

California Regional Water Quality Control Board

San Diego Region

David Gibson, Executive Officer



Executive Officer’s Report

June 20, 2018

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Part A – San Diego Region Staff Activities

1. Personnel Report

Staff Contact: Lori Costa

The Organizational Chart of the San Diego Water Board is available at http://www.waterboards.ca.gov/sandiego/about_us/org_charts/orgchart.pdf

Recruitment

The recruitment process has begun to fill three positions: (1) the Engineering Geologist position in the Site Restoration Unit; (2) the Senior Engineering Geologist position in the Site Restoration, Military Facilities Unit; and (3) the Scientific Aid vacancy in the Wetland and Riparian Protection Unit.

2. File Records Requests

Staff Contact: Lori Costa

Per the California Public Records Act, when a member of the public requests to inspect a public record or obtain a copy of a public record, each agency shall, within 10 days, determine whether the request seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. Once the requested records are ready for review, the records coordinator schedules a date and time for the requestor to review the files.

The San Diego Water Board receives most of these requests by email (rb9_records@waterboards.ca.gov) and some by fax. From November 2017 – April 2018, the records coordinator received 266 records requests. During the last five years, the Water Board has received approximately 54 records requests per month.

3. Performance of Critical Mission Support Services

Staff Contact: Lori Costa

The Core Mission Support project was developed to determine if the most critical mission support functions were being met during the year. The critical functions include position recruitment, procurement, training, health & safety, facility management, records management, and fleet management.

The following sections provide some of the most critical performance measures for each administrative function identified above. This information covers the period of November 2017 - April 2018.

Position Recruitment

How Well We're Doing

- Five recruitment packages requested and prepared
- Four vacancies filled
- 100% assistance with scheduling interviews

Is Anyone Better Off?

- Job announcements posted in a timely manner
- Program work being performed due to vacancies being filled
- Supervisors rate Mission Support staff as very helpful

Procurement

How Well We're Doing

- Twenty-six procurement orders submitted
- Three contracts/service orders for services processed

Is Anyone Better Off?

- 90% of staff received the items requested to aid in enhanced job performance
- 90% of ergonomic needs were met

Training

How Well We're Doing

- 100% of external and internal training requests processed
- New staff orientation and guidance on required training
- Training records maintained for all staff

Is Anyone Better Off?

- Staff able to attend job required and job-related training
- 100% of new staff completed required training

Health and Safety

How Well We're Doing

- 100% of all-staff safety briefings completed
- 100% of mandatory safety trainings implemented
- Training on evacuation/urgent assistance alarms implemented as scheduled

Is Anyone Better Off?

- Staff up to date on mandatory trainings
- Staff are better prepared for emergency situations

Facility Management

How Well We're Doing

- 95% of maintenance requests responded to within the same work day
- 100% of facility concerns addressed
- Worker safety issues immediately addressed

Is Anyone Better Off?

- Staff members rate facilities support "good" or better
- Increased staff morale
- Zero percent sick leave due to building conditions

Records Management

How Well We're Doing

- Files continue to be scanned into electronic documents
- Approximately 25 file boxes recycled

Is Anyone Better Off?

- Staff and the public have quick access to documents and public records
- More building storage space due to fewer paper files

Fleet Management

How Well We're Doing

- All vehicles up to date with scheduled maintenance
- Monthly vehicle checks completed and logged
- Mileage logs turned in on time 100% of the time

Is Anyone Better Off?

- Zero percent vehicle breakdowns
- No fees incurred to the State for late mileage log submittals
- Vehicles available 99% of the time

4. San Diego Bay Tour with the San Diego Unified Port District

Staff Contact: Wayne Chiu

San Diego Bay is a high priority water body in the San Diego region due to its ecological value and because it supports fishing, recreation, tourism, and a variety of maritime, commercial, and military uses. The mission of the San Diego Unified Port District (Port District), created by the California State Legislature in 1962, includes the protection and environmental stewardship of the tideland resources around San Diego Bay. The Port District and the San Diego Water Board are often required to work together, because of our similar, but not always fully compatible missions to protect and manage the resources of San Diego Bay.

To help foster better and more open communication and a more collaborative relationship, the Port District invited San Diego Water Board and State Water Board staff working in and around San Diego Bay for a boat tour of the Bay that took place on May 16, 2018. The Port District was represented by staff from their Environmental, Real Estate, and Planning departments. The San Diego Water Board was represented by staff from the Healthy Waters, Surface Water Protection, and Site Restoration and Groundwater Protection branches, as well as attorneys from the State Water Board's Office of Chief Counsel and Office of Enforcement. This was the first time staff from the Port District's various departments were convened to jointly discuss issues of interest around San Diego Bay with San Diego Water Board and State Water Board staff from the water perspective.

The tour of the Bay stopped at several sites along the eastern shoreline from the south to the north. Among the sites visited and discussed included environmental restoration areas, areas being developed or planned for development, and areas where Board-directed contaminated Bay sediment investigations are taking place. At each stop, the Port District and San Diego Water Board staff were able to discuss areas and issues of common interest and potential opportunities to cooperate and achieve common goals to achieve a healthy and prosperous San Diego Bay.

The tour of San Diego Bay was a great opportunity for San Diego Water Board staff to better understand how the Port District views its role and responsibilities for protecting and managing the Bay, and hopefully vice versa.

Part B – Significant Regional Water Quality Issues

1. Judge Rejects San Altos-Lemon Grove, LLC's Appeal of \$595,367 Board Penalty (*Attachment B-1*)

Staff Contact: Frank Melbourn

After an exhaustive review, San Diego Superior Court (Court) Judge Joan M. Lewis denied the petition for writ of mandate filed by San Altos-Lemon Grove, LLC (San Altos) challenging liabilities assessed by administrative civil liability [Order No. R9-2016-0064](#) (Order). A copy of the final judgment, issued on May 17, 2018, is attached (*Attachment B-1*).

The San Diego Water Board (Board) adopted the Order on August 10, 2016, assessing \$595,367 in administrative civil liability against San Altos for violations of the statewide [Construction Storm Water Permit](#) (Permit) (including six separate sediment discharges and numerous best management practices failures) at the 18-acre construction site of 73 single family homes in the City of Lemon Grove (City). San Altos petitioned the State Water Resources Control Board (State Water Board) in September 2016 to overturn the penalty; however, the State Water Board dismissed the petition in December 2016 without review. On April 7, 2017, San Altos filed a petition for writ of mandate challenging the Board's penalty. Written briefs were filed by both parties, and a tentative ruling in the Board's favor was issued on April 17, 2018. Oral arguments were heard on April 23, 2018. Afterwards, Judge Lewis concluded that she had not heard anything new from San Altos during the oral arguments that would change her tentative ruling. San Altos has sixty days from the final judgment date to appeal the Superior Court judgment.

The following are some key points from the Court's ruling that support the Board's interpretation of the Permit, and how it prosecutes civil penalty cases and documents final enforcement orders:

- 1) San Altos argued that it was denied due process rights during the Board's proceeding; specifically, San Altos argued that the Board inappropriately increased penalties by increasing penalty factors for "harm," and "culpability" after the hearing was closed, and that the Board allowed the Prosecution Team to submit evidence prejudicial to San Altos. As to "the Board's adjustment of the factors after the hearing, the Court agrees with the Board that San Altos had notice after the hearing was closed that the Board could 'affirm, reject, or *modify*' the proposed penalty." (Final Judgment, p. 4 (emphasis in original judgment.)) Regarding the challenged admission of evidence, the Court did not find any due process violations that prejudiced San Altos. (Final Judgment, p. 5.)
- 2) The Court rejected San Altos's arguments that the Board failed to follow the State Water Board Enforcement Policy's (Policy) consistency goal by not comparing previously adopted penalties throughout the Region and the State. The Court concurred with the Board's interpretation "that the consistency sought was to be obtained by utilizing the methodologies, definitions, etc., as found *in the Policy*, not in other matters before the Board (or other Boards)." (Final Judgment, p. 6.)
- 3) And finally, the Court upheld the Board's Order in its entirety.

"The administrative record and the resulting order in this case were extremely detailed. Having conducted its review of this matter, the Court finds San Altos

did not meet its burden to show there was no substantial evidence whatsoever to support the Board's findings. In fact, the Court finds the opposite to be true – that there was substantial evidence to support the Board's findings of violations and its calculation of penalties as to each of the 13 violations. The Court concludes that the evidence further supports a finding that the Board utilized all relevant factors required under both the law and the Policy." (Final Judgment, p. 8.)

2. California Regional Water Quality Control Board, San Diego Region Recycled Water Annual Summary Report 2017 (Attachment B-2)

Staff Contact: Alex Cali

Once a year the San Diego Water Board surveys recycled water facilities and requests information regarding the production, reuse, and quality of recycled water in the San Diego Region (Region). In 2017, thirty-one recycled water facilities in the San Diego Water Board Region reported 91,000 acre-feet of wastewater was treated, of which over 30,000 acre-feet was either discharged to ocean outfalls or disposed of by other methods, and over 51,000 acre-feet of recycled water was beneficially reused. This equates to 56 percent of treated wastewater from recycled water facilities being beneficially reused and not discharged to ocean outfalls. A complete analysis and summary of the recycled water survey information for 2017 is provided in Attachment B-2, the *Recycled Water Annual Summary Report 2017*.

3. Control of Bird Nuisances at Prima Deshecha Landfill

Staff Contact: Amy Grove

Is eco-friendly bird control the wave of the future for our Region's landfills? For the past four and a half years, Orange County Waste and Recycling (OCWR) has used falcons to control the amount of sea gulls and other birds scavenging at the Prima Deshecha Landfill (Landfill). OCWR began a bird abatement program in October 2013 using falcons as a natural means of keeping sea gulls away from the Landfill. As a bird of prey, falcons are natural predators and effectively discourage sea gulls from returning to the area. To control the scavenging bird population, falcons are flown every 10 to 15 minutes during landfill operating hours. You can watch this eco-friendly bird control method in action on YouTube.¹

Bird control is necessary because sea gulls and other birds can create conditions of nuisance and pollution in the areas surrounding the Landfill that could be harmful to human health and the environment. This occurs when birds pick up trash at the landfill and drop it into adjacent neighborhoods or into the ocean. When the bird population at the Landfill grows, the amount of trash potentially spread into nearby areas increases, which is why it's important to keep the birds away from the Landfill. In addition to the litter problem associated with birds at the Landfill, the trash they carry may contain bacteria and disease could also be spread into the adjacent residential areas through bird droppings.

¹ See the falcon in action on YouTube at: <https://www.youtube.com/watch?v=cRyN8Dikvw>

4. Status Report: Closure of the Forster Canyon Landfill

Staff Contact: Amy Grove

The closure of Forster Canyon Landfill is part of a larger redevelopment project called the Distrito-La Novia Master Planned Community project. Closure of the Landfill will occur in two phases: Phase 1 includes excavation and relocation of 225,000 cubic yards (approximately 30,000 tons) of waste to the front face of the Landfill to comply with the Department of Environmental Health's required 100-foot setback between housing and the Landfill waste footprint; Phase 2 includes construction of a final cover system which incorporates the existing interim cover and adds engineered fill material to achieve a total cover thickness of 4 to 5 feet.



Forster Landfill December 2017

While the San Diego Water Board adopted waste discharge requirements Order No. R9-2016-0149 for the closure and post-closure maintenance and monitoring of the Landfill in December 2016, the County of Orange and Advanced Group 99-SJ (Dischargers) have yet to begin closure of the Landfill. According to an April 2018 project status report, the Dischargers have submitted mass grading plans to the City of San Juan Capistrano for review and anticipate approval of the plans in fall of 2018. The Dischargers expect to initiate earthwork and closure activities in the winter of 2018-2019. In preparation for the associated development project, the Dischargers are working with the County of Orange, City of San Juan Capistrano and San Diego Water Board to develop a hydromodification assessment report and Water Quality Improvement Plan (WQIP) for the project.

5. Lake San Marcos Status Update

Staff Contact: Sarah Mearon

The San Diego Water Board held a public workshop for Lake San Marcos residents and other interested stakeholders at the St. Mark Golf Course on June 13, 2018. The purpose of the workshop was to provide a project update, present the results of recently performed field activities and pilot tests, update the schedule for upcoming work, and provide an opportunity for interested parties to ask questions and provide comments. Board staff and members of the Technical Team representing the lake owner, Citizens Development Corporation (CDC), and four public agencies (San Diego County, Cities of San Marcos and Escondido, and Vallecitos Water District) presented information at the workshop.

Lake San Marcos is impaired by excess phosphorus and nitrogen that result in seasonal lake stratification, excess algal growth, and low dissolved oxygen. Both the lake and San Marcos Creek, which flows into the lake at its north end, are included on the U.S. Environmental Protection Agency Clean Water Act 303(d) list of impaired waters. CDC and the four public agencies are currently working cooperatively to mitigate the causes of nutrient impairment in the lake and watershed and pilot-test cleanup alternatives. Results of the pilot tests will be used to design full-scale remedies for implementation.

Gita Kapahi of the State Water Resources Control Board Office of Public Participation facilitated the workshop. Sarah Mearon, the San Diego Water Board case manager, provided information on the role of the Board, a summary of the case timeline, and Board expectations regarding overall project progress and long-term lake management. Dr. John Wolfe of Limnotech, the primary engineering contractor for the five parties, explained the main project remedies; presented a summary of data collected over the last year from the lake, the Upper San Marcos Creek watershed, and San Marcos Creek downstream of the lake; and outlined upcoming work for the rest of 2018. Planned activities include continuation of pilot testing activities, additional downstream data collection, selective withdrawal system engineering, and initiation of the California Environmental Quality Act (CEQA) process. A fish kill event and increased algal growth were observed in the lake in late May 2018; these observations also were discussed at the workshop. High nutrient levels and higher temperatures are prevalent in the summer months, which, in combination with onset of lake stratification, commonly result in increased algal growth. The algal blooms in turn can contribute to decreased dissolved oxygen levels, which in turn can lead to fish die-off. Fish kills were observed in other Southern California lakes within the same timeframe as that observed at Lake San Marcos.

About 200 people attended the meeting, including Lake San Marcos residents, local agency representatives, and other stakeholders. The biggest concern voiced by the attendees was the desire to accelerate the cleanup process. The audience asked several technical questions regarding the feasibility, remediation timeline, and effectiveness of the proposed cleanup alternatives, as well as the possibility of using other cleanup alternatives that are not being pursued during the current phase of work. Other questions were asked regarding how long-term effectiveness of the remedies will be evaluated. Other attendees asked for additional information on the recent fish kill and its possible link to pesticide and alum treatments that had occurred prior to and following the fish die-off event. Questions were answered by the Technical Team and by Board staff during the question-and-answer period.

Two alum treatments were applied to lake in 2017 and were shown to be successful in removing phosphorus from the lake. Accordingly, a third alum treatment and accompanying algaecide application were proposed for April 2018. Due to delays in funding and permitting, the algaecide application and alum treatment pilot test were instead performed in early June 2018. Post-treatment monitoring is ongoing. Results are pending and will be provided to the San Diego Water Board as they become available.

Project documents and correspondence can be viewed online on Geotracker at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000003261.

6. Next Generation Monitoring Project Status Update

Staff Contact: Sarah Mearon

Traditional monitoring and inspection methods typically require a substantial commitment of staff time. In contrast, modern monitoring methods commonly require fewer human resources and can also expand the San Diego Water Board's reach in space and time via remote monitoring using satellite imagery, drone imagery, and closed-circuit television (CCTV) cameras. The Board hosted an informational item and trade show during the April 2017 Board meeting on the use of modern monitoring and surveillance techniques to support the Board's mission and assist with compliance, monitoring, and enforcement work. Board staff, along with Executive Officer David Gibson and Board Vice Chair Henry Abarbanel, have been working since then on advancing an ambitious Next Generation Monitoring Project into 2018 and beyond.

In the interest of statewide collaboration, the San Diego Water Board, along with the Lahontan Water Board and the San Francisco Bay Water Board, recently kicked off a multi-regional, 3- to 5-year pilot project (Project) to develop and implement a next generation monitoring program that will evaluate the effectiveness of using modern monitoring tools in our regulatory programs. Each participating region will work with a local partner or partners to test one or more technologies to monitor permit compliance, perform enforcement inspections, and identify water quality issues. The San Diego Water Board has prepared a project charter that describes the project scope, outlines the objectives, delineates team member roles and responsibilities, defines the authority of the project manager, and identifies anticipated challenges and risks that may be encountered during project execution. The project will also require development of a Funding Plan. Several funding sources are currently being explored.

Project team members from the three regions have been working collaboratively in the initial planning phase to screen available technologies, identify and evaluate potential vendors and suppliers, and develop agreements with local partners and/or dischargers to pilot-test the technologies on local project sites. The San Diego Water Board is currently in discussions with the City of San Diego to test the use of CCTV cameras and possibly drone imagery at a large construction project.

San Diego Water Board project team members will continue working collaboratively with other Water Board Regions to advance the use of next generation monitoring. Planning and project scoping activities will continue through 2018 and pilot monitoring is anticipated to occur over a 2- to 3-year period and begin as early as 2019, pending securing of funding and partnering agreements.



Photo credit: cnet.com

Adding next generation monitoring technologies to the Water Board's toolbox will enhance the ability of staff to identify, prevent, reduce, and preempt pollution in real time or near real time. The results of the next generation pilot program will be used to propose expansion of use of such technology across all regions to meet the goals of the State Water Resources Control Board (State Water Board) and the Regional Water Boards in protecting water quality and improving enforcement capabilities. It is anticipated that the results will also be used to (1) request that the State Water Board update the general permits and (2) prompt conversations with municipalities to adopt local ordinances that are consistent with the updated general permit requirements to ensure consistency and improve enforcement capabilities across the regulated community.

7. Commercial Agriculture Regulatory Program

Staff Contact: Christina Arias

The Commercial Agriculture Regulatory Program (Program) has been gaining momentum in successfully enrolling non-filers in [Order No. R9-2016-0004](#)² (Order) and compelling them to join one of four Third-Party Groups serving the San Diego Region. With the help of an engineering student assistant, staff has issued ten letters directing non-filers to enroll in the Order since February 2018. The directive letters successfully resulted in four non-filers initiating the enrollment process, while five non-filers still have time remaining to enroll without accruing fines. One non-filer failed to comply and staff is preparing a Notice of Violation for the operation.

Approximately 1,300 agricultural operations, representing 30,000 acres, have enrolled in the Order. The highest Program priority continues to be taking enforcement actions on non-filers, starting with operations located in watersheds upstream of surface waters impaired for nutrients or eutrophic conditions. The Program has reached out to local storm water managers, in addition to the Third-Party Groups, to assist with educating growers within their jurisdictions about the need to enroll in the Order.

² *General Waste Discharge Requirements for Discharges from Commercial Agricultural Operations for Dischargers that are Members of a Third-Party Group in the San Diego Region*

Program staff is in the process of reviewing the Third-Party Groups' Monitoring and Reporting Program Plans, which were required by the Order. Staff has provided comments to the San Diego Region Irrigated Lands Group and the De Luz Ag Group, and are preparing comments for the Upper Santa Margarita Lands Group and Frog Environmental Group. Once accepted by the San Diego Water Board, the Third-Party Groups must implement their monitoring plans within 90 days.

Staff is also reviewing the individual growers' submittals. The Order requires each grower to submit a Water Quality Protection Plan and a map indicating the locations of their property boundaries, operations, water flow directions, growing areas, material storage, and any other details necessary to evaluate potential threats to water quality. Many enrolled operations have not submitted all the required information. Staff has identified recurring deficiencies in the information provided by the growers and will provide a description of the deficiencies to the Third-Party Groups so they can assist their growers in correcting the issues.

8. Status of Claude "Bud" Lewis Carlsbad Desalination Plant NPDES Permit Reissuance

Staff Contact: Ben Neill

This report provides a monthly status update on the San Diego Water Board's review of [Poseidon Resources \(Channelside\) LLC's](#) (Poseidon) Report of Waste Discharge (ROWD) application for reissuance of the National Pollutant Discharge Elimination System (NPDES) permit for the [Claude "Bud" Lewis Carlsbad Desalination Plant \(CDP\)](#) and the development of the draft NPDES permit. The reissuance of the NPDES permit for the CDP is a high priority for the San Diego Water Board and the State Water Board (collectively referred to as Water Boards). Following is an update on a key activity since the [previous Executive Officer Report](#) update³.

Chapter III.M.2.a(1) of the California Ocean Plan provides that regional water boards may require an owner or operator of a desalination facility to hire a neutral third party entity to review studies and models and make recommendations to the boards regarding a Water Code section 13142.5(b) determination for the best available site, design, technology and mitigation measures feasible to minimize the intake and mortality of all forms of marine life at new or expanded desalination facilities. On May 11, 2018, the Science Advisory Panel (SAP) held their initial meeting to begin discussion and review of three topics designated by the San Diego Water Board pertaining to: 1) biological performance standards; 2) calculation of marine life impacts; and 3) comparison of intake screen locations. The SAP consists of Dr. Pete Raimondi, professor and chair of the Department of Ecology and Evolutionary Biology at the University of California (UC) Santa Cruz; Dr. Richard Ambrose, professor at the Department of Environmental Health Sciences at UC Los Angeles; and Dr. Brett Sanders, professor and chair of the Department of Civil and Environmental Engineering at UC Irvine. The SAP review is expected to take approximately two months, and their response to these topics will be provided to San Diego Water Board members and all interested persons as part of the CDP NPDES permit reissuance proceedings.

³ Additional information regarding the CDP can be found in Executive Officer Reports for [May 2018](#), [April 2018](#), [February 2018](#), [December 2017](#), [October 2017](#), [September 2017](#), [August 2017](#), [June 2017](#), [April 2017](#), [February 2017](#), [December 2016](#), [November 2016](#), [October 2016](#), [September 2016](#), [August 2016](#), [May 2016](#), [December 2015](#), [September 2015](#), and [June 2015](#).

Background

Poseidon owns and operates the CDP subject to waste discharge requirements established by the San Diego Water Board in NPDES Permit No. CA0109223, Order No. R9-2006-0065. Order No. R9-2006-0065 expired in 2011, but remains in effect under an administrative extension until the reissued NPDES permit supersedes it. The CDP is located adjacent to the Encina Power Station (owned by [NRG Energy](#)) on the southern shore of the [Agua Hedionda Lagoon](#) in Carlsbad, California. The CDP is the nation's largest seawater desalination plant. On November 9, 2015, the CDP began potable water production providing up to 50 million gallons of drinking water per day to customers within the SDCWA service area. The CDP currently intakes source water from Agua Hedionda Lagoon through the existing Encina Power Station discharge structure.

The San Diego Water Board has developed a dedicated website to inform the public about the NPDES permit reissuance for the CDP:

http://www.waterboards.ca.gov/sandiego/water_issues/programs/regulatory/carlsbad_desalination.shtml.

In addition, an email list is available for interested persons to subscribe to at this website:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg9_subscribe.shtml.

9. Enforcement Actions for April 2018 (*Attachment B-9*)

Staff Contact: Chiara Clemente

During the month of April 2018, the San Diego Water Board issued 26 Staff Enforcement Letters. A summary of each enforcement action taken is provided in the attached Table (Attachment B-9). The State Water Board's [Enforcement Policy](#) contains a brief description of the kinds of enforcement actions the Water Boards can take.

Additional information on violations, enforcement actions, and mandatory minimum penalties is available to the public from the following on-line sources:

State Water Board Office of Enforcement webpage:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/

California Integrated Water Quality System (CIWQS):

http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml

State Water Board GeoTracker database: <https://geotracker.waterboards.ca.gov/>

10. Sanitary Sewer Overflows and Transboundary Flows from Mexico in the San Diego Region – March 2018 (*Attachment B-10*)

Staff Contact: Keith Yaeger

Sanitary sewer overflow (SSO) discharges from sewage collection systems and private laterals, and transboundary flows from Mexico into the San Diego Region can contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oil, and grease. SSO discharges and transboundary flows can pollute surface and ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters. Typical impacts of SSO discharges and transboundary flows include the closure of beaches and other recreational areas, the inundation of property, and the pollution of rivers and streams.

Sanitary Sewer Overflows (SSOs)

State agencies, municipalities, counties, districts, and other entities (collectively referred to as public entities) that own or operate sewage collection systems report SSO spills through an on-line database system, the *California Integrated Water Quality System (CIWQS)*. These spill reports are required under the [Statewide General SSO Order](#)⁴, the [Regional General SSO Order](#)⁵, and/or individual National Pollutant Discharge Elimination System (NPDES) permit requirements. Some federal entities⁶ report this information voluntarily. Most SSO reports are available to the public on a real-time basis at the following State Water Board webpage:

https://ciwqs.waterboards.ca.gov/ciwqs/readOnly/PublicReportSSOServlet?reportAction=criteria&reportId=sso_main.

Details on the reported SSOs are provided in the following attached tables (Attachment B-10):

- Table 1: March 2018 - Summary of Public and Federal Sanitary Sewer Overflows in the San Diego Region.
- Table 2: March 2018 - Summary of Private Lateral Sewage Discharges in the San Diego Region.

A summary view of information on SSO trends is provided in the following attached figures (Attachment B-10):

- Figure 1: Number of SSOs per Month
- Figure 2: Volume of SSOs per Month

These figures show the number and total volume of sewage spills per month from March 2017 to March 2018. During this period, 38 of the 50 collection systems regulated under the SSO Program reported one or more sewage spills. Twelve collection systems did not report any sewage spills. A total of 324 sewage spills were reported during this one-year period and approximately 230,000 gallons of sewage reached surface waters.

Additional information about the San Diego Water Board sewage overflow regulatory program is available at http://www.waterboards.ca.gov/sandiego/water_issues/programs/sso/index.shtml.

Transboundary Flows

Water and wastewater in the Tijuana River and from several canyons located along the international border ultimately drain from Tijuana, Mexico into the U.S. The water and wastewater flows are collectively referred to as transboundary flows. The U.S. Section of the International Boundary and Water Commission (USIBWC) has built canyon collectors to capture dry weather transboundary flows from some of the canyons for treatment at the South Bay International Wastewater Treatment Plant (SBIWTP) in San Diego County at the U.S./Mexico border. Dry weather transboundary flows that are not captured by the canyon collectors for treatment at the SBIWTP, such as flows within the main channel of the Tijuana River, are reported by the USIBWC pursuant to [Order No. R9-2014-0009](#), the NPDES

⁴ State Water Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* as amended by Order No. WQ 2013-0058-EXEC, *Amending Monitoring and Reporting Program for Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*.

⁵ San Diego Water Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*.

⁶ Marine Corp Base Camp Pendleton reports sewage spills to CIWQS as required by its individual NPDES permit, Order No. R9-2013-0112, NPDES Permit No. CA0109347, *Waste Discharge Requirements for the Marine Corps Base, Camp Pendleton, Southern Regional Tertiary Treatment Plant and Advanced Water Treatment Plant, Discharge to the Pacific Ocean via the Oceanside Ocean Outfall*. The U.S. Marine Corps Recruit Depot and the U.S. Navy voluntarily report sewage spills through CIWQS.

permit for the SBIWTP discharge. These uncaptured flows can enter waters of the U.S. and/or State, potentially polluting the Tijuana River Valley and Estuary, and south San Diego beach coastal waters.

Details on the reported transboundary flows are provided in the attached tables (Attachment B-10):

- Table 3: March 2018 - Summary of Transboundary Flows from Mexico into the San Diego Region.

According to the 1944 *Water Treaty for the Utilization of Waters of the Colorado and Tijuana Rivers and of the Rio Grande* and stipulations established in [IBWC Minute No. 283](#), the USIBWC and the Comisión Internacional de Límites y Aguas (CILA)⁷ share responsibility for addressing border sanitation problems, including transboundary flows. Efforts on both sides of the border have led to the construction and ongoing operation of several pump stations and treatment plants to reduce the frequency, volume, and pollutant levels of transboundary flows. This infrastructure includes but is not limited to the following:

- The SBIWTP, located just north of the U.S./Mexico border, provides secondary treatment for a portion of the sewage from Tijuana, Mexico and dry weather runoff collected from a series of canyon collectors located in Smuggler Gulch, Goat Canyon, Canyon del Sol, Stewart's Drain, and Silva Drain. The secondary-treated wastewater is discharged to the Pacific Ocean through the South Bay Ocean Outfall, in accordance with Order No. R9-2014-0009, NPDES No. CA0108928.
- Several pump stations and wastewater treatment plants in Tijuana, Mexico.
- The River Diversion Structure and Pump Station CILA in Tijuana divert dry weather flows from the Tijuana River. The flows are diverted to a Pacific Ocean shoreline discharge point approximately 5.6 miles south of the U.S./Mexico border, or can be diverted to SBIWTP or another wastewater treatment plant in Tijuana, depending on how Tijuana's public utility department (CESPT) configures the collection system. The River Diversion Structure is not designed to collect wet weather river flows and any river flows over 1,000 liters per second (35.3 cubic feet per second).

Additional information about sewage pollution within the Tijuana River Watershed is available at https://www.waterboards.ca.gov/sandiego/water_issues/programs/tijuana_river_valley_strategy/sewage_issue.html.

Part C – Statewide Issues of Importance to the San Diego Region

1. Vehicle Dismantler Industry Strike Team

Staff Contact: Whitney Ghoram

The State of California is actively confronting the problem of unlicensed vehicle dismantling. Governor Edmund G. Brown Jr. signed Assembly Bill 1858 in September 2016, requiring the California Department of Motor Vehicles (DMV) to collaborate with representatives from six State agencies, including the Regional Water Boards, and investigate unlicensed and unregulated vehicle dismantling. This law also established the multiagency Vehicle Dismantler Industry Strike Team (VDIST) tasked with enforcement, investigating environmental damage, tax evasion, and public harm that occurs because of unlicensed vehicle dismantling.

San Diego Water Board staff member Whitney Ghoram participated in a VDIST tactical operation in late January 2018 to conduct unannounced vehicle dismantler business inspections at Pogo Row located in Otay Mesa, just north of Brown Field Airport in the City of San Diego. DMV's VDIST included representatives from the County of San Diego Department of Environmental Health (DEH) Hazardous Materials Division and District Attorney Office; the City of San Diego's Attorney Office; and the San Diego Water Board. The San Diego Water

⁷ The Mexican section of the IBWC.

Board's role was to identify violations of the statewide Industrial General Storm Water Permit. Seven (7) sites were identified as non-compliant with various provisions of the storm water permit.



Pogo Road Dismantler Operations separated into Four Inspection Quadrants

A total of 52 automotive businesses were inspected. The large parcels of land inspected were subdivided up into over one hundred smaller fenced sections of rented spaces/land. Some of the businesses are unlicensed, known to store stolen vehicles and parts, and chronic violators of water quality and hazardous waste laws. DMV issued citations to 23 businesses for unlicensed dismantling activities or unlicensed auto repair activities.



Engine fluid carelessly drained to the floor raising potential for discharge to reach ground or the storm drain.

Of the 52 businesses, at least 12 were observed to be generating hazardous waste without a Unified Program Facility Permit and 7 were observed to be in violation of storm water permit requirements. A



Dismantled car parts leaking fluid to ground, and improperly stored waste.

full and joint follow-up inspection will be conducted at these specific locations by County of San Diego DEH Hazardous Materials Division and the San Diego Water Board soon.

NBC 7 news report on the Pogo Row Operation:

<https://www.nbcsandiego.com/news/local/Dozens-of-Otay-Mesa-Businesses-Cited-in-Chop-Shop-Crackdown-471191953.html>

2. New Statewide Water Conservation Laws

Staff Contact: Brandi Outwin-Beals

Governor Jerry Brown signed [Senate Bill 606](#) (Hertzberg) and [Assembly Bill 1668](#) (Friedman) into law on May 31, 2018. These two bills, which are double joined, provide changes in statute necessary to help implement the Governor's Executive Order B-37-16 entitled [Making Conservation a California Way of Life](#), and the [Administration's framework](#) for implementing the Executive Order. The laws will go into effect in January 2019. Key provisions of the bills are summarized below.

The bills establish an indoor residential water use standard of 55 gallons per capita daily (GPCD) until January 1, 2025. Beginning January 1, 2025, until January 1, 2030, the bills establish an indoor residential water use standard of 52.5 GPCD and beginning January 1, 2030, establish an indoor residential water use standard of 50 GPCD. Based on current indoor water use averages, most Californians already meet these goals. The bills also provide the State Water Resources Control Board (State Water Board), in coordination with the California Department of Water Resources (DWR), with one-time-only authority to adopt long-term standards for the efficient use of water by June 30, 2022, including outdoor residential and irrigation use, variances, and performance measures for commercial, institutional, and industrial water use.

The bills outline conservation mandates for water districts and municipalities, requiring water suppliers to set annual water budgets based on objectives that implement efficient water use standards still to be adopted by the State Water Board. The objectives are to be comprised of indoor residential water use, outdoor residential water use, outdoor irrigation of landscape areas with dedicated irrigation meters, in connection with commercial, institutional, and industrial water use, and a volume for water loss due to leakage rates in the distribution system. The objectives will vary by locality, depending on regional climate and other factors to account for unique circumstances.

The bills also require agricultural water suppliers to expand the scope of agricultural water management plans to include 1) an annual water budget based on the quantification of all inflow and outflow components for the service area of the agricultural water supplier and 2) a drought plan describing the actions of the agricultural water supplier for drought preparedness and management of water supplies and allocations during drought conditions. The bills establish a process for DWR review of the plans.

The State Water Board and DWR have significant roles in implementing the bills. The framework for the implementation and oversight of the water conservation goals must be in place by 2022. The bills establish a process for progressive enforcement and penalty authority to assess if water suppliers fail to submit required information or meet water use objectives.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

SAN DIEGO REGION

**Significant NPDES Permits,
WDRs, and Actions of the
San Diego Water Board**

June 20, 2018

APPENDED TO EXECUTIVE OFFICER'S REPORT

TENTATIVE SCHEDULE
SIGNIFICANT NPDES PERMITS, WDRS, AND ACTIONS
OF THE SAN DIEGO WATER BOARD

Action Agenda Item	Action Type	Draft Complete	Written Comments Due	Consent Item
July 2018 <i>No Meeting Scheduled</i>				
August 8, 2018 <i>San Diego Water Board</i>				
Annual Update on the Healthy Waters Strategy for San Diego Bay <i>(Chiu)</i>	Workshop	NA	NA	NA
Report on 2014 Triennial Review Project to Evaluate Water Contact Recreation (REC-1) Water Quality Objectives and Methods for Quantifying Exceedances <i>(Santillan)</i>	Informational	99%	NA	NA
Tentative Investigative Order to Quantify Sources of Human Waste in to the San Diego River <i>(Mitchell)</i>	Investigative Order Issuance	90%	20-Jun-2018	No
September 12, 2018 <i>Fallbrook Public Utilities Department</i>				
Update by the City of San Diego on Construction Site Oversight <i>(Walsh)</i>	Informational Item	NA	NA	NA
San Luis Rey Wastewater Treatment Plant, City of Oceanside, San Diego County <i>(Cali)</i>	Master Recycling Permit Reissuance	95%	3-Aug-2018	Yes
NPDES Permit Reissuance for the Encina Wastewater Authority, Encina Water Pollution Control Facility, Encina Ocean Outfall <i>(Lim)</i>	Permit Reissuance	75%	TBD	Yes
NPDES Permit Reissuance for San Diego Gas and Electric, Palomar Energy Center, Encina Ocean Outfall <i>(Lim)</i>	Permit Reissuance	50%	TBD	Yes
NPDES Permit Reissuance for Stone Brewing Company, Encina Ocean Outfall <i>(Lim)</i>	Permit Reissuance	50%	TBD	Yes
Resolution Adopting the Triennial Review of the Basin Plan <i>(Ebsen)</i>	Resolution	10%	TBD	No

Requested Agenda Item	Board Member	Status
June 24, 2015		
Gary Strawn would like more information on how to address low dissolved oxygen conditions in the San Diego River.	Strawn	
Informational item about how the Board deals with high levels of naturally occurring elements in groundwater when they interact with other uses.	Olson	
August 12, 2015		
Informational item on the data that supports the Basin Plan WQOs.	Olson	
December 16, 2015		
Workshop on the status of restoration and land acquisition efforts along the San Diego River.	Strawn	
August 10, 2016		
Informational item before the Board on the SCCWRP Flow Recovery Project once their report is available.	Strawn	
March 15, 2017		
Information item regarding impacts of population dynamics on water quality	Olson	
Clarify operation of value for beneficial uses.	Abarbanel	
June 21, 2017		
San Diego Water Board to partner with the San Diego Unified Port District in planning and conducting additional and more focused outreach meetings with stakeholder groups on San Diego Bay water quality issues and environmental justice issues.	Abarbanel	
San Diego Water Board to provide an opportunity for San Diego Unified Port District participation in analysis of the data from the San Diego Bay Fish Consumption Study.	Abarbanel	
San Diego Unified Port District report back to San Diego Water Board on the steps the Port District is taking in their decision-making on San Diego Bay projects to ensure "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values..."	Abarbanel	
San Diego Water Board to support and encourage the San Diego Unified Port District participation in the Southern California Coastal Water Research Project (SCCWRP) so that the Port District can be a recipient of the water quality science research conducted by SCCWRP.	Abarbanel	
September 13, 2017		
A future board meeting will include an agenda item on how best to amend the WDRs.	Abarbanel	
December 13, 2017		
Gary Strawn wants an Informational Item on the low dissolved oxygen issues in the San Diego River. In particular, he wants to know more about the aerators added to the river. He would like the San Diego River Park Foundation and the San Diego River Conservancy to attend and possibly present information	Strawn	
February 14, 2018		
The Board's Tentative Resolution on Climate Change to include a request to obtain a climate scientist as part of the San Diego Water Board staff.	Abarbanel	
April 11, 2018		
Identify and review current proposed legislation related to homeless populations and related issues	Olson	
Provide an update on storage of radioactive materials at the San Onofre Nuclear Generating Station (SONGS)	Warren	June 20, 2018 Board Meeting
Provide an update on SONGS' preparation for impacts of climate change, particularly from sea level rise.	Abarbanel	June 20, 2018 Board Meeting
Formation of a "Volunteer Climate Science Advisory Panel" to inform board staff of the latest climate science; to consist of members from the Scripps Institution of Oceanography, the Southern California Coastal Research Project, San Diego State University, the University of California at Irvine, and possibly from the San Francisco Estuary Institute.	Abarbanel	
Do "more" for environmental justice; work with the recently formed Office of Environmental Justice at the Attorney General. Provide a background report regarding the possibility.	Abarbanel	
Future Executive Officer's Reports to clearly explain the opportunity to comment on the proposed enforcement priorities for the coming year.	Warren	
May 9, 2018		
Letter to State Water Resources Control Board Executive Director Eileen Sobock and Board Member Joaquin Esquivel requesting a response to questions posed to Mr. Esquivel by members of the San Diego Water Board at the April 2018 Board Meeting. The letter is to be signed by Chair Morales and Vice Chair Abarbanel.	Abarbanel	
Provide an off-cycle update to the Clean Water Act Section 305(b) and 303(d) Integrated Report (which includes the list of impaired waters). Further, use data submitted to the Board up to six months prior to the time of adoption of the next regularly scheduled Integrated Report.		
Provide a complete list of all action items requested by the Board.	Morales	
Reach out to the Mayor of Temecula about possible attendance at the October Water Quality Coordinating Committee meeting in Sacramento.	Abarbanel	
Provide statistics regarding homeless in the San Diego Region. The list will include health impacts and associated illnesses, along with the number of camps, campers, and the amount of trash.	Olson	
Provide a report on what portion of channels in Southern Orange County have been adopted already.	Olson	
Send a response to CalEPA's comment letter asking for the establishment of a climate change panel in each Region and asking to create a hiring classification for climate scientists, to be equal to geologists, engineers, and other scientists.	Abarbanel	

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Superior Court of California
County of San Diego
05/17/2018 at 03:55:00 PM
Clerk of the Superior Court
By Ines Quirarte, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

SAN ALTOS-LEMON GROVE, LLC,
Petitioner,

v.

**CALIFORNIA REGIONAL WATER
QUALITY CONTROL BOARD, SAN
DIEGO REGION,**
Respondent.

Case No. 37-2017-00012461-CU-WM-CTL

[PROPOSED] AM NQ Q JUDGMENT

Date: April 23, 2018
Time: 9:00 a.m.
Dept: C-65
Judge: The Honorable Joan M. Lewis
Action Filed: April 7, 2017

The above-entitled action came on regularly for hearing on April 23, 2018 in Department 65, Judge Joan M. Lewis presiding, on a Petition for Writ of Mandate (Writ Petition) filed by Petitioner San Altos-Lemon Grove, LLC (Petitioner). The Writ Petition was filed pursuant to section 1094.5 of the Code of Civil Procedure, challenging the imposition of \$595,367.00 in administrative civil liability issued pursuant to Water Code section 13323. Petitioner was represented by Walter E. Rusinek of Procopio, Cory, Hargreaves & Savitch. Respondent

1 Regional Water Quality Control Board, San Diego Region, was represented by Deputy Attorney
2 General Kathryn M. Megli.

3 The record of the administrative proceedings was received into evidence and examined by
4 the Court. The Court also reviewed the written briefings submitted by the parties on the Writ
5 Petition, and heard oral argument. At the conclusion of the hearing, the Court determined an
6 April 17, 2018 tentative Minute Order as amended would become the final order of the Court. A
7 full, true and correct copy of the Court's final April 23, 2018 Minute Order denying the Writ
8 Petition is attached to this Judgment as Exhibit "1." In accordance with the April 23, 2018
9 Minute Order and for the reasons stated in the Minute Order, and for good cause appearing,
10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

11 The Petition for Writ of Mandate is DENIED.

12
13 Dated: May 17, 2018



14 JOAN M. LEWIS
15 JUDGE OF THE SUPERIOR COURT

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EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO

Attachment B-1

CENTRAL

MINUTE ORDER

DATE: 04/23/2018

TIME: 09:00:00 AM

DEPT: C-65

JUDICIAL OFFICER PRESIDING: Joan M. Lewis

CLERK: Lori Urie

REPORTER/ERM: Johnell Gallivan CSR# 10505

BAILIFF/COURT ATTENDANT: J. Arnold

CASE NO: **37-2017-00012461-CU-WM-CTL**CASE !NIT.DATE: 04/07/2017

CASE TITLE: **San Altos-Lemon Grove LLC vs. California Regional Water Quality Control Board
San Diego Region [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT TYPE: Hearing on Petition

APPEARANCES

WALTER E RUSINEK, counsel, present for Petitioner(s).

Kathryn M Megli, counsel, present for Respondent(s).

Attorney Catherine Hagan is also appearing for respondent.

The Court hears oral argument and CONFIRMS the tentative ruling as follows:

First Amended Petition for Writ of Mandate

The operative pleading in this case is San Altos' First Amended Petition for Writ of Mandate brought pursuant to CCP Sec. 1094.5. By way of this writ petition, San Altos challenges an order issued by the Respondent Regional Water Quality Control Board - San Diego Region ("Board") imposing \$595,575 in administrative civil liability against San Altos pursuant to Water Code Sec. 13323.

Petitioner's prayer sought a peremptory writ of mandate pursuant to CCP Sec. 1094.5 directing the Board to take one of the following actions: (1) vacate the final order entirely and dismiss all allegations against San Altos; or (2) vacate the final order entirely and issue a new order that complies with the rulings of this Court on legal and evidentiary issues; or (3) vacate the final order and schedule a rehearing of the matter that affords San Altos the opportunity to take additional discovery as needed related to the allegations prior to the hearing and the opportunity to present its case in full at the hearing.

Background

In this case, San Altos was issued a Construction General Stormwater Permit ("CGP" or "Permit") for a project in the City of Lemon Grove ("Lemon Grove" or the "City"). According to San Altos, the project at issue was the construction of 73 affordable homes for middle class families on approximately 18 acres of

undeveloped land in Lemon Grove.

San Altos constructed homes under a Permit that was adopted by the State Water Resources Control Board (State Board), which authorizes storm water discharges associated with construction activity provided other permit requirements are followed. The Permit regulates discharges of pollutants in stormwater (and authorized non-stormwater discharges) associated with construction activities to Waters of the United States ("WOUS"). In the permit application process, San Altos identified its project as a "Risk Level 2" construction site, acknowledging any discharges from the site would likely result in discharges into impaired water bodies covered by the Clean Water Act ("CWA"). The water ways near the construction site were Encanto Channel ("Channel") and Chollas Creek ("Creek"). Based on evidence presented at the administrative hearing and under the applicable methodology, the Board assessed a penalty using established penalty multipliers associated with statutory factors. The Board reduced the ACL penalty by roughly thirty percent, from the \$848,374.00 penalty recommended by the Prosecution Team, to \$595,367.00 after finding some alleged violations were not adequately supported.

This dispute generally concerns the Board's findings that San Altos did not exercise appropriate Best Management Practices ("BMPs") and, as a result, issued the penalties for those alleged violations of BMPs.

The underlying complaint ("Administrative Civil Liability" or "ACL") was initiated against San Altos by the Board pursuant to Water Code Sec. 13323. ("(a) Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article") The ACL concerned charges that San Altos had violated the Clean Water Act during its construction of the project.

With respect to any penalty to be imposed, Water Code Sec. 13385 sets forth the factors to be considered:

(e) in determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at level that recovers the economic benefits, if any, derive from the acts that constitute the violation.

The Water Quality Enforcement Policy (the "Policy")

In addition to Water Code Sec. 13385(e), guiding the Board in this case is a "Water Quality Enforcement Policy" (the "Policy"). The Policy is 40 pages long and provides various instructions and methodologies for penalties to be assessed by the Board. The Policy "[e]stablishes an administrative civil liability methodology to create a fair and consistent statewide approach to liability assessment. Liabilities imposed by the Board must [b]e assessed in a fair and consistent manner."

What the Board Did

On October 19, 2015, the Board served San Altos with the ACL and a 71-page Technical Analysis ("TA") and other attachments. The hearing was held on March 9, 2016. After the hearing, the Board directed

the Prosecution Team ("PT") to prepare and submit an amended TA showing in "redline" the supplemental evidence that been submitted at the hearing (over San Altos' objections). On July 20, 2016, the Board issued a Tentative Order ("TO") allowing comments on "factual errors" to be made.

San Altos complains that although the TO reduced the assessed liability, it increased the average penalty for each violation and changed various factors used to identify the harm, culpability and other criteria employed under the Policy to calculate liability.

In arriving at the penalties assessed, the Board had before it various documents and testimony. Included was its staffs TA and then later, the Amended Technical Analysis ("ATA"). There were photographs of the site and testimony as to what was observed. After the hearing, the Board issued a 27-page order outlining the various violations it found against San Altos. There were a total of 13 violations with many of the violations covering several days. Attached to the order, was a 41-page "Penalty Methodology Decisions" where the Board essentially examined each of the 13 violations utilizing the various steps and factors that the Policy dictate should be followed in assessing penalties.

All but a small number of the penalties (San Altos calculates it to be 95%) were imposed for "non-discharge" violations. The remaining violations were for six days where the Board contended that San Altos actually caused a discharge into the WOUS.

Standard of Review

In its opening brief, Petitioner suggests that the Court should exercise its independent judgment on the evidence, meaning - according to San Altos - that the Court must make "its own independent findings of fact", quoting *Harlow v. Carleson* (1976) 6 Cal.3d 731, 735, and exercise its independent judgment on issues of law.

In its opposition, the Board argues that it is not the independent judgment test that applies but, rather, the substantial evidence standard is utilized. The Board explains that "[w]hen, as here, an ACL complaint is issued and adjudicated under section 13323, the substantial evidence standard applies to the trial court's review of an ACL order. (Sec. 13330(e).)"

In its reply, San Altos seems to almost concede that the substantial evidence test would apply here but argues that if statutes and precedent are to be interpreted the trial court would still exercise its independent judgment. ("The RB argues that the substantial evidence test applies here. Even if it does, the trial court still 'exercises independent judgment on pure questions of law, including the interpretation of statutes and judicial precedent.' (*McAllister v. California Coastal Comm'n* (2008) 169 Cal.App.4th 912, 921.)")

Water Code Sec. 13330(e) states:

Except as provided in this section, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section. For the purposes of subdivision (c) of Section 1094.5 of the code of Civil Procedure, **the court shall exercise its independent judgment on the evidence in any case involving the judicial review of a decision or order of the state board issued under Section 13320, or a decision or order of a regional board for which the state board denies review under Section 13320, other than a decision or order issued under Section 13323.** (Emphasis added.)

The challenge here is of the Board's decision issued under Section 13323 and the standard of review would be substantial evidence, not independent judgment. (Although the Court would agree with San Altos that for any questions of law the Court would exercise its independent judgment.)

Due Process Arguments

The writ petition raises various arguments, including that San Altos was denied certain due process rights.

In this regard, San Altos makes various arguments.

Included was that one day before San Altos' initial brief was due, the PT requested it be allowed to submit new evidence which the Advisory Team allowed. Additionally, San Altos claims the "prejudice increased" when the AT barred San Altos from additional discovery on the basis that it could use some of the 90 minutes allotted San Altos to present its case to the Board to cross-examine the PT about the new evidence.

Then, at the hearing, San Altos also complains that the PT added 10 new exhibits not included in the OAC and relied on at least 27 more photos not identified before as supporting any of the allegations.

San Altos' principal complaints appear to be that the Board (1) directed the PT to prepare and submit an amended TA showing in "redline" the supplemental evidence (Exs. 32-41) on which it had relied to support the claims and that the Amended TA added new exhibits; and (2) increased certain factors to calculate liability after the hearing.

Insofar as the Board's adjustment of the factors after the hearing, the Court agrees with the Board that San Altos had notice after the hearing was closed that the Board could "affirm, reject, or *modify*" the proposed penalty. (Emphasis added.) San Altos argues that the language utilized actually stated that "at the hearing" (San Altos' emphasis) the Board "will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter for judicial civil action." San Altos takes the position that if there is to be a modification it must be done "at the hearing." The Court rejects that interpretation. Under San Altos' analysis, if the Board had decided - after taking the matter under submission - to reject the proposed assessment (as San Altos would presumably desire) such action would not be effective because it occurred after the hearing. There is no logical basis for concluding that any available action to the Board must be taken only at the time of the hearing.

Also with respect to changing the factors, in its reply San Altos relied on *Tafti v. County of Tulare* (2011) 198 Cal.App.4th 891. San Altos noted that in *Tafti* the court of appeal eliminated additional penalties imposed after an administrative hearing because the petitioner (Mr. Tafti) had not been given adequate notice that such an increase could occur. According to San Altos, "[t]hat happened here as well, and based on *Tafti* and basic due process and fairness consideration, the court should reduce the additional liability that was assessed in the Order."

Tafti is distinguishable. In *Tafti*, Mr. Tafti was assessed penalties of \$138,824 with respect to underground gasoline storage tanks on his property. In the enforcement order imposing those penalties was the following language under the heading "right to hearing," - "[Appellant] may request a hearing *to challenge the Order.*" (Court of appeal's emphasis.) The appellant challenged the order but instead of simply considering the appropriateness of the penalties assessed Mr. Tafti, the ALJ calculated penalties against him to be \$1,148,200. In other words, Mr. Tafti's challenge to the \$138,824 in penalties was

resolved at the hearing by an increase of over a million dollars in penalties.

The *Tafti* court held "that respondent failed to provide adequate notice to appellant concerning the nature of the administrative hearing involved. In particular, it was unclear whether the hearing would simply be an opportunity to challenge the factual basis - i.e., the merits - of the allegations in the enforcement Order; or conversely, whether the hearing would decide anew the full amount of the appropriate civil penalties, thereby subjecting appellant to the potential of increased civil penalties above and beyond what was determined in the Enforcement Order. We think that basic fairness requires that when a party is ordered by an agency to pay substantial civil penalties, but is given a right to request an administrative hearing concerning said order, the party should be informed of which type of hearing is contemplated so that he or she will be able to ascertain what is at stake and intelligently decide on whether or not to request the hearing "

That is unlike this case where San Altos was informed that if it elected to proceed to a public hearing, the Board would "accept testimony, public comment, and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial action."

Finally, as to San Altos' arguments that certain evidence was admitted in violation of its due process rights, it was not clear how any of this evidence prejudiced San Altos. Moreover, to the extent San Altos could demonstrate some prejudice, the Court is of the opinion that the only remedy would be to remand for further proceedings. Although *Tafti* found remand not appropriate, the facts of that case are unique and do not dictate that remand here would not be appropriate (assuming San Altos could otherwise show a due process violation and prejudice therefrom).

The Court tentatively finds there were no due process violations that prejudiced San Altos.

San Altos claims WOUS Were Not Impacted/Exhaustion of Administrative Remedies

San Altos argues that the record shows that the order by the Board was improper because the PT provided no evidence that either the Channel or Creek, which the order claims were impacted by discharges from the site and threatened by the inadequate BMPs, is a WOUS. Because, according to San Altos, neither the Channel nor the Creek were WOUS, it would be legally impossible for the Board to impose liability under Water Code Sec. 13385.

San Altos states that "[b]ecause the RB failed to prove that either the Channel or the Creek is a WUS, it cannot seek penalties under Section 13385 for the alleged violations. The Court should issue a writ directing the Board to rescind its decision based on that failure alone."

In opposition, the Board responds, in part, that San Altos failed to exhaust its administrative remedies as to this argument because the issue was not raised before the Board.

In reply to this argument San Altos states that whether or not the Channel or the Creek is a WOUS under Sec. 13385 is jurisdictional and cannot be waived. As support, San Altos cited to *Gilliland v. Medical Bpt,8rd of California* (2001) 89 Cal.App.4th 208 and *Buckley v. California Coastal Com.* (1998) 63 Cal.App.4 178.

The Court finds both cases distinguishable.

In *Gilliland*, the challenged action was the Medical Board's decision to impose a penalty on the two

petitioners (Dr. Gilliland and Jose Rivera). The court of appeal noted that the statute under which the Board had fined the petitioners specified that the action must be brought by the Attorney General. The court held that "since the Attorney General is only a party in an action in court, the Board did not have jurisdiction to impose a penalty under this statute in an administrative proceeding."

In the *Buckley* case, the Coastal Commission had denied the Buckleys' request for a permit to develop a lot in Malibu. The Commission, however, was found to not have jurisdiction over the Buckleys' lot. The Commission had argued a failure to exhaust administrative remedies of this issue. The court of appeal rejected that argument because "[t]he rule of exhaustion of administrative remedies does not apply where the subject matter lies outside the administrative agency's jurisdiction."

Unlike *Gilliland* and *Buckley* where the agencies lacked jurisdiction, the Board here has jurisdiction over violations pursuant to Water Code Sec. 13385. Subdiv. (e) of that statute specifically grants the Board the powers to impose penalties. ("In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account ...")

Whether or not the Channel or Creek were WOUS was simply a factual issue that, under exhaustion of administrative remedies principles, should have been raised at the time of the administrative hearing if San Altos did not believe these were WOUS.

Other Exhaustion of Remedies Arguments

The Board also argued that San Altos failed to exhaust its administrative remedies in two other respects. First, as to its claim that the Board violated the Policy and/or Sec. 13385(e) factors. Second, as to its argument that the Board imposed significant penalties for non-discharge events.

The Court agrees with San Altos that its challenges to the assessed liability were sufficient to exhaust its administrative remedies and therefore rejects the Board's arguments as to these issues.

Other Board Proceedings

The Policy makes clear that it wants enforcement actions to be consistent. For example, the Policy states that "It is the policy of the State Water Board that the Water Boards shall strive to be fair, firm, and consistent in taking enforcement actions throughout the State, while recognizing the unique facts of each case." In the "Introduction" to the Policy, it also states that the Policy "[e]stablishes an administrative civil liability assessment methodology to create a fair and consistent statewide approach to liability assessment."

San Altos contends that to determine whether there is consistency, the Court should look at orders in other arguably similar matters. Specifically, San Altos cites to actions in the areas of Escondido, Encinitas, Irvine Ranch, San Diego and Scripps Mesa.

The Court disagrees with San Altos.

It is the Court's opinion that the consistency sought was to be obtained by utilizing the methodologies, definitions, etc., as found *in the Policy*, not in other matters before the Board (or other Boards).

The first paragraph of the Policy includes the following language:

... In adopting this Policy, the State Water Board intends to provide guidance that will enable Water Board staff to expend its limited resources in ways that openly address the greatest needs, deter harmful conduct, protect the public, and achieve maximum water quality benefits. Toward that end, it is the intent of the State Water Board that the Regional Water Boards' decisions be consistent with this Policy."

(Emphasis added.)

The Policy could have said that the "decisions be consistent with other decisions" but it did not. Instead, the desired consistency is obtained through use of the methodologies set forth in the Policy.

Additionally, the Court agrees with the Board that to look at other orders (without a full record of the underlying acts) would be going outside the administrative record.

The Court concludes that other ACL actions are not relevant to this dispute.

The Violations

The following violations were found for the stated number of days and penalties assessed in the amounts indicated.

- Unauthorized discharge of sediment (6 days) [\$29,822];
- Failure to implement material stockpile BMPs (8 days) [\$41,860];
- Failure to implement vehicle fluid leak BMPs (2 days) [\$8,750];
- Failure to implement erosion control BMPs in inactive areas (22 days) [\$195,105];
- Failure to implement perimeter sediment control BMPs (4 days) [\$23,660];
- Failure to implement erosion control BMPs in active areas (11 days) [\$97,190];
- Failure to apply linear sediment control (5 days) [\$45,730];
- Failure to manage run-on and runoff (2 days) [\$15,730];
- Failure to remove sediment or other construction materials from roads (10 days) [\$80,785];
- Failure to protect storm drain inlets (2 days) [\$14,550];
- Failure to contain and securely protect stockpiled waste material from wind and rain (1 day) [\$3,575];
- Failure to properly store chemicals (7 days) [\$35,035]; and
- Failure to prevent discharge of concrete waste to the ground (1 day) [\$3,575].

In opposing the writ petition, the Board submitted a 25-page chart that was neither part of the administrative record nor mentioned in its brief. The chart struck the Court as being somewhat similar to a separate statement in support of a motion for summary judgment - i.e., the citation to evidence that supported the Board's findings.

Because the Court was concerned that this was argumenUevidence outside the pleadings or record, it scheduled an ex parte with counsel to discuss the chart. At the April 4, 2018 ex parte, the Board's counsel explained that this document was simply a chart reflecting what evidence the Board had cited in its order in support of its findings. At that hearing, the Court expressed its belief that the chart was helpful and allowed San Altos to file a responsive document.

In ruling on this matter, the Court has reviewed the administrative record and also utilized the Board's chart and San Altos' response thereto (with the exceptions of the two exhibits stricken - - see ruling on request to strike, discussed below).

San Altos challenged various findings made by the Board concerning the violations and, as well, the factors utilized for certain violations.

As indicated above, the Court adjudicates this matter by applying the substantial evidence standard. "Substantial evidence has been defined as relevant evidence that a reasonable mind might accept as adequate support for a conclusion. (*Goggin v. State Personnel Bd.* [(1984) 156 Cal.App.3d 96, 102].) A presumption exists that an administrative action was supported by substantial evidence. (*Barnes v. Personnel Department* (1978) 87 Cal.App.3d 502, 502 [151 Cal.Rptr. 94].) The burden is on the appellant to show there is no substantial evidence whatsoever to support the findings of the District. (*Pescosolido v. Smith* (1983) 142 Cal.App.3d 964, 970 [191 Cal.Rptr. 415].)" *Taylor Bus Serv. v. San Diego Bd. of Educ.* (1987) 195 Cal.App.3d 1331, 1340-41.

The administrative record and the resulting order in this case were extremely detailed. Having conducted its review of this matter, the Court finds San Altos did not meet its burden to show there was no substantial evidence whatsoever to support the Board's findings. In fact, the Court finds the opposite to be true - that there was substantial evidence to support the Board's findings of violations and its calculation of penalties as to each of the 13 violations. The Court concludes that the evidence further supports a finding that the Board utilized all relevant factors required under both the law and the Policy.

This includes findings of actual discharge on six days (December 4, 12, 17 and 31, 2014; May 8, 2015 and September 15, 2015).

With the exception of Violation No. 1 (the six days of actual discharge), the remaining violations were for "non-discharge" events. Again, the Court finds the record supports the Board's findings of violations and penalties assessed therefor.

Besides utilizing factors higher than San Altos believed appropriate, San Altos also took exception to other portions of the Board's findings.

Included was the Board's finding of a failure by San Altos to install BMPs in "active" areas for the dates of December 2-16, 2014. San Altos argues these areas cannot be "active" areas of construction because of a Stop-Work Order ("SWO") issued by the City on December 2.

The Court rejects San Altos' argument. As the Board noted in opposition, the Permit defines "active areas of construction" as "all areas subject to land disturbance activities . . . All previously active areas are still considered active areas until final stabilization is complete." Once San Altos disturbed the soil, the site was "active" until final stabilization was complete. The Court also agrees with the Board's argument that the SWO only stopped *construction*, it did not relieve San Altos of its obligation to implement BMPs to comply with the Permit.

Moreover, as the Board also noted, roads on the site were being used to access areas where the BMPs were being implemented. Therefore, even though the SWOs were in place, San Altos was working in December to bring the site within Permit-required BMPs and therefore it was "active."

San Altos also challenged the violations concerning "inactive areas." San Altos' argument appears to be (1) findings with respect to certain dates in May of 2015 are not supported because there were no site inspections on May 9-12 and May 14; and (2) the violations for "inactive" areas in December is inconsistent with the Board's findings of violations for "active" areas for those same dates.

The Court agrees with the Board that the closeness of time between inspections and observations during May supports the inference that the same violations occurring on dates of inspection were similarly occurring on May 9-12 and May 14.

And, with respect to there being violations for active and inactive areas at the same time, the Court saw no persuasive argument that a construction site could not simultaneously contain both an active area and an inactive area.

San Altos also complained that Violation No. 2 ("Failure to Implement Material Stockpile BMPs") was improper because, according to San Altos, the Board relied on standards not identified in the Permit.

Attachment D "Risk Level 2 Requirements" to the Permit provides under Section B "Good Site Management 'Housekeeping'" that "At a minimum, Risk Level 2 dischargers shall implement the following good housekeeping measures:" "[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.)"

It is undisputed that the term "actively being used" is not defined.

San Altos contends the Board's interpretation of "actively being used" is unreasonable and, instead, tries to incorporate language from other portions of the permit concerning "inactive areas of construction" to support its argument that stockpiles should only be required to be covered where they are not scheduled to be re-disturbed for at least 14 days.

The Court agrees with the Board that the interpretation urged by San Altos is inconsistent with the intent and the purpose of the Permit to prevent sediment from leaving the site.

And, the Court again finds that any days of violations not personally observed by inspection are supported by inferences given the brief time period between actual inspections and observations of violations.

Board's Objection and Request Strike Documents Attached to the Notice of Lodgment filed by San Altos on April 10, 2018

The request to strike Exs. A and B to Ex. 1 is granted. The remaining requests are denied.

Request for Judicial Notice

San Altos requested judicial notice of "attached decisions of the California Regional Water Quality Control Boards." No documents were attached to the request for judicial notice. The Court presumes that these documents were what was submitted as Exs. A through D (A, Escondido; B, Scripps Mesa; C, City of San Diego; and D, Irvine Ranch) as courtesy copies.

The Board objected to the Court taking judicial notice.

As indicated above, the Court finds that decisions in other Water Board cases are not relevant.

The request for judicial notice is denied.

Summary of Ruling

The petition for writ of mandate is denied.

The Court instructs counsel to pick up the administrative record by 4/24/18. The Court releases binders to the tendering parties.

Respondent is to give notice.

Joan M. Lewis

Judge Joan M. Lewis

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **San Altos-Lemon Grove, LLC v. Regional Water Board-San Diego, et al.**
 No.: **37-2017-00012461-CU-WM-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **May 2, 2018**, I served the attached:

[PROPOSED] AMENDED JUDGMENT

by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Walter E. Rusinek
 Laurence R. Philips
 PROCOPIO CORY HARGREAVES & SAVITCH
 12544 High Bluff Drive, Suite 300
 San Diego, CA 92130

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **May 2, 2018**, at San Diego, California.

 Linda Jean Fraley
 Declarant


 Signature

California Regional Water Quality Control Board, San Diego Region Recycled Water Annual Summary Report 2017

California must diversify its water supply sources to meet the needs of a growing population. Importing water to meet demand is not sustainable due to significant drought conditions, climate change, fluctuations in the volume and quality of source water available, increasing population of water consumers in the State, and complex legal issues. Maximizing recycled water beneficial use is an important part of a diversified and sustainable water supply for the San Diego Water Board Region (Region).

“Recycled water use” is defined as a use that replaces the use of potable water. The goals of the State’s Recycled Water Policy¹ include an increase in the total recycled water use in California by 1 million acre-feet per year by 2020 and 2 million acre-feet per year by 2030². For reference, the average family of four uses 0.45 acre-feet (ac-ft) of water each year.

The *Recycled Water Annual Summary Report* raises awareness of the production of recycled water as a resource in the Region and provides Board members, water purveyors, and the public with a region-wide summary of the volume of recycled water reused, volume of treated wastewater disposed, and quality of recycled water resources available for reuse in the Region. Information analyzed in this report comes from a regional survey of recycled water facilities.

Thirty-one recycled water facilities in the Region reported that in 2017 they treated over 91,000 acre-feet of wastewater, of which over 30,000 acre-feet was either discharged to ocean outfalls or disposed of by other methods (Table 1). Recycled water use site information for 2017 indicates over 51,000 acre-feet of recycled water was beneficially reused in the Region. This volume of recycled water equates to approximately 56 percent of the total treated wastewater produced by recycled water facilities. The total volume of recycled water that was beneficially reused in 2017 decreased by 6,600 acre-feet compared to 2016, a decrease of 12 percent. This decrease is likely attributed to the large rain events that occurred in early 2017, which lead to the discharges of treated waste water to ocean outfalls to ensure adequate capacity in the recycled water storage ponds.

Year	# of Facilities Reporting	Total Vol. Treated (ac-ft)	Volume Disposed (ac-ft)	Volume Reused (ac-ft)	Percent Reused (ac-ft)
2009	29	104,777	49,376	54,928	52%
2010	27	74,043	32,449	41,594	56%
2011	30	109,764	62,913	48,955	45%
2012	29	104,791	38,480	57,397	55%
2013	29	91,704	33,301	58,454	64%
2014	30	106,013	27,951	61,161	58%
2015	30	96,483	32,605	55,408	57%
2016	30	102,606	28,418	57,780	56%
2017	31	91,384	30,261	51,205	56%

¹ http://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2013/rs2013_0003_a.pdf

² The goals in the Recycled Water Policy are based on 2002 recycled water reuse volumes.

Additional recycled water use site information regarding the number of use sites, number of inspections, and compliance with applicable permits is summarized in Table 2 below.

Table 2	2016	2017	Difference
Recycled water use sites	6,168	6,042	-126
Number of inspections	5,262	5,088	-174
Number of sites with violations	689 violations at 201 sites	371 violations at 238 sites	318 fewer overall violations at 37 more sites

The number of inspected recycled water use sites with violations increased by 18 percent in 2017 (Table 3). Typical violations included broken sprinkler heads, broken pipes, over-spray of application areas, ponding, unapproved modifications, and runoff of recycled water at reuse sites.

Table 3. Recycled Water Use Site Survey								
Reported User Data								
Year	# of Sites	Total Reuse (ac-ft)	Average Reuse (ac-ft)	Median Reuse (ac-ft)	# Inspections	# Sites Inspected	# Violations	# Sites with Violations
2009	3,981	40,764	10.2	3.8	4,403	2,303	405	72
2010	4,095	42,142	10.3	3.2	3,380	2,430	66	33
2011	4,360	42,415	9.7	2.9	4,105	2,995	341	53
2012	4,376	55,069	12.6	3.2*	4,282	2,693	605	142
2013	5,358	57,223	10.7	3.6*	4,740	3,179	721	150
2014	5,659	62,925	11.1	3.88	5,154	4,076	520	169
2015	5,956	52,525	8.8	2.9	4,889	3,172	620	158
2016	6,168	48,286	7.9	2.8	5,262	3,322	689	201
2017	6,042	51,205	8.5	3.0	5,088	2,885	371	238

* median calculation does not include data from Moulton Niguel Water District

Recycled water quality showed some minor fluctuations in 2017, but remained within the historical averages. The average concentration of chloride, sulfate, and total dissolved solids (TDS) in the potable water sources decreased in 2017 (Table 4). Decreases were also observed in the average concentrations of TDS and chloride in recycled water in 2017. Increased concentrations of manganese, nitrate, total nitrogen, iron, and sulfate in recycled water were reported in 2017 (Table 5). Selected water quality data from 2014 to 2017 for 16 wastewater treatment facilities are shown in Figures 2, 4, 5, 7, and 9, at the end of this report. Overall, recycled water quality met discharge specifications across the Region.

Average Source Water Quality			
Year	TDS (mg/L)	Chloride (mg/L)	Sulfate (mg/L)
2011	578	120	150
2012	440	83	135
2013	586	105	164
2014	613	110	178
2015	608	100	205
2016	625	117	212
2017	499	92	170

Year	TDS (mg/L)	Chloride (mg/L)	Sulfate (mg/L)	Percent Sodium (%)	Nitrate (mg/L)	Total Nitrogen (mg/L)	Iron (mg/L)	Manganese (mg/L)	MBAS (mg/L)	Boron (mg/L)	Turbidity Daily Avg (NTU)	Fluoride (mg/L)
2011	796	208	186	48.3	16.6	11.5	0.12	0.05	0.14	0.37	0.9	0.62
2012	775	209	188	51.0	11.0	10.3	0.83	0.04	0.13	0.41	1.0	0.68
2013	794	201	194	55.4	15.0	9.0	0.09	0.04	0.12	0.37	1.0	0.67
2014	859	210	218	51.4	17.1	10.4	0.08	0.05	0.13	0.37	1.0	0.69
2015	922	244	240	60.9	15.7	15.3	0.10	0.04	0.11	0.37	0.9	0.66
2016	890	222	231	55.0	18.3	14.6	0.33	0.04	0.14	0.39	1.0	0.69
2017	770	224	187	59.9	25.0	23.1	0.42	0.06	0.22	0.37	0.9	0.68

TDS= Total dissolved solids; MBAS= Methylene blue-activated substances

The San Diego Water Board regulates the production and discharge of recycled water through waste discharge requirements, master reclamation permits, water reclamation requirements, and statewide General Orders ³ (collectively referred to as “permits”), and conditional waivers of waste discharge requirements. Master reclamation permits are useful tools for promoting recycled water use by allowing the producer to regulate its users, rather than requiring each user to obtain separate requirements from the San Diego Water Board or the State Water Board.

Many areas of the Region are precluded from receiving a regular supply of recycled water for landscape irrigation because of the lack of conveyance systems which is highlighted in Table 6. Recycled water produced in the Region is largely conveyed to use areas through pipelines exclusively used for recycled water, commonly referred to as “purple pipes.” Many potential users are unable to receive recycled water because use areas are located too far from a recycled water pipeline. The cost of adding pipeline often prevents users from switching to recycled water from potable water. For example, the City of San Diego has stated that the cost of building conveyance facilities to bring recycled water to Balboa Park and the San Diego Zoo for landscape irrigation is cost prohibitive. However, low-interest loans and grants for planning, design, and construction of water recycling projects may be available from the California Water Recycling Funding Program (CWRFP).⁴ A small percentage of those remote recycled water use

³ General Order [WQ 2014-0068-DDW](#) for Recycled Water Discharges.

⁴ California Water Recycling Funding Program:

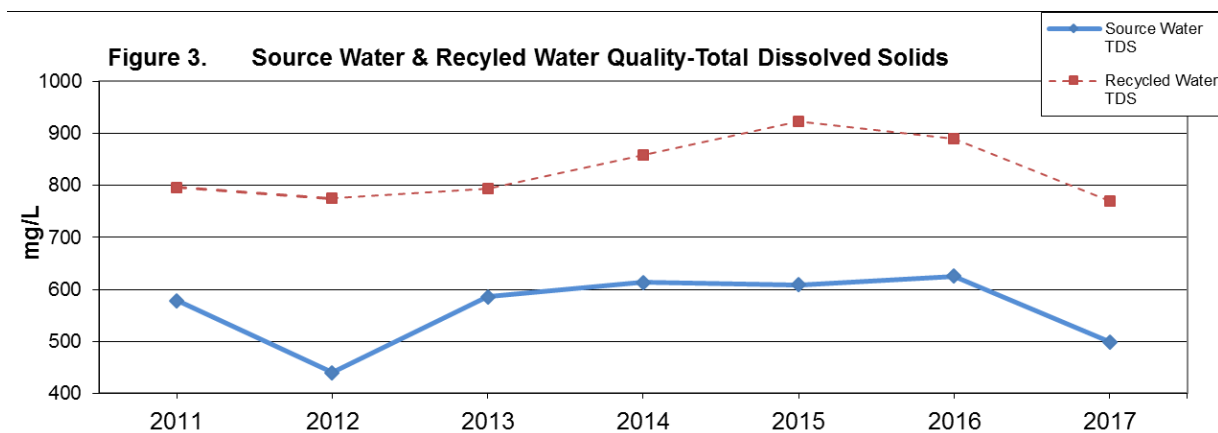
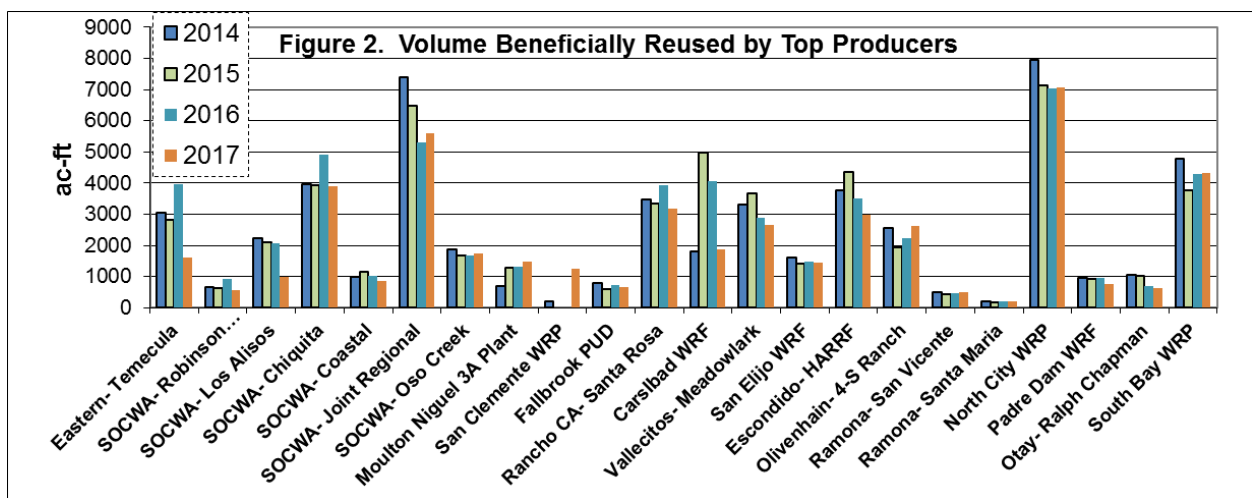
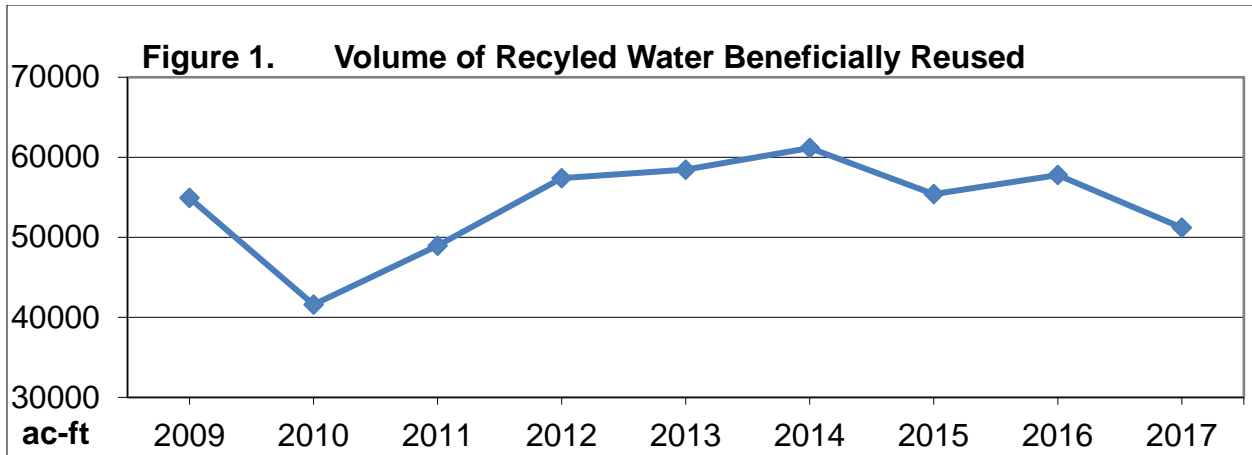
https://www.waterboards.ca.gov/water_issues/programs/grants_loans/water_recycling/proposition1_funding.shtml

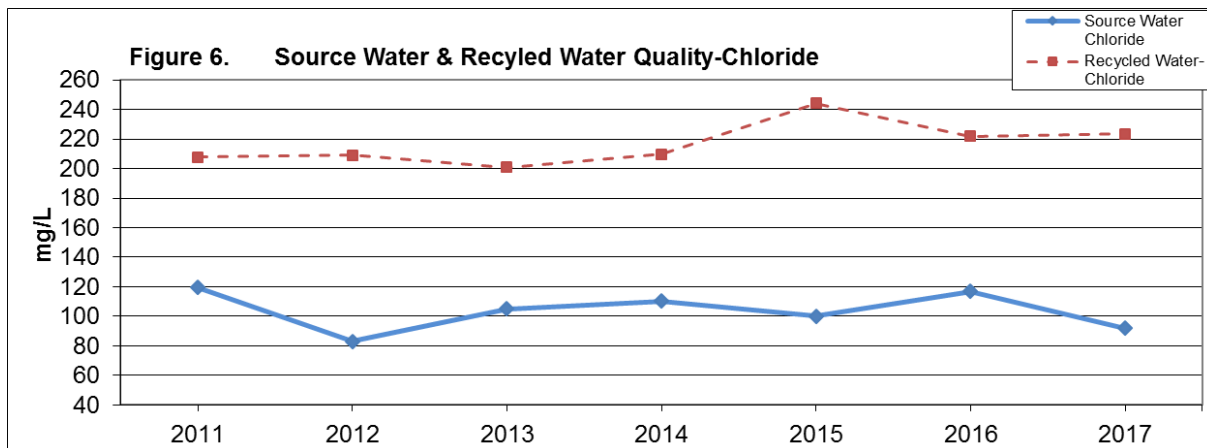
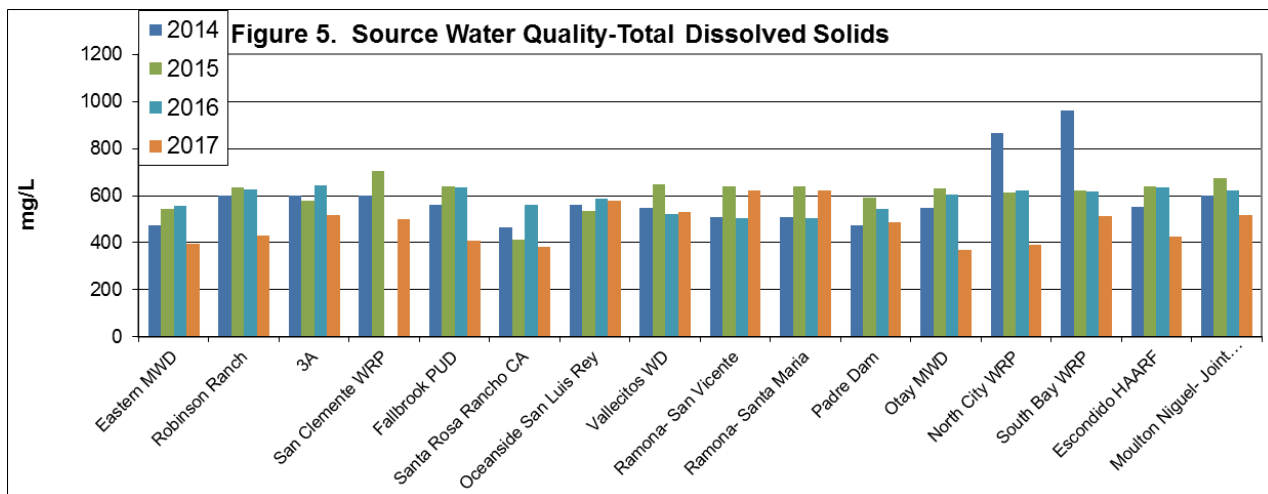
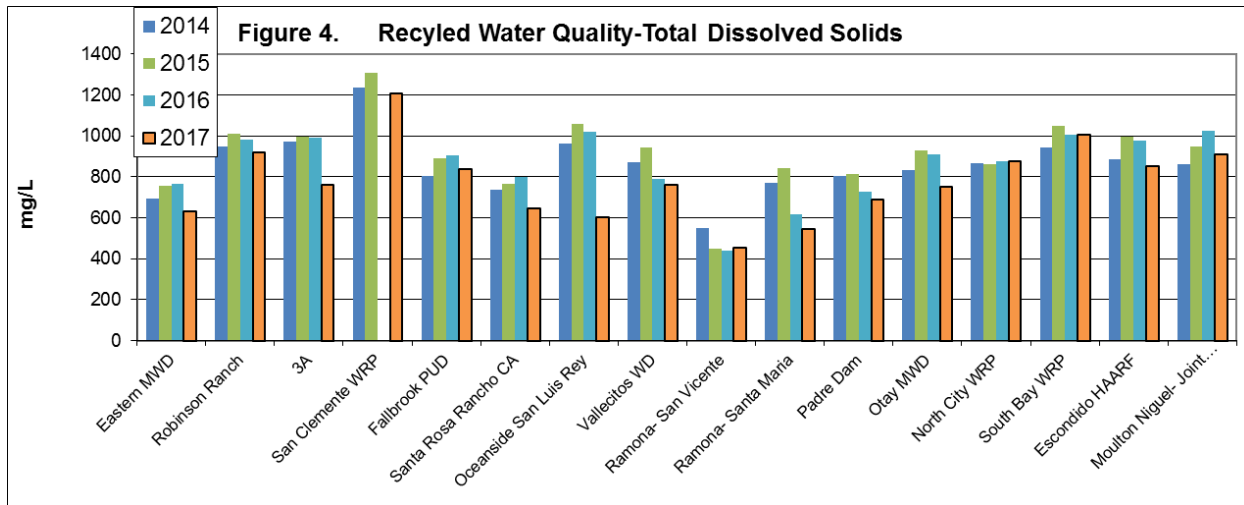
sites may be served by recycled water filling stations where recycled water can be collected and trucked to the site.

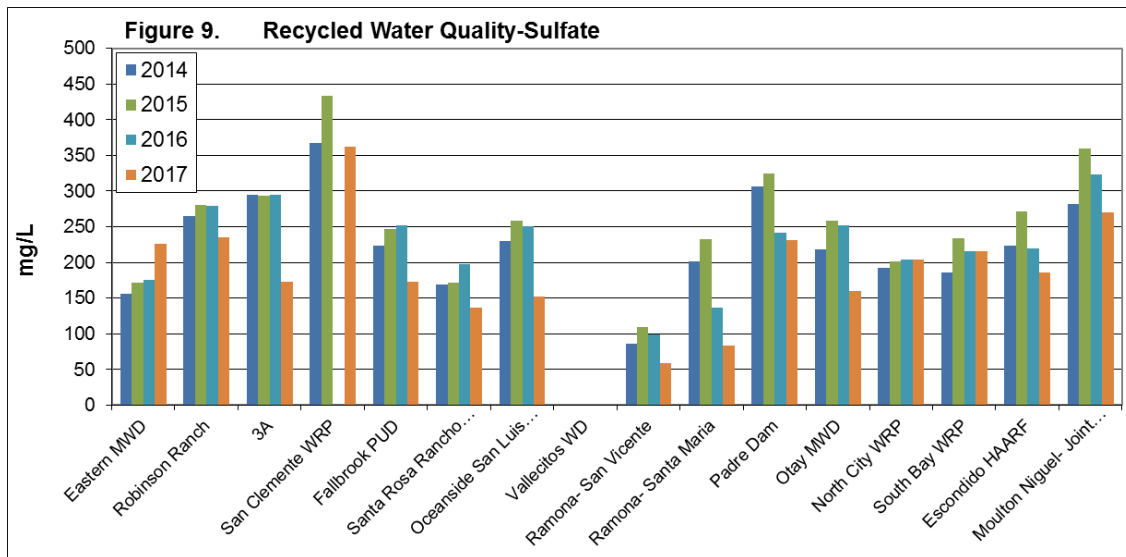
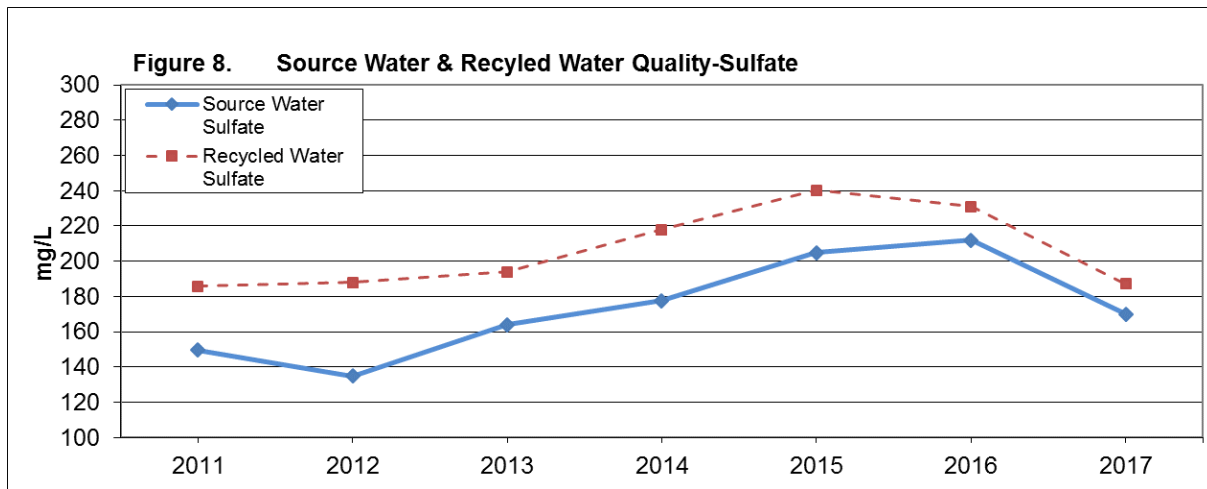
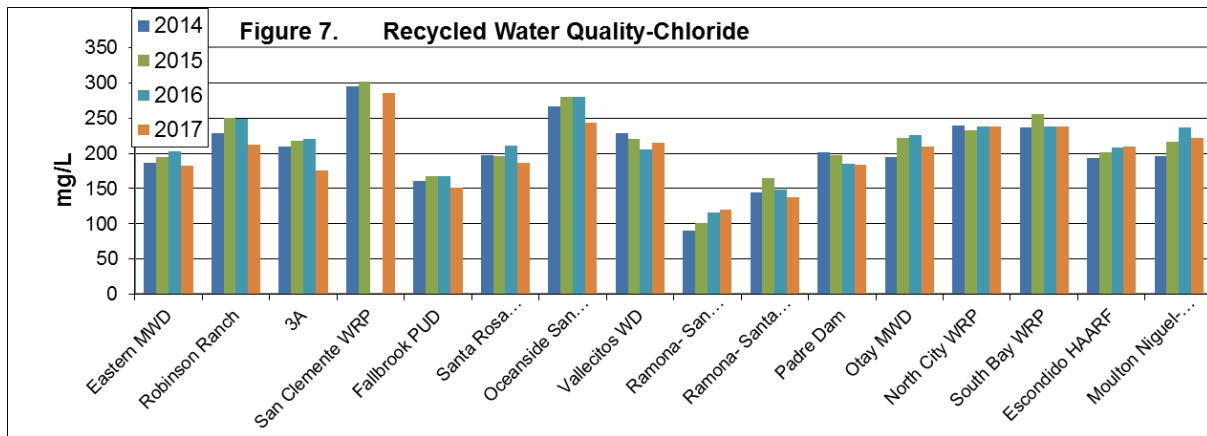
Year	901 San Juan	902 Santa Margarita	903 San Luis Rey	904 Carlsbad	905 San Dieguito	906 Penasquitos	907 San Diego	908 Pueblo	909 Sweet- water	910 Otay	911 Tijuana
2009	14,539	2,917	313	4,827	2,839	7,413	1,346	0	1,661	2,815	1,477
2010	13,919	2,968	1,074	5,895	3,085	6,473	678	0	1,237	2,372	NR
2011	12,425	5,676	1,101	3,600	2,693	7,677	687	0	1,269	2,396	4,582
2012	10,235	6,421	1,351	8,311	3,299	12,744	1,296	0	2,308	4,458	4,644
2013	16,553	6,227	1,365	9,251	2,849	8,749	782	0	1,517	2,738	4,328
2014	17,520	6,996	1,072	9,627	3,296	9,211	1436	0	1,690	2,866	4,719
2015	15,559	4,823	1,323	11,321	2,681	7,533	1,067	0	1,307	2,321	3,774
2016	16,272	5,231	1,337	7,958	1,659	7,245	829	0	706	2,138	4,287
2017	14,926	6,765	1,394	8,930	2,439	7,562	1,331	0	919	1,678	4,308

The last major challenge remaining to enhance regional uses of recycled water is developing, constructing, permitting, and implementing potable reuse projects. Publicly Owned Treatment Works experience time periods when there is a low demand for recycled water, and with limited storage capacity, treated wastewater must be discharged to ocean outfalls. Regulations for surface water augmentation (SWA) were recently adopted by the State Water Board in March 2018. With the adoption of the SWA regulations, viable projects planned in the Region have the potential to decrease disposal of excess treated wastewater to the ocean and increase the amount of treated wastewater that is beneficial reused.

The San Diego Water Board continues to work with the recycled water agencies to ensure consistent and efficient gathering and reporting of the data included in the annual survey. All comparisons are approximations due to variations in measuring, gathering, and reporting the volume of recycled water and uncertainties regarding the purveyance of recycled water across jurisdictional areas of the San Diego and Santa Ana Water Boards.







Enforcement Actions for April 2018

Enforcement Date	Enforcement Action	Entity/ Facility/ Location	Summary of Violations and Enforcement	Applicable Permit/Order Violated
4/3/2018	Staff Enforcement Letter	City of Oceanside Public Works Dept., La Salina Wastewater Treatment Plant	Inadequate Storm Water Pollution Prevention Plan (SWPPP), deficient Best Management Practices (BMPs), and unauthorized discharge	National Pollutant Discharge Elimination System (NPDES) Industrial General Permit Order No. 2014-0057-DWQ
4/12/2018	Staff Enforcement Letter	Bosa Development California II Inc., Bosa Lot, San Diego	Missing and late submittal of self-monitoring reports for groundwater extraction	NPDES Permit and General Waste Discharge Requirements for Groundwater Extraction Discharges to Surface Waters within the San Diego Region Order No. R9-2015-0013
4/12/2018	Staff Enforcement Letter	Alvarado Hospital Medical Center, San Diego	Missing and late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/12/2018	Staff Enforcement Letter	Alexan Project, K Street Apartment Investors, LLC, Carlsbad	Missing submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013

Enforcement Actions for April 2018

Enforcement Date	Enforcement Action	Entity/ Facility/ Location	Summary of Violations and Enforcement	Applicable Permit/Order Violated
4/12/2018	Staff Enforcement Letter	ABP Capital, LLC, Encinitas	Missing and late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/12/2018	Staff Enforcement Letter	Development Wood Partners, LLC, Pacific Highway, Irvine	Missing and late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	California Department of Transportation (Caltrans), Interstate 5 North Coast Corridor, Solana Beach Project, Solana Beach	Late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	LMI Little Italy Holdings LLC, 1440 Columbia Street, San Diego	Late and deficient submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	City of Coronado, Coronado County Club	Late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013

Enforcement Actions for April 2018

Enforcement Date	Enforcement Action	Entity/ Facility/ Location	Summary of Violations and Enforcement	Applicable Permit/Order Violated
4/13/2018	Staff Enforcement Letter	Rancho Mission Viejo, Planning Area 2 and Cow Camp Rd., Orange County	Late and deficient submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	City of Carlsbad, Foxes Landing Sewer Lift Station, Carlsbad	Missing submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	T Brook LLC, GW Extraction, iFly, Oceanside	Late and deficient submittal of self-monitoring reports for groundwater extraction and exceedances of effluent limitations for toxicity	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	SFPP, L.P. Operating partnership of Kinder Morgan Energy Partners, L.P., Mission Valley Terminal, San Diego	Late and deficient submittal of self-monitoring reports for groundwater extraction and exceedances of effluent limitations for toxicity	NPDES General Permit Order No. R9-2015-0013

Enforcement Actions for April 2018

Enforcement Date	Enforcement Action	Entity/ Facility/ Location	Summary of Violations and Enforcement	Applicable Permit/Order Violated
4/13/2018	Staff Enforcement Letter	Pinnacle Bayside Development US L.P., GW Extraction, San Diego	Late and deficient submittal of self-monitoring reports for groundwater extraction and exceedances of effluent limitations for toxicity	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	Pinnacle 11 th Ave Broadway U.S. LLC & Pinnacle, San Diego	Late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	Promenade Mall Development Corp, GW Extraction, Promenade at Pacific Beach, San Diego	Missing and late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	U.S. General Services Administration, San Ysidro Land Port of Entry, Phase II, San Diego	Late submittal of self-monitoring report for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/13/2018	Staff Enforcement Letter	LPP Lane Field, LLC, Lane Field South Hotel, San Diego	Late and deficient submittal of self-monitoring reports for groundwater extraction and exceedances of effluent limitations for toxicity	NPDES General Permit Order No. R9-2015-0013

Enforcement Actions for April 2018

Enforcement Date	Enforcement Action	Entity/ Facility/ Location	Summary of Violations and Enforcement	Applicable Permit/Order Violated
4/13/2018	Staff Enforcement Letter	Richard J Donovan Correctional Facility, Phase II Small MS4	Failure to submit annual reports	NPDES Phase II Municipal General Permit Order No. 2013-0001-DWQ
4/13/2018	Staff Enforcement Letter	City of San Diego Engineering Capital Projects Department, Sunset Cliffs Natural Park Hillside Improvements Phase II, San Diego	Deficient BMPs	NPDES Construction General Permit Order No. 2009-0009-DWQ
4/16/2018	Staff Enforcement Letter	LMC East Village I Holdings, LLC, Little Italy, San Diego	Deficient submittal of self-monitoring reports for groundwater extraction and exceedances of effluent limitations for flow and toxicity	NPDES General Permit Order No. R9-2015-0013
4/17/2018	Staff Enforcement Letter	U.S. General Services Administration, San Ysidro Land Port of Entry Phase III, San Diego	Deficient, missing, and late submittal of self-monitoring reports for groundwater extraction and exceedances of effluent manganese and toxicity limits	NPDES General Permit Order No. R9-2015-0013

Enforcement Actions for April 2018

Enforcement Date	Enforcement Action	Entity/ Facility/ Location	Summary of Violations and Enforcement	Applicable Permit/Order Violated
4/17/2018	Staff Enforcement Letter	San Marcos City, Las Posas Reach Flood Protection, San Marcos	Deficient and late submittal of self-monitoring reports for groundwater extraction	NPDES General Permit Order No. R9-2015-0013
4/17/2018	Staff Enforcement Letter	Las Vegas Sunset Properties A Nevada Corp, La Media Stockpile, San Diego	Deficient BMPs	NPDES Construction General Permit Order No. 2009-0009-DWQ
4/20/18	Staff Enforcement Letter	Rainbow Valley Nursery	Failure to submit a Notice of Intent; discharging without a permit	Order No. R9-2016-0004; General Waste Discharge Requirements (WDR) for Commercial Agricultural Operations
4/20/18	Staff Enforcement Letter	Orfila Winery and Vineyard	Failure to submit a Notice of Intent; discharging without a permit	Order No. R9-2016-0004; General WDR for Commercial Agricultural Operations

Table 1: March 2018 - Summary of Public and Federal Sanitary Sewer Overflows in the San Diego Region

Responsible Agency	Collection System (CS)	Total Volume ¹	Total Recovered ²	Total Reaching Surface Waters ³	Total Reaching Separate Storm Drain and Recovered ⁴	Total Discharged to Land ⁵	Percent Recovered	Percent Reaching Surface Waters	Percent Reaching Separate Storm Drain and Recovered	Percent Discharged to Land	Surface Water Body Affected	Miles of Pressure Sewer	Miles of Gravity Sewer	Population in Service Area
		(Gallons)					(%)							
Carlsbad Municipal Water District (MWD)	Carlsbad MWD CS	3,000	3,000	0	0	3,000	100%	0%	0%	100%	-	4.5	282.0	69,750
Coronado City	City of Coronado CS	850	25	825	25	0	3%	97%	3%	0%	Glorietta Bay	6.6	39.3	24,697
El Toro Water District	El Toro Water District R9 CS	40	0	40	0	0	0%	100%	0%	0%	Aliso Creek	6.0	118.0	48,461
National City	National City CS	51,000	21,500	29,500	2,500	19,000	42%	58%	5%	37%	Sweetwater River	1.0	105.0	58,967
Padre Dam Municipal Water District	Padre Dam CS	421	421	0	0	421	100%	0%	0%	100%	-	4.6	161.0	69,957
Poway City	City of Poway CS	136	136	0	67	69	100%	0%	0%	100%	-	3.5	185.0	44,006
		30	1	0	1	29	100%	0%	49%	51%	-			
		109	0	0	0	109	0%	0%	0%	100%	-			
San Diego City (City Attorney's Office at Civic Center Plaza)	San Diego City CS	1,400	1,400	0	0	1,400	100%	0%	0%	100%	-	153.7	3,021.1	2,207,591
		420	300	0	0	420	71%	0%	0%	100%	-			
		3,520	1,600	0	0	3,520	45%	0%	0%	100%	-			
		660	660	0	0	660	100%	0%	0%	100%	-			
		30,200	27,700	0	0	30,200	92%	0%	0%	100%	-			
San Diego County Dept. of Public Works	County of San Diego CS	20	20	0	0	20	100%	0%	0%	100%	-	10.0	408.0	35,567
San Juan Capistrano City	City of San Juan Capistrano CS	210	210	0	10	200	100%	0%	5%	95%	-	0.4	128.0	40,000
Santa Margarita Water District	Santa Margarita Water District CS	2,850	2,850	0	0	2,850	100%	0%	0%	100%	-	14.0	615.0	155,000
UC San Diego	UC San Diego CS	6	5	0	0	6	83%	0%	0%	100%	-	0.5	25.0	57,000
		2	2	0	0	2	100%	0%	0%	100%	-			
US Marine Corps Base Camp Pendleton	USMC Base Camp Pendleton CS	20	20	0	0	20	100%	0%	0%	100%	-	35.0	122.0	90,000
US Navy Southwest Division	NAVFAC Southwest Utility CS	5	0	5	0	0	0%	100%	0%	0%	San Diego Bay	N/A		
Totals for Public Spills		94,874	59,830	30,365	2,603	61,906	63%	32%	3%	65%	-	204.8	5,087.4	2,810,996
Totals for Federal Spills		25	20	5	0	20	100%	0%	0%	100%	-	N/A	N/A	N/A

¹Total Volume = total amount that discharged from sanitary sewer system to a separate storm drain, drainage channel, surface water body, and/or land.

²Total Recovered = total amount recovered from a separate storm drain, drainage channel, surface water body, and/or land.

³Total Reaching Surface Waters = total amount reaching separate storm drain (not recovered), drainage channel, and/or surface water body, but does not include amount reaching separate storm drain that was recovered.

⁴Total Reaching Separate Storm Drain and Recovered = total amount reaching separate storm drain that was recovered.

⁵Total Discharged to Land = total amount reaching land.

Table 2: March 2018 - Summary of Private Lateral Sewage Discharges in the San Diego Region

Responsible Agency	Collection System (CS)	Total Volume ¹	Total Recovered ²	Total Reaching Surface Waters ³	Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land ⁴	Percent Recovered	Percent Reaching Surface Waters	Percent Reaching Separate Storm Drain & Recovered and/or Discharged to Land	Population in Service Area	Lateral Connections
		(Gallons)				(%)				
El Toro Water District	El Toro Water District R9 CS	40	0	40	0	0%	100%	0%	48,461	9,549
		15	13	2	13	87%	13%	87%		
Escondido City	Hale Avenue Resource Recovery Facility Disch to San Elijo Ocean Outfall CS	200	90	110	90	45%	55%	45%	142,000	53,848
Imperial Beach City	City of Imperial Beach CS	400	300	100	300	75%	25%	75%	26,337	10,909
Leucadia Wastewater District	Leucadia Wastewater District CS	81	81	0	81	100%	0%	100%	67,000	20,644
		20	20	0	20	100%	0%	100%		
National City	City of National City CS	200	100	0	200	50%	0%	100%	58,967	8,000
Rainbow Municipal Water District	Rainbow Municipal Water District CS	1,000	1,000	100	900	100%	10%	90%	9,800	2,300
San Diego City (City Attorney's Office at Civic Center Plaza)	San Diego City CS	1,435	1,435	0	1,435	100%	0%	100%	2,207,591	267,237
San Juan Capistrano City	City of San Juan Capistrano CS	60	60	0	60	100%	0%	100%	40,000	9,900
Totals		3,451	3,099	352	3,099	90%	10%	90%	2,600,156	382,387

¹Total Volume = total amount that discharged from private lateral to a separate storm drain, drainage channel, surface water body, and/or land.

²Total Recovered = total amount recovered from a separate storm drain, drainage channel, surface water body, and/or land.

³Total Reaching Surface Waters = total amount reaching separate storm drain (not recovered), drainage channel, and/or surface water body, but does not include amount reaching separate storm drain that was recovered.

⁴Total Reaching Separate Storm Drain & Recovered and/or Discharged to Land = total amount reaching separate storm drain that was recovered and/or total amount reaching land.

Figure 1: Number of SSOs per Month

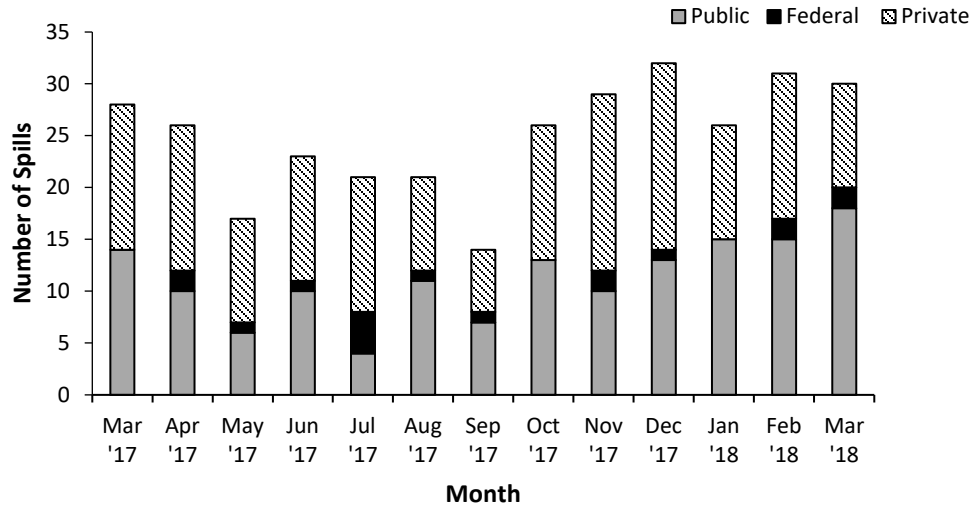


Figure 1: The number of public, federal, and private sanitary sewer overflows (SSOs) per month from March 2017 to March 2018.

Figure 2: Volume of SSOs per Month

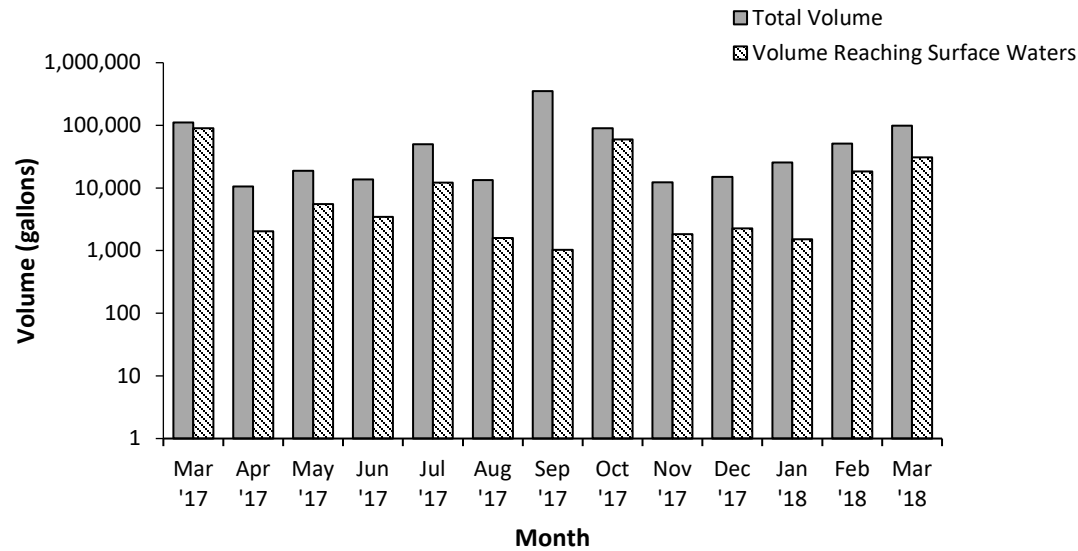


Figure 2: The volume of public, federal, and private sanitary sewer overflows (SSOs) per month from March 2017 to March 2018. Note the logarithmic scale on the vertical axis showing the wide variation in SSO volumes.

Table 3: March 2018 - Summary of Transboundary Flows from Mexico into the San Diego Region

Location	Start Date	Total Volume	Total Recovered	Total Reaching Surface Waters	Percent Recovered	Percent Reaching Surface Waters	Additional Details
		(Gallons)			(%)		
Dry Weather ¹							
Tijuana River	3/5/2018	1,500,000	0	1,500,000	0%	100%	Due to an electro-mechanical failure at pump station CILA, flow in the Tijuana River bypassed the river diversion structure and flowed across the U.S./Mexico border.
Tijuana River	3/6/2018	63,000	0	63,000	0%	100%	Due to an electro-mechanical failure at pump station CILA, flow in the Tijuana River bypassed the river diversion structure and flowed across the U.S./Mexico border.
Total Dry Weather		1,563,000	0	1,563,000	0	100%	-
Wet Weather ²							
Tijuana River	3/10/2018	n/a	n/a	n/a	n/a	n/a	Due to precipitation in the Tijuana watershed, pump station CILA was deactivated causing flow in the Tijuana River to bypass the river diversion structure and flow across the U.S./Mexico border. Pump station CILA was reactivated on May 22, 2018.
Tijuana River	3/29/2018	109,000	0	109,000	0%	100%	Pump station CILA was unable to divert peak flows in the Tijuana River. Excess flow in the Tijuana River bypassed the river diversion structure and flowed across the U.S./Mexico border.
Total Wet Weather		n/a	n/a	n/a	n/a	n/a	-

1 - Order No. R9-2014-0009 requires monthly reporting of all dry weather transboundary flows.

2 - Order No. R9-2014-0009 does not require monthly reporting of wet weather transboundary flows. Any information provided regarding these flows is voluntary.