that sediment controls were not being implemented and maintained on all significant slopes. (PT Ex. 92) City photograph Portola8AUG0004614.JPG shows slopes (near the Saddleback Ranch Road and Glenn Ranch Road entrance to the Site) without linear sediment controls. (PT Ex. 85)

January 5, 2016: On January 21, 2016, the City issued NOV/Administrative Compliance Order Citation No. 2258 to the Dischargers for violations observed during the storm event on January 5, 2016. Section 1 of the Citation noted a “[f]ailure to implement and/or inadequate implementation of erosion and sediment control (“Best Management Practices”) BMPs throughout the construction site including all slopes, pads, inactive areas, and all disturbed areas exposed to

potential erosion from wind/rain.” Additionally, as section 1.b. of the Citation stated, “[s]ediment controls such as gravel bags, fiber rolls, silt fences, etc. must be implemented in accordance with the specification in the appropriate BMP Fact Sheet. For example, fiber rolls and gravel bag berms must be installed in accordance with the maximum spacing specified for certain slopes.” (PT Ex. 105) City photographs Portola8AUG0009104.JPG, Portola8AUG0009105.JPG, Portola8AUG0009106.JPG and Portola8AUG0009107.JPG show various slopes without linear sediment controls. (PT Ex. 86) Dischargers photographs IMG\_1931.JPG and IMG\_1932.JPG show slopes without linear sediment controls. (PT Ex. 87)

January 6, 2016: City photographs Portola8AUG0004166.JPG and Portola8AUG0004167.JPG show various slopes without linear sediment controls after a rain event. (PT Ex. 88)

January 7, 2016: City photograph Portola8AUG0004657.JPG shows a slope without linear sediment controls. Photograph Portola8AUG0004658.JPG shows multiple slopes in the upper left half of the photograph without linear sediment controls. Photographs Portola8AUG0004660.JPG, Portola8AUG0004661.JPG, Portola8AUG0004662.JPG, Portola8AUG0004666.JPG and Portola8AUG0004667.JPG show various slopes without linear sediment controls. Photograph Portola8AUG0004664.JPG shows a slope on the lower half of the photograph without linear sediment controls that discharges off-site into an unnamed tributary to Aliso Creek. (PT Ex. 90)

January 8, 2016: City photographs Portola8AUG0007699.JPG, Portola8AUG0007700.JPG, Portola8AUG0007701.JPG and Portola8AUG0007703 show several slopes without linear sediment controls. (PT Ex. 91)

January 11, 2016: The City inspected the Site and reported that sediment controls were not being implemented and maintained on all significant slopes. (PT Ex. 92) City photographs Portola8AUG0004676.JPG, Portola8AUG0004678.JPG, Portola8AUG0004679.JPG, Portola8AUG0004680.JPG, Portola8AUG0004685.JPG, Portola8AUG0004686.JPG, Portola8AUG0007708.JPG, Portola8AUG0007710.JPG, Portola8AUG0007711.JPG, Portola8AUG0007744.JPG, Portola8AUG0007745.JPG, Portola8AUG0007746.JPG, Portola8AUG0007761.JPG, Portola8AUG0007762.JPG, Portola8AUG0007767.JPG, Portola8AUG0007768, Portola8AUG0007772.JPG, Portola8AUG0007774.JPG and Portola8AUG0007775 show various slopes without linear sediment controls. (PT Ex. 93)

January 12, 2016: City photographs Portola8AUG0004049.JPG, Portola8AUG0004699.JPG, Portola8AUG0004700.JPG, Portola8AUG0004701.JPG, Portola8AUG0004703.JPG, Portola8AUG0004704.JPG, Portola8AUG0004705.JPG, Portola8AUG0004706.JPG, Portola8AUG0004707.JPG, Portola8AUG0004708.JPG, Portola8AUG0004709.JPG,



Portola8AUG0004719.JPG, Portola8AUG0004729.JPG, Portola8AUG0004733.JPG, Portola8AUG0004734.JPG, Portola8AUG0008303.JPG, Portola8AUG0008306.JPG, Portola8AUG0008307.JPG, Portola8AUG0008309.JPG, Portola8AUG0008313.JPG, Portola8AUG0008316.JPG, Portola8AUG0008401.JPG, Portola8AUG0008402.JPG, Portola8AUG0008403.JPG, Portola8AUG0008404.JPG, Portola8AUG0008405.JPG, Portola8AUG0008406.JPG, Portola8AUG0008407.JPG, Portola8AUG0008408.JPG, Portola8AUG0008409.JPG, Portola8AUG0008410.JPG and Portola8AUG0008429.JPG show various slopes without linear sediment controls. (PT Ex. 95)

January 13, 2016: Dischargers photographs IMG\_1031.JPG and IMG\_1033.JPG show slopes without linear sediment controls. (PT Ex. 96)

January 14, 2016: City photographs Portola8AUG0004750.JPG and Portola8AUG0004751.JPG show various slopes without linear sediment controls. (PT Ex. 97) Dischargers photograph IMG\_1049.JPG shows several slopes in the upper left corner of the photograph without linear sediment controls. (PT Ex. 98)

January 15, 2016: City photographs Portola8AUG0004754.JPG, Portola8AUG0004755.JPG, Portola8AUG0004756.JPG, Portola8AUG0004757.JPG, Portola8AUG0004758.JPG, Portola8AUG0004759.JPG, Portola8AUG0004761.JPG, Portola8AUG0004765.JPG, Portola8AUG0004768.JPG, Portola8AUG0004769.JPG, Portola8AUG0004770.JPG, Portola8AUG0004771.JPG, Portola8AUG0004772.JPG, Portola8AUG0004773.JPG, Portola8AUG0004776.JPG, Portola8AUG0004785.JPG and Portola8AUG0004786.JPG show various slopes without linear sediment controls. Photograph Portola8AUG0004787.JPG shows a slope with a linear sediment control (straw waddle) installed at the toe of the slope; however, there are no linear sediment controls on the face of the slope as required by the Construction Storm Water Permit. (PT Ex. 99)

January 19, 2016: San Diego Water Board photographs 20160119\_115809.JPG, 20160119\_130311.JPG, 20160119\_130606.JPG, 20160119\_130608.JPG and 20160119\_130851.JPG show slopes without linear sediment controls. Photographs 20160119\_130057.JPG and 20160119\_130102.JPG show a slope with a linear sediment control (straw waddle) installed at the toe of the slope; however, there are no linear sediment controls on the face of the slope as required by the Construction Storm Water Permit. Photograph 20160119\_130202.JPG shows a slope in the center of the photograph without linear sediment controls. (PT Ex. 102) City photographs Portola8AUG0004789.JPG and Portola8AUG0004798 show slopes without linear sediment controls. (PT Ex. 103)

January 20, 2016: Dischargers photographs DJI\_0028.JPG (lower right half of the photograph) and DJI\_0029.JPG (center and lower left of the photograph) show slopes without linear sediment controls. (PT Ex. 104)

January 21, 2016: City photograph Portola8AUG0004154.JPG shows a slope without linear sediment controls. (PT Ex. 107) Dischargers photographs IMG\_0002.JPG, IMG\_0003.JPG, and IMG\_0004.JPG show slopes without linear sediment controls. (PT Ex. 108)

January 22, 2016: City photograph Portola8AUG0004800.JPG shows a slope with a linear sediment control (straw waddle) installed at the toe of the slope; however, there are no linear sediment controls on the face of the slope as required by the Construction Storm Water Permit. Photographs Portola8AUG0004801.JPG, Portola8AUG0004802.JPG, Portola8AUG0004806.JPG, Portola8AUG0004807.JPG, Portola8AUG0004809.JPG, Portola8AUG0004811.JPG, Portola8AUG0004819.JPG and Portola8AUG0004838.JPG show various slopes without linear sediment controls. (PT Ex. 109)

January 23, 2016: City photographs Portola8AUG0004051.JPG, Portola8AUG0004053.JPG, Portola8AUG0004054.JPG, Portola8AUG0004863.JPG, Portola8AUG0004864.JPG and Portola8AUG0004867.JPG show various slopes without linear sediment controls. (PT Ex. 110)

January 25, 2016: City photographs Portola8AUG0004195.JPG, Portola8AUG0004199.JPG and Portola8AUG0004200.JPG show various slopes without linear sediment controls. (PT Ex. 111)

January 26, 2016: City photographs Portola8AUG0004877.JPG, Portola8AUG0004878.JPG, Portola8AUG0004889.JPG and Portola8AUG0004890.JPG show various slopes without linear sediment controls. (PT Ex. 113) Dischargers photographs DJI\_0083.JPG and DJI\_0086.JPG show slopes without linear sediment controls. (PT Ex. 114)

January 27, 2016: City photographs Portola8AUG0004901.JPG, Portola8AUG0004903.JPG, Portola8AUG0004918.JPG and Portola8AUG0008484.JPG show slopes without linear sediment controls except some orange silt fencing along the roadway. (PT Ex. 115)

January 29, 2016: City photographs Portola8AUG0004947.JPG and Portola8AUG0004952.JPG show various slopes without linear sediment controls except for the orange silt fencing along the roadway. (PT Ex. 117)

January 30, 2016: City photographs Portola8AUG0004960.JPG and Portola8AUG0004963.JPG show various slopes without linear sediment controls except for the orange silt fencing along the roadway. (PT Ex. 118)

February 1, 2016: City photographs Portola8AUG0004979.JPG; Portola8AUG0004980.JPG, Portola8AUG0004983.JPG; Portola8AUG0004990.JPG; and Portola8AUG0004993.JPG show various slopes without linear sediment controls except for the orange silt fencing at the top of the slope. There should be additional linear sediment controls at the toe of the slope and at intervals pursuant to the Construction Storm Water Permit dependent upon slope length. (PT Ex. 120)

February 2, 2016: City photograph Portola8AUG0005013.JPG shows various slopes without linear sediment controls. (PT Ex. 121)

February 3, 2016: City photographs Portola8AUG0005016.JPG, Portola8AUG0005018.JPG, Portola8AUG0005019.JPG and Portola8AUG0005020.JPG show various slopes without linear sediment controls. (PT Ex. 122) Dischargers photograph IMG\_1198.JPG shows various slopes without linear sediment controls. (PT Ex. 123)

February 4, 2016: City photographs Portola8AUG0005028.JPG, Portola8AUG0005029.JPG, Portola8AUG0005030.JPG, Portola8AUG0005036.JPG, Portola8AUG0005037.JPG, Portola8AUG0005038.JPG and Portola8AUG0005039.JPG show various slopes without linear sediment controls. (PT Ex. 124)

February 8, 2016: City photographs Portola8AUG0005068.JPG, Portola8AUG0005070.JPG, Portola8AUG0005071.JPG, Portola8AUG0005072.JPG, Portola8AUG0005073.JPG and Portola8AUG0005074.JPG show various slopes without linear sediment controls. (PT Ex. 129)

February 17, 2016: City photographs Portola8AUG0005138.JPG, Portola8AUG0005140.JPG, Portola8AUG0005143.JPG, Portola8AUG0005153.JPG, and Portola8AUG0005167.JPG show various slopes without linear sediment controls. (PT Ex. 137)

February 26, 2016: City photographs Portola8AUG0005169.JPG, Portola8AUG0005170.JPG, Portola8AUG0005171.JPG, Portola8AUG0014633.JPG and Portola8AUG0014634.JPG show various slopes without linear sediment controls. A few slopes have linear sediment controls in the form of orange silt fencing; however, they are insufficient because alone they fail to satisfy the requirements of the Construction Storm Water Permit's Table 1 of Attachment D. (PT Ex. 139)

March 4, 2016: City photographs Portola8AUG0005283.JPG, Portola8AUG0005294.JPG and Portola8AUG0005295.JPG show various slopes without linear sediment controls. Again, some slopes have orange silt fencing, a linear sediment control; however, they are not in compliance with the Construction Storm Water Permit's Table 1 of Attachment D. (PT Ex. 145)

March 7, 2016: City photographs Portola8AUG0005298.JPG, Portola8AUG0005299.JPG, Portola8AUG0005502.JPG, Portola8AUG0005512.JPG, Portola8AUG0008730.JPG, and Portola8AUG0008732.JPG show various slopes without linear sediment controls. Again, some slopes have orange silt fencing, a linear sediment control; however, they are not in compliance with the Construction Storm Water Permit's Table 1 of Attachment D. (PT Ex. 146)

March 10, 2016: City photographs Portola8AUG0005577.JPG, Portola8AUG0005579.JPG, Portola8AUG0005580.JPG, Portola8AUG0005581.JPG and Portola8AUG0005583.JPG show various slopes without linear sediment controls. Again, some slopes have orange silt fencing, a linear sediment control; however, they are not in compliance with the Construction Storm Water Permit's Table 1 of Attachment D. (PT Ex. 148)

March 11, 2016: City photographs Portola8AUG0005587.JPG,

Portola8AUG0005589.JPG, Portola8AUG0005592.JPG, Portola8AUG0005597.JPG, Portola8AUG0005603.JPG, Portola8AUG0005606.JPG, and Portola8AUG0005625.JPG show various slopes without linear sediment controls. Photographs Portola8AUG0005619.JPG and Portola8AUG0005620.JPG show various slopes with linear sediment controls at the toe of the slope (orange silt fence) but no linear sediment controls on the face of the slope. Photograph Portola8AUG0005628.JPG shows slopes above the wall with linear sediment controls (orange silt fence) but no linear sediment controls on the face of the slope, while the slope below the wall (just the upper right of the center of the photograph) have no linear sediment controls. Photograph Portola8AUG0005629.JPG shows a slope on the left with linear sediment controls (orange silt fence) at the toe of the slope but no linear sediment controls on the face of the slope. Additionally, the slope below the wall (right of the photograph) has no linear sediment controls. Photograph Portola8AUG0005631.JPG shows slopes above the wall with linear sediment controls (orange silt fence) but no linear sediment controls on the face of the slope, while the slope below the wall (on the left of the photograph) has no linear sediment controls. Photograph Portola8AUG0005633.JPG shows various slopes (on the right of the photograph) without linear sediment controls. (PT Ex. 149) March 14, 2016: San Diego Water Board photograph 20160314\_111958.JPG shows slopes without linear sediment controls. The large hill depicted in the photograph has exposed areas that require linear sediment controls by the Construction Storm Water Permit. Photographs 20160314\_121439.JPG, 20160314\_121724.JPG and 20160314\_121919.JPG show slopes without linear sediment controls. Photograph 20160314\_122714.JPG shows some slopes without linear sediment controls. Photograph 20160314\_122716.JPG shows slopes on the far left without linear sediment controls. Photographs 20160314\_123328.JPG, 20160314\_123613.JPG and 20160314\_123804.JPG show various slopes without linear sediment controls. Photographs 20160314\_123901.JPG and 20160314\_123928.JPG show slopes without linear sediment controls except for orange silt fencing at the toe of the slopes; however, there are no linear sediment controls on the face of the slope. Photographs 20160314\_124150.JPG, 20160314\_124320.JPG, 20160314\_125051.JPG, 20160314\_125104.JPG and 20160314\_160800.JPG show various slopes without linear sediment controls. (PT Ex. 150)

35. **Violation No. 7:** Section B.1.c. of Attachment D of the Construction Storm Water Permit requires Risk Level 2 dischargers to “[s]tore chemicals in watertight containers (with appropriate secondary containment to prevent any spillage or leakage) or in a storage shed (completely enclosed).” The Dischargers violated this requirement on the following 9 days: August 20, 2015; October 7, 2015; November 3, 2015; November 23, 2015; November 30, 2015; December 10, 2015; January 19, 2016; March 14, 2016; and March 21, 2016. This finding is based on evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, City enforcement documents, Dischargers submissions, deposition testimony of Board staff, and photographs

in Exhibits 16, 31, 46, 60, 62, 68, and 150.

August 20, 2015: City photographs Portola8AUG0004372.JPG (oil in 18 gallon bucket without watertight lid and secondary containment, oily rag on ground without watertight container and secondary containment, there are oil drops on the ground, and vehicle coolant containers without secondary containment), Portola8AUG0004373.JPG (drip pan with oil does not have a watertight lid or secondary containment, and there are oil spills to the ground), Portola8AUG0004375.JPG (oily rag on the ground without watertight container and secondary containment), Portola8AUG0004376.JPG (oil in five gallon bucket without watertight lid and secondary containment, and there are oil drips on the ground), Portola8AUG0004377.JPG (six one-gallon watertight containers in an oil stained cardboard box without secondary containment), Portola8AUG0004378.JPG (two 55-gallon drums without secondary containment, and there are oil drips on the ground and oil staining on wood pallet) and Portola8AUG0004379.JPG (five 55-gallon drums, two of which are exposed because their lids are not latched, fail to have secondary containment, there are oil drips on the ground, a box full of oily rags, containers, and trash that does not have a watertight container and secondary containment) display a failure to store chemicals in watertight containers with secondary containment. (PT Ex. 16)

October 7, 2015: The City issued Citation No. 2240 on October 9, 2015, for violations observed on October 7, 2015, stating that City staff observed a “lack of BMPs controlling adequately...drips and leaks and containment at the above ground DS [diesel] fuel storage tank, improper storage of hazardous materials, including oil, coolant and oil filters.” (PT Ex. 34) City photographs Portola8AUG0009266.JPG (eight 55-gallon drums, two of which have open lids, without secondary containment); Portola8AUG0009267.JPG (close up of drums in Portola8AUG0009266.JPG); Portola8AUG0009268.JPG (55-gallon drum of antifreeze without secondary containment); and Portola8AUG0009269.JPG (close up of 55-gallon drum of antifreeze without secondary containment). (PT Ex. 31)

November 3, 2015: Dischargers photograph IMG\_2180.JPG shows eight 55-gallon drums without secondary containment, three of which are not covered. Additionally, there is an oil stained cardboard box of oily rags without a watertight container and secondary containment. (PT Ex. 46)

November 23, 2015: Dischargers photograph IMG\_0164.JPG shows seven 55-gallon drums without secondary containment, six five-gallon buckets without watertight lids and secondary containment, an oil stained cardboard box, and two kiddy-pool drip pans. Photograph IMG\_0166.JPG shows another view of the items seen in photograph IMG\_0164.JPG. (PT Ex. 60)

November 30, 2015: Dischargers photograph IMG\_0349.JPG shows eight 55-gallon drums, two of which are uncovered, without secondary containment; five five-gallon buckets without watertight lids and secondary containment; and an oil-stained cardboard box full of oily rags and containers without a watertight container and secondary containment. (PT Ex. 62)

December 10, 2015: Dischargers photograph IMG\_0549.JPG shows 11 55-

gallon drums without secondary containment (three of which do not have lids); several oil stains on the ground, and oil-stained kiddie pools. (PT Ex. 68)

January 19, 2016: San Diego Water Board NOV No. R9-2016-0124 section 7.c. states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed unmaintained construction equipment and hazardous waste stored without secondary containment on the site.” (PT Ex. 169)

March 14, 2016: San Diego Water Board NOV No. R9-2016-0124 section 7.c. states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed unmaintained construction equipment and hazardous waste stored without secondary containment on the site.” (PT Ex. 169) San Diego Water Board photograph 20160314\_125419.JPG shows two 55-gallon drums without secondary containment. Photograph 20160314\_125422.JPG shows seven 55-gallon drums, and a larger yellow drum without secondary containment. (PT Ex. 150)

March 21, 2016: San Diego Water Board NOV No. R9-2016-0124 section 7.c. states that “[d]uring the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed unmaintained construction equipment and hazardous waste stored without secondary containment on the site.” (PT Ex. 169)

36. **Violation No. 8**: Section B.2.i. of Attachment D of the Construction Storm Water Permit requires Risk Level 2 dischargers to “[e]nsure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.” The Dischargers violated this requirement on the following five days: January 5, 2016; February 8, 2016; March 21, 2016; March 30, 2016 and March 31, 2016. This finding is based on evidence in the record, including but not limited to evidence identified in the Technical Analysis for the Complaint, City enforcement documents, Dischargers submissions, deposition testimony of Board staff, and photographs in Exhibits 159, 167, and 168.
- January 5, 2016: On January 21, 2016, the City issued NOV/Administrative Compliance Order Citation No. 2258 to the Dischargers for violations observed on January 5, 2016. Citation section 3 noted that “[t]emporary concrete washout facilities are implemented improperly, are not being inspected, managed, and maintained appropriately to prevent prohibited discharges. Temporary concrete washout facilities were observed to be constructed inappropriately to contain waste materials and prevent discharges.” (PT Ex. 105)
- February 8, 2016: On February 10, 2016, the City issued a Cease and Desist Order and Notice to Abate Nuisances, which included a matrix of violations and their status. Corrective Action 3S noted that on February 8, 2016, “[a] discharge of concrete waste/washout material was observed on the soil directly adjacent to the concrete washout bin.” (PT Ex. 131)
- March 21, 2016: San Diego Water Board photographs 20160321\_112940.JPG, 20160321\_113018.JPG, 20160321\_113020.JPG, 20160321\_113032.JPG and 20160321\_113103.JPG show dried concrete washout waste on the ground as a

result of inadequate containment at the concrete washout area. (PT Ex. 159)  
March 30, 2016: City photograph Portola8AUG0005853.JPG shows a large discharge of waste concrete to the ground in violation of the Construction Storm Water Permit. (PT Ex. 167)  
March 31, 2016: City photograph Portola8AUG0009292.JPG shows a large discharge of waste concrete to the ground in violation of the Construction Storm Water Permit. (PT Ex. 168)

37. With regard to the violations identified Findings 29 through 36, supra, the San Diego Water Board independently evaluated the evidence in the record and finds that substantial evidence in the record supports each and every violation established by this Order.

### LIABILITIES UNDER WATER CODE SECTION 13385

38. Water Code section 13385 states in relevant part:
- (a) Any person who violates any of the following shall be liable civilly in accordance with this section:
    - (2) A waste discharge requirement . . . issued pursuant to this chapter . . .
    - (5) Any requirements of Section 301, 302, 306, 307, 308, 318, 401, or 405 of the Clean Water Act, as amended.”
39. The Construction Storm Water Permit was adopted by the State Water Resources Control Board on September 2, 2009, pursuant to Clean Water Act sections 201, 208(b), 302, 303(b), 304, 306, 307, 402, and 403. Section IV(A)(1) of the Construction Storm Water Permit states in part: “Any permit noncompliance constitutes a violation of the Clean Water Act (CWA) and Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from [Permit] coverage.”
40. The Dischargers’ failure to implement the elements of the Construction Storm Water Permit described above violates the Construction Storm Water Permit and therefore violates the Clean Water Act and the Water Code. Water Code section 13385 authorizes the imposition of administrative civil liability for such violations.
41. Water Code section 13385, states in relevant part:
- (a) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:
    - (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.
    - (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars

(\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

42. The Dischargers violated provisions of law for which the San Diego Water Board may impose civil liability pursuant to section 13385 of the Water Code. The maximum liability that the San Diego Water Board may assess pursuant to Water Code section 13385, subdivision (c), for all the violations established is **\$64,524,380**.
43. Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation." The Enforcement Policy requires that the adjusted Total Base Liability shall be at least ten percent (10%) higher than the economic benefit. Therefore, the minimum liability that the San Diego Water Board shall assess pursuant to Water Code section 13385 subdivision (e) for all of the violations established is **\$821,983**.
44. Water Code sections 13327 and 13385, subdivision (e), specify the factors that the San Diego Water Board is required to consider in establishing the amount of discretionary liability for the violations. The Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and with respect to the violator, the ability to pay, the effect on the Dischargers' ability to continue in business, any voluntary cleanup efforts undertaken, prior history of violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
45. The Enforcement Policy establishes a methodology for assessing administrative civil liability use of which is intended to "create a transparent, fair, and consistent statewide approach to liability assessment." (2017 Enforcement Policy, p. 2.) The use of this methodology addresses the factors that are required to be considered when a regional water board imposes a civil liability as outlined in Water Code section 13385, subdivision (e). The civil liability ordered in this matter was derived from the use of the liability calculation methodology, as explained in detail in Attachment 1.
46. The liability calculation methodology analysis described in Attachment 1 and incorporated in full in this Order is consistent with the evidence received and the circumstances of this case, as independently evaluated by the Board, and supports the administrative civil liability in the amount of **\$9,085,932** imposed against Dischargers.



## REGULATORY CONSIDERATIONS

47. Notwithstanding issuance of this Order, the San Diego Water Board retains the authority to assess additional liabilities for violations of the requirements of the Construction Storm Water Permit for which liabilities have not yet been assessed or for violations that may subsequently occur.
48. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The method of compliance with this enforcement action consists entirely of payment of an administrative liability. The San Diego Water Board finds that issuance of this Order is not subject to the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it is not considered a “project” (Public Resources Code 21065, 21080(a); 15060(c)(2),(3); 15378(a), Title 14, of the California Code of Regulations). The San Diego Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15061(b)(3) because it can be seen with certainty that the project will not have a significant effect on the environment and in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
49. Any person aggrieved by this action may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: [http://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.
50. Fulfillment of Dischargers’ obligations under this Order constitutes full and final satisfaction of Administrative Civil Liability Complaint No. R9-2020-0006.
51. The Executive Officer is authorized to refer this matter to the Office of the Attorney General for collection or other enforcement if Dischargers fail to comply with payment of the administrative civil liability.

**IT IS HEREBY ORDERED**, pursuant to Water Code section 13385, that civil liability be imposed upon Dischargers in the amount of **\$9,085,932** for the above violations of the Construction Storm Water Permit. Dischargers shall pay the total administrative civil liability amount within thirty (30) days of adoption of this Order executed by the San

Diego Water Board. Payment shall be made by check to the "State Water Board Cleanup and Abatement Account" and a copy e-mailed to San Diego Water Board contact Frank Melbourn at [frank.melbourn@waterboards.ca.gov](mailto:frank.melbourn@waterboards.ca.gov). Dischargers shall include the number of this Order (R9-2021-0119) on the check and send it to:

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

I, David W. Gibson, Executive Officer, do hereby certify that 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 **DATE**.

DAVID W. GIBSON  
Executive Officer

Attachment:

1. Liability Methodology Decisions for Order No. R9-2021-0119