

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

**IN THE MATTER OF CITY OF OCEANSIDE,  
APRIL 2020 SANITARY SEWER OVERFLOWS,  
BUENA VISTA CREEK, BUENA VISTA LAGOON, PILGRIM CREEK, AND  
WINDMILL CREEK**

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY**

**ORDER NO. R9-2024-0060**

**I. INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) on behalf of the San Diego Water Board Prosecution Team (Prosecution Team), and the City of Oceanside (City) (collectively, Parties). This Order is presented to the San Diego Water Board for adoption as an order by settlement pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60.

**II. RECITALS**

2. The City owns and operates its own municipal sanitary sewer system. The City's sanitary sewer system consists of approximately 460 miles of gravity sewer pipeline, 135 miles of force mains, 33 lift stations, and two wastewater treatment plants; the La Salina Wastewater Treatment Plant and the San Luis Rey Water Reclamation Facility (SLRWRF). The SLRWRF treats approximately 9.5 million gallons per day (MGD) of sewage from Oceanside, Vista, Fallbrook, and Rainbow Municipal Water District. There are also approximately 200 miles of private sewer laterals which connect to the City's sewer system. Treated wastewater from the SLRWRF is discharged into the Pacific Ocean via the City's Oceanside Ocean Outfall.
3. The Buena Vista Lift Station (BVLS) site is operated by the City and consists of two separate lift stations. The Upper BVLS is the primary station used to handle everyday sewer flows which are pumped to the SLRWRF. The Lower BLVS is used as an emergency overflow station.
4. The SLRWRF consists of two plants, the East Plant (also known as Plant 1) and the West Plant (also known as Plant 2). From the headworks, flow through the SLRWRF is diverted into either Plant 1 or Plant 2. Plant 1 consists of flow equalization, primary sedimentation, biological secondary treatment by means of activated sludge, and

secondary sedimentation/clarification. Plant 2 consists of primary sedimentation and biological secondary treatment by means of activated sludge, and secondary sedimentation/clarification.

5. The City’s sewage collection system, including the BVLS, is regulated by State Water Resources Control Board (State Water Board) Order No. 2006-0003-DWQ,<sup>1</sup> *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Statewide General Order), and San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region* (Regional General Order). The SLRWRF is regulated by San Diego Water Board Order No. R9-2019-0166, National Pollutant Discharge Elimination System (NPDES) No. CA0107433, as amended by Order Nos. R9-2020-0190 and R9-2021-0199; *Waste Discharge Requirements for the City of Oceanside San Luis Rey Water Reclamation Facility, La Salina Wastewater Treatment Plant, and Mission Basin Groundwater Purification Facility Discharge to the Pacific Ocean Through the Oceanside Ocean Outfall* (Order No. R9-2019-0166).
6. The BVLS is directly adjacent to Buena Vista Creek, in the Carlsbad Watershed Management Area and Buena Vista Creek hydrologic subarea (904.21) and is approximately 0.6 miles upstream of Buena Vista Lagoon. Pilgrim Creek and Windmill Creek (also known as Windmill Canyon) are located in the San Luis Rey River Watershed in the Mission hydrologic subarea (903.11). They are both adjacent to the SLRWRF, to the east of the facility. The Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) designates beneficial uses for Buena Vista Creek, Buena Vista Lagoon, Pilgrim Creek, and Windmill Creek as presented in Table 1.

**Table 1. Basin Plan Designated and Potential Beneficial Uses for Buena Vista Creek, Buena Vista Lagoon, Pilgrim Creek, and Windmill Creek**

<b>Beneficial Uses<sup>1</sup></b>	<b>Buena Vista Creek</b>	<b>Buena Vista Lagoon</b>	<b>Pilgrim Creek</b>	<b>Windmill Creek</b>
Agricultural Supply (AGR)	✓		✓	✓
Preservation of Biological Habitats of Special Significance (BIOL)		✓	✓	
Cold Freshwater Habitat (COLD)			✓	✓

<sup>1</sup> Although the violations alleged herein occurred when 2006-0003-DWQ was in effect, the order has since been superseded with updates in Order No. 2022-0103-DWQ: [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/water\\_quality/2022/wqo\\_2022-0103-dwq.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2022/wqo_2022-0103-dwq.pdf)

<b>Beneficial Uses<sup>1</sup></b>	<b>Buena Vista Creek</b>	<b>Buena Vista Lagoon</b>	<b>Pilgrim Creek</b>	<b>Windmill Creek</b>
Estuarine Habitat (EST)		*		
Industrial Service Supply (IND)	✓		✓	✓
Marine Habitat (MAR)		✓		
Rare, Threatened, or Endangered Species (RARE)	✓	✓	✓	
Contact Water Recreation (REC-1)	✓	✓	✓	✓
Non-Contact Water Recreation (REC-2)	✓	✓	✓	✓
Warm Freshwater Habitat (WARM)	✓	✓	✓	✓
Wildlife Habitat (WILD)	✓	✓	✓	✓

Notes: ✓ = designated as a beneficial use in the Basin Plan; \* = indicates a potential beneficial use in the Basin Plan; Basin Plan = Water Quality Control Plan for the San Diego Basin (9)

1 – Definitions of beneficial uses are provided in the [Basin Plan](#).<sup>2</sup>

7. Buena Vista Creek is listed as impaired in the 2020-2022 California Integrated Report (Clean Water Act Section 303(d) List and 305(b) Report) for: benthic community effects, indicator bacteria, nitrogen, phosphorus, total dissolved solids, toxicity, selenium, and various pyrethroid insecticides, including bifenthrin, cyfluthrin, and cypermethrin. Buena Vista Lagoon is also a 303(d) impaired waterbody listed for: indicator bacteria, nutrients, sedimentation/siltation, and toxicity.
8. In accordance with [Resolution No. R9-2017-0030](#),<sup>3</sup> the San Diego Water Board considers Buena Vista Lagoon as a key area for two beneficial use categories: recreation and aquatic habitats and ecosystems. The mouth of the Buena Vista

<sup>2</sup> The Basin Plan can be accessed at:

[https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/basin\\_plan/](https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/)

<sup>3</sup> A copy of the Resolution is available at:

[https://www.waterboards.ca.gov/rwqcb9/board\\_decisions/adopted\\_orders/2017/R9-2017-0030.pdf](https://www.waterboards.ca.gov/rwqcb9/board_decisions/adopted_orders/2017/R9-2017-0030.pdf)

Lagoon drains to the Pacific Ocean when water levels are high. The Pacific Ocean is considered a key area for three beneficial use categories: recreation, aquatic habitats and ecosystems, and fish and shellfish consumption. Discharges of untreated sewage can negatively impact all beneficial use categories for these two key areas.

9. In accordance with the State Water Board's Water Quality Enforcement Policy ([Enforcement Policy](#)),<sup>4</sup> the San Diego Water Board promotes enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority and low-income populations. A "Disadvantaged Community" (DAC) per Health and Safety Code section 39711 includes areas disproportionately affected by environmental pollution and other hazards that can lead to negative public health effects, exposure, or environmental degradation; or areas with concentrations of people that are of low income, high unemployment, low levels of homeownership, high rent burden, sensitive populations, or low levels of educational attainment. Neither the BVLS nor the SLRWRF are located within DACs as described in the California Office of Environmental Health Hazard Assessment (OEHHA) [Senate Bill \(SB\) 535 Disadvantaged Communities Map](#).<sup>5</sup> According to the Department of Water Resources' DAC Mapping Tool<sup>6</sup>, however, both facilities are located within or adjacent to a DAC census block with a low median household income. The pollution burden percentile of the communities surrounding and downstream of these facilities ranges from 16 to 71, according to OEHHA's [CalEnviroscreen 4.0 Map](#).<sup>7</sup>
10. A rain event occurred on April 5-10, 2020 during which the City received a total of 5.75 inches (as measured at the San Diego County Flood Control District (FCD) Oceanside weather station (27039)), within the frequency range of a 50-year, 5-day storm (as interpolated using the NOAA Atlas 14 Point Precipitation Frequency Estimate tables, available through NOAA's [Hydrometeorological Design Studies Center](#)). The City received the majority of that rain (3.09 inches) between April 9 and 10, within the frequency range of a 50-year, 24-hour storm.
11. In April 2020, the SLRWRF Plant 2 was offline and undergoing upgrades related to the Pure Water Oceanside advanced water treatment plant project when the storm

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<sup>4</sup> A copy of the Enforcement Policy is available at:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

<sup>5</sup> The SB 535 Disadvantaged Communities Map is provided by the California Office of Environmental Health Hazard Assessment (OEHHA) and can be accessed at:

<https://oehha.ca.gov/calenviroscreen/sb535>

<sup>6</sup> The DAC Mapping Tool is available at: <https://gis.water.ca.gov/app/dacs/>

<sup>7</sup> For CalEnviroscreen, the pollution burden indicator ranges from 0 to 100, with 100 representing the highest pollution burden relative to other census tracts. See Census Tracts 6073018504, 6073017801, 6073017900, 6073018100, 6073018000 (BVLS and downstream) and 6073018613, 6073018608, 6073018601, 6073018603, 6073018400, 6073018300 (SLRWRF and downstream). <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

event occurred. Daily wet weather capacity for Plant 1 is 10.7 MGD. With both plants online, that capacity would have increased to 15.4 MGD, but Plant 2 was under construction at the time of the storm event. Peak hourly capacity has always been 16 MGD for Plant 1 due to limitations of the Load Equalization Tanks. Since Plant 2 was offline due to construction, 16 MGD was the peak hourly capacity of the SLRWRF during the storm event. In the morning hours of April 10, 2020, hourly influent flows exceeded 24 MGD for over an hour and remained above 18 MGD for 8.5 hours.

12. On April 10, 2020, two high volume sanitary sewer overflows (SSOs) occurred from the City's collection system and the SLRWRF due to hydraulic overloading and flooding associated with storm water flows.
  - a. The BVLS flooded because Buena Vista Creek overtopped its banks and the berm surrounding the BVLS and flooded the pumps and electrical equipment rendering the lift station inoperable. This resulted in an estimated 988,333<sup>8</sup> gallons of raw sewage discharged into Buena Vista Creek and Buena Vista Lagoon until a bypass was installed on April 11, 2020 (Violation 1).
  - b. Hydraulic overloading also overwhelmed the SLRWRF resulting in a discharge of 820,000 gallons of raw sewage from the SLRWRF to Windmill and Pilgrim Creek (Violation 2) on April 10, 2020. This was despite preventative measures taken (e.g., diverting influent to temporary storage ponds and increasing flow from the Load Equalization Tank to the Primary Influent Channel). Hydraulic overloading occurs when the incoming wastewater flow rate exceeds the system's intake flow rate. When this happens, the system can't treat the wastewater effectively.
13. On April 10, 2020, the City informed the San Diego Water Board of the SSOs via phone (voicemail) and posted precautionary signage on the beach North and South of the Buena Vista Lagoon outlet. The City submitted a 45-day technical report to the San Diego Water Board on May 26, 2020 in accordance with the reporting requirements of the Statewide General Order.

### **RELEVANT REGULATORY REQUIREMENTS**

14. The Statewide General Order regulates all entities that own or operate a sanitary sewer system greater than one mile in length that collects or conveys untreated or partially treated wastewater to a publicly owned treatment facility in the State of California. Prohibition C.1 of the Statewide General Order states that "[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."

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<sup>8</sup> The City discovered and reported a calculation error to the San Diego Water Board on September 26, 2023 to revise the previously estimated discharge volume from the BVLS (see Paragraph 25).

15. The Regional General Order establishes additional requirements beyond the minimum requirements established in the Statewide General Order. For instance, Prohibition B.1 of the Regional General Order states “[t]he discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.”
16. Clean Water Act section 301 and California Water Code (Water Code) section 13376 prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
17. The SLRWRF is regulated under NPDES No. CA0107433, Order No. R9-2019-0166. Discharge Prohibitions described in Order No. R9-2019-0166 include:
  - a. Section III.A, which states that “[t]he discharge of waste from the SLRWRF and/or the [La Salina Wastewater Treatment Plant] LSWTP not treated by a secondary treatment process and/or not in compliance with the effluent limitations specified in section IV.A of this Order, and/or to a location other than Discharge Point No. 001, unless specifically regulated by this Order or separate WDRs, is prohibited” and;
  - b. Section III.D, which prohibits the discharge of wastewater in violation of Basin Plan prohibitions listed in Attachment G of the Order.
18. Water Code section 13243 provides that a Regional Board, in a water quality control plan, may specify certain conditions or areas where the discharge of waste, or certain types of waste is not permitted. The San Diego Basin Plan contains Waste Discharge Prohibitions applicable to entities that could affect water quality in waters of the state in the San Diego Region.
  - a. Waste Discharge Prohibition No. 1 states “[t]he discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Codes section 13050, is prohibited.”
  - b. Waste Discharge Prohibition No. 9 states “[t]he unauthorized discharge of treated or untreated sewage to waters of the state or to a storm water conveyance system is prohibited.”
19. Section VI.C.4.b-d of Order No. R9-2019-0166 provides operational specifics for the SLRWRF which include protection from: (1) a 100-year storm event as defined by the San Diego County FCD; (2) impacts resulting from a 100-year, 24-hour storm event (e.g. erosion, overland runoff); and (3) regional impacts due to climate change (e.g., sea level rise and floods).

## ALLEGED VIOLATIONS

20. **Violation 1:** The discharge of 988,333 gallons of raw sewage from the BVLS to Buena Vista Creek on April 10-11, 2020, was in violation of Clean Water Act section 301 and Water Code section 13376, which prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit. The BVLS discharge was also in violation of Basin Plan Waste Discharge Prohibition No. 1 and Prohibition No. 9. This discharge was also a violation of the Statewide General Order (Prohibition C.1) and the Regional General Order (Prohibition B.1). For the purposes of this Stipulated Order, the Prosecution Team consolidated these violations into a single base liability amount since the violations arising from the BVLS discharge were not independent of one another, were not substantially distinguishable, and were the result of a single act that violates similar requirements in different applicable permits and plans that are designed to address the same water quality issue.<sup>9</sup>
21. **Violation 2:** The City's discharge of 820,000 gallons of raw sewage from the SLRWRF to Pilgrim Creek and Windmill Creek on April 10, 2020, was in violation of Clean Water Act section 301 and Water Code section 13376. The SLRWRF discharge was also in violation of Order No. R9-2019-0166 Discharge Prohibitions described in Section III.A and Section III.D and operational specifics described in Section VI.C.4.b-d. Per the Enforcement Policy<sup>9</sup>, these violations were consolidated into a single base liability amount for the SLRWRF discharge.
22. A discharger who violates Water Code section 13376 or Clean Water Act section 301 is subject to administrative civil liability pursuant to Water Code section 13385(a). Additionally, the unauthorized discharge of untreated sewage in violation of the Statewide General Order, Regional General Order, and Basin Plan Prohibitions is subject to administrative civil liability pursuant to Water Code section 13350. The Prosecution Team elected to pursue enforcement of the alleged violations pursuant to Water Code section 13385. Water Code section 13385(c) authorizes the San Diego Water Board to impose administrative civil liability up to \$10,000 per day of violation, plus \$10 for each gallon exceeding 1,000 gallons discharged but not cleaned up.

## ENFORCEMENT PROCESS

23. On April 3, 2023, the Prosecution Team issued Administrative Civil Liability Complaint R9-2023-0015 to the City of Oceanside for the April 2020 SSOs to Buena Vista Creek, Buena Vista Lagoon, Pilgrim Creek, and Windmill Creek. The

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<sup>9</sup> See Enforcement Policy, Section VI.A, Step 4, Multiple Violations Resulting from the Same Incident, accessible at: [https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_fi\\_nal%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_fi_nal%20adopted%20policy.pdf)

Prosecution Team proposed the San Diego Water Board impose civil liability against the City in the amount of \$1,807,321 for the violations described in Paragraphs 20 and 21 above. The liability amount was calculated using the penalty calculation methodology described in the Enforcement Policy, with supporting details contained in Attachment A of Administrative Civil Liability Complaint R9-2023-0015. The penalty calculation was performed using an estimated BVLS discharge volume of 1,121,000 gallons<sup>10</sup>.

24. On April 7, 2023, the City submitted a waiver form waiving the 90-day hearing requirement in order to engage in settlement discussions with the Prosecution Team to resolve the alleged violations arising from the SSOs.
25. On September 26, 2023, the City notified the San Diego Water Board of a calculation error made when determining the volume of sewage discharged from the BVLS to Buena Vista Creek (Violation 1). The previously estimated discharge volume of 1,121,000 gallons was revised to 988,333 gallons based on the duration of time the discharge occurred.
26. After protracted settlement discussions, the Parties have agreed to settle this matter without administrative or civil litigation by presenting this Order to the San Diego Water Board for adoption as an order by settlement pursuant to Water Code section 13323 and Government Code section 11415.60. The terms of settlement are manifested in this Order as follows:
  - a. The Parties agree to revise the penalty calculations for Violation 1 to reflect the revised volume estimate of 988,333 gallons discharged. Based on the penalty calculation methodology described in the Enforcement Policy, this results in a revised liability from **\$840,890** to **\$742,165** for Violation 1 and from **\$1,807,321** to **\$1,708,596** for total liability.
  - b. The City agrees to complete a feasibility study to evaluate long-term improvement alternatives to eliminate or minimize the risk of future flooding from Buena Vista Creek to the BVLS with consideration to climate change and future land use and, as described in Paragraph 30 (Due Diligence Measures), report the findings and recommendations of the study to the Board by January 2027.
  - c. The Prosecution Team agrees to further reduce the proposed total liability amount by ten percent (10%) in consideration of the risks inherent in litigation, resulting in a final liability amount of **\$1,537,737**.
27. The final **\$1,537,737** of administrative civil liability imposed pursuant to this Stipulated Order comports with the State Water Board's Enforcement Policy methodology.

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<sup>10</sup> The estimated discharge volumes of 1,121,000 gallons used in the penalty calculation and 1,210,000 gallons provided in the City's 45-Day Technical Report were recognized as calculation errors and corrected as described in Paragraph 25.

28. The Prosecution Team asserts that the resolution of the alleged violations is fair, reasonable, and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Administrative Civil Liability Complaint R9-2023-0015 and reiterated herein except as provided in this Order, and that this Order is in the best interest of the public.

### III. STIPULATIONS

The Parties stipulate to the following:

29. **Administrative Civil Liability:** The City hereby agrees to the imposition of an administrative civil liability totaling **ONE MILLION, FIVE HUNDRED THIRTY-SEVEN THOUSAND, SEVEN HUNDRED THIRTY-SEVEN DOLLARS (\$1,537,737)**, which includes \$67,101 in staff costs associated with the investigation and preparation of this enforcement action, to resolve the violations specifically alleged in Administrative Civil Liability Complaint R9-2023-0015 and in this Stipulated Order:

- a. Within 30 days of the effective date of this Order, the City agrees to remit, by check, **\$1,537,737** payable to *State Water Pollution Cleanup and Abatement Account* and shall indicate "Order No. R9-2024-0060" on the check. The City shall send the original signed check to the following address:

State Water Resources Control Board; Accounting Office  
ATTN: ACL Payment / Order No. R9-2024-0060  
P.O. Box 1888  
Sacramento, California 95812-1888

The City shall send a copy of the check to the Prosecution Team Party Contact at the address listed in Paragraph 32. Alternative forms of payment are acceptable if agreed upon in advance.

30. **Due Diligence Measures:** As a result of the April 2020 SSOs, the City will be undertaking a feasibility study to evaluate long-term improvement alternatives to eliminate or minimize the risk of future flooding from Buena Vista Creek to the BVLS. Potential alternatives include: relocating the new station onto the Carlsbad Shopping Center parking lot that is higher in elevation and further from creek, rehabilitating the existing lift station such that it is operable in the event of a flood, or partnering with the neighboring agency that also has a sewer lift station next to the same creek downstream to combine lift stations or share the site within the City of Oceanside or the City of Carlsbad. The City will report the findings and recommendations of the study to the Board by January 2027 along with its plans to implement the recommendations resulting from this study in order to properly manage, operate, and maintain the BVLS in compliance with Section D.8 of the Statewide General Order.

**31. Compliance with Applicable Laws:** The City understands that the payment of administrative civil liability in accordance with the terms of this Order does not relieve the City of its obligation to comply with applicable laws and new violations of the type alleged in Administrative Civil Liability Complaint R9-2023-0015 may subject it to further enforcement, including additional administrative civil liability.

**32. Party Contacts for Communications related to the Order:**

**For the Prosecution Team:**

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

**For the City of Oceanside:**

Lindsay Leahy  
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300 North Coast Highway  
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(760) 435-5913

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

**34. Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order, and the San Diego Water Board covenants not to sue or pursue any additional administrative civil claims against the Discharger for any Covered Matter.

**35. Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

36. **Covered Matters:** Upon the San Diego Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of alleged violations in this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 29.
37. **Public Notice:** The City understands that the San Diego Water Board will conduct a 30-day public review and comment period prior to consideration and adoption of the Order. If significant new information is received that reasonably affects the propriety of presenting this Order to the San Diego Water Board for adoption, the Assistant Executive Officer may unilaterally declare this Order void and decide not to present it to the San Diego Water Board. The City agrees that it may not rescind or otherwise withdraw its approval of this proposed Order.
38. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or the San Diego Water Board to enforce any provision of this Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or San Diego Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Order.
39. **Procedural Objections:** The Parties agree that the procedure contemplated for adopting the Order by the San Diego Water Board and review of this Order by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary and advisable.
40. **Interpretation:** This Order shall be construed as if the parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
41. **Modification:** This Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the San Diego Water Board.
42. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the San Diego Water Board or is vacated in whole or in material part by the State Water Board or a final judgment of a court of competent jurisdiction, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the San Diego Water Board, on a future date after reasonable notice and opportunity for preparation, to determine whether to assess administrative civil liability for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of the settlement discussions will not be admissible as evidence in such a hearing. The Parties agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the San Diego Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the San Diego Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing this Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on a Complaint in this matter; or,
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
43. **Waiver of Hearing:** The City has been informed of the rights provided by Water Code section 13323(b), and provided this Stipulated Order is approved by the San Diego Water Board, hereby waives its right to a hearing before the San Diego Water Board.
44. **Waiver of Right to Petition or Appeal:** The City hereby waives its right to petition the San Diego Water Board's adoption of the Order as written for review by the State Water Board, and further waives its right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
45. **Authority to Bind:** Each person executing this Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
46. **No Third-Party Beneficiaries:** Except as described in this Order, the Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Order for any cause whatsoever.
47. **Effective Date:** This Order shall be effective and binding on the Parties on the date that the San Diego Water Board adopts the Order.
48. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterpart shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
49. **Severability:** The provisions of this Order are severable, and should any provision be found invalid, the remainder shall remain in full force and effect.

**IT IS SO STIPULATED**

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

**By:**

**KELLY DORSEY, P.G., Assistant Executive Officer**

**CITY OF OCEANSIDE**

**By:**

**LINDSAY LEAHY, Water Utilities Director**

#### IV. FINDINGS OF THE SAN DIEGO WATER BOARD

50. The San Diego Water Board incorporates Sections I through III by reference as if set forth fully herein.
51. In accepting this settlement, the San Diego Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The San Diego Water Board's consideration of these factors is based upon information obtained by the San Diego Water Board's staff in investigating the violations alleged herein or otherwise provided to the San Diego Water Board. In addition to these factors, this settlement recovers a portion of the costs incurred by the Prosecution Team for this matter.
52. This is an action to enforce the laws and regulations administered by the San Diego Water Board. The San Diego Water Board finds that issuance of this Order is not subject to the provisions of the California Environmental Quality Act (CEQA; 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.
53. The San Diego Water Board's Executive Officer is hereby authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under this Order.
54. Fulfillment of the City's obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
55. The attached Agreement between the Assistant Executive Officer and the City is approved pursuant to Water Code section 13323 and Government Code section 11415.60 and is incorporated by reference into this Order.

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

*I, David W. Gibson, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Diego Region on \_\_\_\_\_ 2024.*

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David W. Gibson  
Executive Officer