



Linda S. Adams  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board San Diego Region

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Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4353  
(858) 467-2952 • Fax (858) 571-6972  
<http://www.waterboards.ca.gov/sandiego>

September 22, 2008

Mr. Dan Ferons  
Chief Engineer of Engineering and Operations  
Santa Margarita Water District  
P.O. Box 7005  
Mission Viejo, CA 92690-7005

VIA CERTIFIED MAIL  
7007 1490 0003 8753 5247

In reply refer to:  
CAU:01-0771:jcofran  
Place ID: 631542

Dear Mr. Ferons:

## NOTICE OF HEARING AND ISSUANCE OF COMPLAINT NO. R9-2008-0057 FOR ADMINISTRATIVE CIVIL LIABILITY AGAINST SANTA MARGARITA WATER DISTRICT FOR VIOLATION OF ORDER NOS. 2006-0003-DWQ AND R9-2007-0005

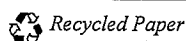
Enclosed find Administrative Civil Liability Complaint No. R9-2008-0057 against the Santa Margarita Water District (Discharger) for the discharge of untreated sewage from a 16-inch diameter Ortega Force Main located on Ortega Highway within the City of San Juan Capistrano, California, and the discharge of untreated sewage from a 16-inch diameter Talega Force Main located within Rancho Mission Viejo Ecological Reserve in the City of San Clemente, California. The discharge of untreated sewage occurred in violation of Regional Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*. The Complaint proposes an amount of \$133,190 be imposed for violations of these Orders. A Staff Report that explains the basis for the issuance of this Complaint is also included.

### Waiver of Hearing

Pursuant to California Water Code Section 13323, the California Regional Water Quality Control Board, San Diego Region (Regional Board) will hold a hearing on the Complaint no later than 90 days after it is served. The Discharger may elect to waive its right to a hearing before the Regional Board. Waiver of the hearing constitutes admission of the validity of the allegations of violation in the Complaint and acceptance of the assessment of civil liability in the amount of \$133,190 as set forth in the Complaint. For the Regional Board to accept the waiver of the Discharger's right to a public hearing, the Discharger must submit the following by 5 P.M., **October 24, 2008**.

1. The enclosed waiver form signed by an authorized agent of the Discharger;

California Environmental Protection Agency



2. A check for the full amount of civil liability of \$133,190 made out to the "State Water Resources Control Board Cleanup and Abatement Account"; and
3. Verification that the enclosed public notice has been published in a newspaper circulated in the project's area.

### Public Hearing

Alternatively, if the Discharger elects to proceed to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on December 10, 2008. The meeting is scheduled to convene at the Regional Board Office, 9174 Sky Park Court, Suite 100, San Diego, CA and the meeting will begin at 9 A.M. At that time, the Regional Board will accept testimony and public comment and decide whether to affirm, reject, or modify the proposed liability, or whether to refer the matter for judicial civil action.

Enclosed you will find a draft of the procedures I am recommending that the Regional Board follow in conducting the hearing. Please note that comments on the proposed procedures are due by **October 1, 2008** to the Regional Water Board's advisory attorney, Catherine Hagan (mailing address shown below).

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

If you have any questions, please contact State Water Resources Control Board Office of Enforcement Attorney Cris Carrigan at 916 322 3626, Jeremy Haas at 858 467-2735, or Joann Cofrancesco at 858 637-5589 or [JCofrancesco@waterboards.ca.gov](mailto:JCofrancesco@waterboards.ca.gov).

Respectfully,



 MICHAEL P. McCANN  
Assistant Executive Officer

MPM:ma:jlc

Mr. Ferons  
Santa Margarita Water District

- 3 -

September 22, 2008

- Attachments: 1. ACL Complaint No. R9-2008-0057  
2. Waiver of Hearing Forms  
3. Public Notice of Waiver of Hearing  
4. Staff Report  
5. Proposed Hearing Procedures

CIWQS:

Reg Msr: 213965 (Enrollee), 352429 (R9-2008-0057)  
Violation IDs: 497417 (April 2007 SSO), 576607 (July 2007 SSO)  
Place ID: 631542  
Party ID: 39979

cc (by email):

Ms. Erinn Wilson  
Environmental Scientist Habitat  
Conservation  
Department of Fish and Game  
[ewilson@dfg.ca.gov](mailto:ewilson@dfg.ca.gov)

Mr. Reed Sato / Mr. Cris Carrigan  
Director, Office of Enforcement  
State Water Resources Control Board  
[RSato@waterboards.ca.gov](mailto:RSato@waterboards.ca.gov)  
[CCarrigan@waterboards.ca.gov](mailto:CCarrigan@waterboards.ca.gov)

Ms. Sharon Taylor  
Division Chief  
United States Fish & Wildlife Service  
[Sharon\\_Taylor@fws.gov](mailto:Sharon_Taylor@fws.gov)

Ms. Catherine Hagan  
Office of Chief Counsel  
State Water Resources Control Board  
[CHagan@waterboards.ca.gov](mailto:CHagan@waterboards.ca.gov)

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

<b>IN THE MATTER OF:</b>	)	
	)	
<b>SANTA MARGARITA WATER DISTRICT</b>	)	<b>COMPLAINT NO. R9-2008-0057</b>
<b>SANITARY SEWER SYSTEM</b>	)	<b>FOR</b>
<b>ORANGE COUNTY</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
	)	
	)	<b>VIOLATION OF</b>
	)	<b>ORDER NO. R9-2007-0005</b>
<b>Place ID: 631542</b>	)	
<b>Reg Msr: 213965</b>	)	<b>September 22, 2008</b>

**SANTA MARGARITA WATER DISTRICT, SANITARY SEWER SYSTEM, HEREBY GIVEN NOTICE THAT:**

1. The Santa Margarita Water District (Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (Regional Board) may impose civil liability pursuant to the Porter-Cologne Water Quality Control Act, Section 13350 of the California Water Code (CWC). The violation alleged herein is a violation of a prohibition in waste discharge requirements for the discharge of untreated sewage into waters of the State.
2. This Administrative Civil Liability Complaint is issued under authority of CWC Section 13323.
3. The Discharger owns and operates approximately 537 miles of sewer lines and is required to operate and maintain its sewage collection systems to prevent sanitary sewer overflows and spills in compliance with requirements of State Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, and Regional Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*. Prohibition B.1 of Order No. R9-2007-0005 states that the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.

**ALLEGATIONS**

4. The Discharger violated Prohibition B.1 of Order No. R9-2007-0005 by discharging a total of 392,000 gallons of sewage from April 5-8, 2007 from the 16-inch diameter Ortega Force Main located on Ortega Highway, City of San Juan Capistrano, California. The discharge entered San Juan Creek, waters of the State. The details of this violation are set forth in full in the accompanying Staff Report, which is incorporated herein by this reference as if set forth in full.

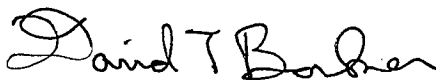
5. The Discharger violated Prohibition B.1 of Order No. R9-2007-0005 by discharging a total of 495,934 gallons of sewage from July 3 to July 4, 2007 from the 16-inch diameter Talega Force Main located within Rancho Mission Viejo Ecological Reserve in the City of San Clemente, California. The discharge went to Cristianitos Creek, waters of the State. The details of this violation are set forth in full in the accompanying Staff Report, which is incorporated herein by this reference as if set forth in full.
6. Persons or entities that discharge waste in violation of Waste Discharge Requirements are subject to civil liability pursuant to CWC Section 13350, either on a daily basis, not to exceed five thousand dollars (\$5,000) for each day the violation occurs, or on a per gallon basis, not to exceed ten dollars (\$10) for each gallon of waste discharged, but not both. The statutory maximum ACL amount is as follows:

Source of Discharge	Dates of Discharge	Volume of sewage discharged	Maximum Liability
Ortega Force Main	April 5 to 8, 2007	392,000	\$3,920,000
Talega Force Main	July 3 to July 4, 2007	495,934	\$4,959,340
<b>TOTAL</b>		<b>887,934</b>	<b>\$8,879,340</b>

**PROPOSED CIVIL LIABILITY**

8. It is recommended that pursuant to CWC Section 13350(e), the Regional Board should impose a civil liability of one hundred thirty three thousand one hundred ninety dollars (\$133,190) on the Santa Margarita Water District for the discharge of 887,934 gallons of untreated sewage from April 5-8 and July 3-4, 2007 (\$0.15 per gallon).

Dated this 22<sup>th</sup> Day of September 2008



*or* MICHAEL P. McCANN  
Assistant Executive Officer

Signed pursuant to the authority  
delegated by the Executive Officer to  
the Assistant Executive Officer

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Santa Margarita Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R9-2008-0057 (hereinafter the "Complaint");
2. I am informed that California Water Code Section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
3. I hereby waive any right the Discharger may have to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Water Board) within ninety (90) days of service of the Complaint; and
4.  **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
  - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of One hundred thirty three thousand, one hundred and ninety dollars (\$133,190.00) by check, which contains a reference to "ACL Complaint No. R9-2008-0057" and is made payable to the "State Water Resources Control Board Cleanup and Abatement Account" Payment must be received by the Regional Water Board by October 24, 2008, or this matter will be placed on the Regional Water Board's agenda for adoption as initially proposed in the Complaint.
  - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Water Board receive new information or comments during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Regional Water Board who are not associated with the enforcement team's issuance of the Complaint.
  - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

-or-

5.  **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time)** I certify that the Discharger will promptly engage the Regional Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is not waiving its right to a hearing on this matter. I understand that this waiver is a request to delay the hearing so the Discharger and Regional Water Board staff can discuss settlement. It does not constitute the Regional Water Board's agreement to delay the hearing. A hearing on the matter may be held before the Regional Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

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(Print Name and Title)

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(Signature)

---

(Date)

**NOTICE OF WAIVER OF PUBLIC HEARING**

**California Regional Water Quality Control Board, San Diego Region  
Issuance of Administrative Civil Liability (ACL) Order  
Against  
Santa Margarita Water District  
San Juan and Cristianitos Creek Sewage Discharges  
within City of San Juan Capistrano and San Clemente, California**

On September 22, 2008, the California Regional Water Quality Control Board, San Diego Region (Regional Board) issued Complaint No. R9-2008-0057 to the Santa Margarita Water District (Discharger) in the amount of \$133,190 for alleged violations of Regional Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Agencies in the San Diego Region*. The Discharger has elected to waive its right to a public hearing in this matter. Waiver of the hearing constitutes admission of the validity of the allegation of violations in the Complaint and acceptance of the assessment of civil liability in the amount of \$133,190 as set forth in the Complaint. The Regional Board may consider accepting the Discharger's waiver at its December 10, 2008 meeting.

Written comments regarding the allegations contained in Complaint No. R9-2008-0057, and/or acceptance of the waiver, will be accepted through Monday, November 24, 2008.

The Regional Board's December 10, 2008 meeting will be at the Regional Board office located at 9174 Sky Park Court, San Diego, California. The meeting will begin at 9:00 a.m. Oral comments for this item may be made during the meeting upon receipt of a request to speak slip. For more information regarding this matter please contact Ms. Joann Cofrancesco at (858) 637-5589, or at [JCofrancesco@waterboards.ca.gov](mailto:JCofrancesco@waterboards.ca.gov) or visit the Regional Board's web site at [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego).

MICHAEL P. McCANN  
Assistant Executive Officer

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

**TECHNICAL ANALYSIS**

**Proposed Administrative Civil Liability  
Contained in Complaint No. R9-2008-0057  
Santa Margarita Water District  
Sewage Collection System**

**Noncompliance with  
Order No. R9-2007-0005  
Waste Discharge Requirements for  
Sewage Collection Agencies  
in the San Diego Region**

**September 22, 2008**



## 1. INTRODUCTION

This report provides a summary of factual and analytical evidence that form the basis for findings to support an administrative assessment of civil liability in the amount of \$133,190 against the Santa Margarita Water District (Discharger) for violations of State Board Order No. 2006-0003-DWQ, *Statewide General Waste Discharge Requirements* (hereafter the "State Board Order"), and Regional Board Order No. R9-2007-0005, *Waste Discharge Requirements for Sewage Collection Systems San Diego Region* (hereafter the "Regional Board Order"), as alleged in Complaint No. R9-2008-0057.

## 2. BACKGROUND

The Discharger owns and operates approximately 537 miles of sewer lines and is required to operate and maintain their sewage collection systems to prevent sanitary sewer overflows (SSOs) in compliance with requirements of both the State Board Order and the Regional Board Order. Regional Board Order Prohibition B.1 states that the discharge of sewage from a sanitary sewer system at any point upstream of a sewage treatment plant is prohibited.

The Discharger reported two SSOs to the Regional Board that resulted in significant discharges to San Juan Creek and Cristianitos Creek, both waters of the State. The arroyo toad (*Bufo californicus*) has been identified in the areas where both sewage discharges occurred. The arroyo toad is listed as an endangered species under the federal Endangered Species Act by the United States Fish and Wildlife Services (USFWS) and as a "Species of Special Concern" by the State of California under the state Endangered Species Act.

The Water Quality Control Plan for the San Diego Region (9) (hereafter the "Basin Plan") designates the beneficial uses of San Juan Creek to include wildlife habitat, warm and cold freshwater habitat, contact and non-contact water recreation, agricultural supply, and industrial service supply. The Basin Plan designates the beneficial uses of Cristianitos Creek to include wildlife habitat, warm freshwater habitat, contact and non-contact water recreation.

### **3. ALLEGATIONS**

#### **3.1. April 5 – 8, 2007 Ortega Force Main Sanitary Sewer Overflow**

Between April 5 and April 8, 2007, an estimated 392,000 gallons of untreated sewage were discharged from a portion of the Discharger's sewage conveyance system, referred to as the Ortega Force Main, located on Ortega Highway in San Juan Capistrano, California, into San Juan Creek, a water of the State (see Attachment 1 for location map). The sewage spill violates Prohibition B.1 of the Regional Board Order because it is a prohibited discharge from a sanitary sewer system upstream of a sewage treatment plant.

#### **3.2. July 3 and 4, 2007 Talega Force Main Sanitary Sewer Overflow**

On July 3 and 4, 2007 an estimated 495,534 gallons of untreated sewage were discharged from a portion of the Discharger's sewage conveyance system, referred to as the Talega Force Main, located within Ranch Mission Viejo Ecological Reserve in the City of San Clemente, California, into Cristianitos Creek, a water of the State (see Attachment 1 for location map). The sewage spill violates Prohibition B.1 of the Regional Board Order because it is a prohibited discharge from a sanitary sewer system upstream of a sewage treatment plant.

### **4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY**

#### **4.1 Maximum Civil Liability**

Persons or entities that discharge waste in violation of waste discharge requirements are subject to Administrative Civil Liability (ACL) pursuant to California Water Code (CWC) Section 13350 on either a daily basis, not to exceed five thousand dollars (\$5,000) for each day the violation occurs, or on a per gallon basis, not to exceed ten dollars (\$10) for each gallon of waste discharged.

##### **4.1.1. April 5 - 8, 2007 Ortega Force Main Sanitary Sewer Overflow**

The April SSO occurred over a period of four calendar days for a maximum per day civil liability of forty thousand dollars (\$40,000). The SSO discharged 392,000 gallons of sewage to waters of the State for a maximum per gallon civil liability of three million nine hundred twenty thousand dollars (\$3,920,000). Therefore the maximum possible civil liability for this violation is three million nine hundred twenty thousand dollars (\$3,920,000) for the April 5 to 8, 2007 sewage discharge.

#### **4.1.2 July 3 and 4, 1007 Talega Force Main Sanitary Sewer Overflow**

The July SSO occurred over a period of two calendar days for maximum per day civil liability of twenty thousand dollars (\$20,000). The SSO discharged 495,934 gallons of sewage to waters of the State for a maximum per gallon civil liability of four million nine hundred fifty nine thousand three hundred forty dollars (\$4,959,340). Therefore, the maximum civil liability for this violation is four million nine hundred fifty nine thousand three hundred forty dollars (\$4,959,340).

#### **4.2 Factors to be Considered When Determining Administrative Civil Liability (ACL)**

CWC Section 13327 requires the Regional Board to consider several factors when determining the amount of civil liability to impose. These factors include: "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup and abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in 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 as justice may require."

##### **4.2.1 April 5 to 8, 2007 Ortega Force Main Sanitary Sewer Overflow**

###### **4.2.1.1 Nature, Circumstance, Extent, and Gravity of the Violation**

The Discharger was notified via a phone call from an employee of Rancho Mission Viejo at approximately 3:00 p.m. on Sunday, April 8, 2007 of an SSO occurring at a manhole located on the Rancho Mission Viejo property near the Ortega Lift Station.

The Regional Board conducted an inspection of the spill site on April 8, 2007 (Attachment 2), and issued Investigative Order No. R9-2007-0069 (Attachment 3) directing the Discharger to submit technical information about the circumstances of the sewage discharge and the impacts of the sewage discharge to water quality pursuant to the authority of CWC Section 13267. The Discharger provided its technical report (dated May 31, 2007) (Attachment 4) and an additional map in an email dated June 4, 2007 (Attachment 5). The technical report contained supplemental information about the nature and impacts of the sewage discharge and augmented the information in the original SSO Report (Attachments 6).

Based on a review of the Ortega Lift Station pumping charts the Discharger estimated the SSO started at approximately 5:30 p.m. on April 5, 2007. The discharge lasted for approximately 70.5 hours and was caused by a broken PVC flange on a ductile-iron pipe force main.

The Discharger estimated the discharge volume of untreated sewage based on comparison of influent flows into the Santa Margarita Water District Chiquita Water Reclamation Plant prior to the SSO with those during the SSO event. The average flow into the plant before the SSO (April 1 to 5, 2007) was 6.28 million gallons per day (MGD). The average flow into the plant during the SSO (April 6 to 8, 2007) was 6.15 MGD. The difference before and during the SSO was 0.13 MGD, or approximately 5,556 gallons per hour. The total estimated SSO volume is approximately 392,000 gallons (5,556 gallons per hour times 70.5 hours).

Three days after the SSO was terminated, the Discharger collected surface water samples from four locations within San Juan Creek. The sample results indicated that the spill was contained to approximately three and one half linear miles in an area of San Juan Creek that has no public access. The Discharger reported that the creek in the area of the SSO was dry prior to the spill.

USFWS notified the Regional Board that the SSO was located in occupied habitat of the arroyo toad (*Bufo californicus*), an endangered species. USFWS further indicated that, while the creek may have been dry during the spill, toads were likely burrowed and aestivating in soils where sewage was absorbed into the ground and direct contact likely occurred (Attachment 7).

Raw sewage contains a mixture of pollutants. Pollutants have been identified as stressors that have contributed to direct mortality of amphibians as well as the decline of amphibian populations. Pollutants have also been identified as one of the four major causes in amphibian malformations. USFWS reports that the discharge of raw sewage would release high levels of nitrate, which could be toxic to amphibians such as the arroyo toad.

Sewage-polluted water contains viruses and bacteria that are a potential vehicle for transmission of disease to ecological receptors. Following a major sewage SSO event, high concentrations of fecal indicator bacteria are persistent in the sediment and remain in the sediment for several weeks. Amphibians are known to be susceptible to infection from bacteria, including those that potentially could be found in human sewage. Bacteriological analyses for the San Juan Creek sampling locations confirm that high levels of total fecal and enterococcus bacteria were present in the discharge.

The Discharger reported that it inspected the SSO site over a two week period and did not observe any impacted wildlife. The Discharger did not employ a qualified professional to assess the SSO site after the incident.

The discharge of large amounts of raw sewage to occupied endangered species habitat and waters of the state with beneficial uses, including wildlife habitat, warm and cold freshwater habitat, contact and non-contact recreation and agricultural supply, the nature, extent and gravity of the violation, indicate a substantial penalty should be imposed.

#### **4.2.1.2 Susceptibility to Cleanup or Abatement**

In this instance, the Discharger reported that cleanup of the spilled sewage was not possible due to the location of the discharge and how quickly the sewage was absorbed into the soil. Residual solid waste resulting from the sewage spill was cleaned up after the discharge was terminated. Accordingly, this penalty factor is neutral, and does not weigh either for or against a substantial penalty.

#### **4.2.1.3 Degree of Toxicity**

The USFWS has provided information indicating that the discharge of raw sewage into the arroyo toad habitat could result in harmful effects on the federally protected species. The Discharger did not perform adequate sampling to determine the long or short term impacts of the release. Water quality monitoring did not begin until three days after the termination of the SSO and a biologist was not available to help evaluate the immediate impact(s) to the arroyo toad and its habitat. Since high levels of total fecal and enterococcus bacteria were present three days after the discharge, and because the Discharger failed to perform adequate sampling to determine the short or long term effects of the release on beneficial uses, including wildlife habitat, this penalty factor indicates a substantial penalty should be imposed.

#### **4.2.1.4 Ability to Pay and Ability to Continue in Business**

At this time, the Regional Board has no information that the Discharger is unable to pay the proposed ACL or how payment of the proposed ACL would affect the Discharger's ability to provide essential services. It is not anticipated that the ACL proposed would cause a financial hardship for the Discharger. Accordingly, this penalty factor is neutral and does not weigh either for or against a substantial penalty.

#### **4.2.1.5 Voluntary Cleanup Efforts**

The Discharger reported that the following corrective actions were taken:

1. Sewage flow in the sewer line was diverted to a backup ten-inch diameter Ortega Force Main prior to reaching the failed 16-inch diameter Ortega Force Main;
2. The spill was stopped at approximately 4:00 p.m. on Sunday, April 8, 2007;
3. Three Vactor trucks were called in an attempt to contain the sewage discharge;
4. The remaining sewage was evacuated from the damaged force main into the lift station wet well;
5. Sewage debris was cleaned up with the help of a landscape contractor; and
6. The force main was repaired by replacing the broken poly-vinyl chloride (PVC) flange with a steel flange.

The Discharger made good-faith efforts to terminate and to cleanup the discharge of raw sewage by taking the following steps: (1) diverting the sewer flow from the failed 16-inch diameter Ortega Force Main to the backup ten-inch diameter Ortega Force Main; (2) calling in three Vactor trucks to try to contain the sewage discharge; (3) evacuating the remaining sewage in the damaged force main to the lift station wet well; (4) cleaning up the SSO debris with the help of a landscape contractor; and (5) repairing the force main by replacing the broken PVC flange with a steel flange.

Because the Discharger made substantial voluntary cleanup efforts, this penalty factor weighs in favor of a substantial reduction from the statutory maximum penalty amount.

#### **4.2.1.6 Prior History of Violation**

Prior to April 2007, the Discharger's records indicate that ruptures from PVC flanges and force mains have not been a prevalent problem with the sewage conveyance system.

During the fiscal year (FY) 2005-06, the Discharger had four SSOs. One of the SSOs was over 1,000 gallons and three of the SSOs entered a storm drain or surface waters. The volume of the remaining three SSOs totaled less than 300 gallons. The SSOs were caused by roots, grease, and power failures.

During FY 2006-07, the Discharger had three SSOs in addition to the April 5 to 8, 2007 incident. The volumes of these SSOs were all less than 1,000 gallons and two of the SSOs entered a storm drain or surface water. The SSOs were caused by roots and the rupture of a PVC flange (June 2007).

During FY 2007-08, the Discharger had five SSOs in addition to the July 3 to 4, 2007 incident. Two of the SSOs were over 1,000 gallons and three entered surface waters (Cristianitos Creek). Two of the SSOs occurred on the same Ortega Force Main as the July 3 to 4, 2007 incident, on August 20 (20,700-gallon spill) and September 14, 2007 (10,000-gallon spill), possibly by the same cause. The other three SSOs were caused by a power outage, a pump station failure, and operator error.

Because the operator has a reasonably good record of violations for the size of its system, the penalty factor weighs in favor of a reduction from the statutory maximum penalty amount.

#### **4.2.1.7 Degree of Culpability**

The Discharger could have implemented measures to reduce the amount of the discharge. According to an email received from the Discharger and dated June 11, 2007, the Discharger's staff inspected the Ortega Lift Station mid-day on April 5, 2007 (before the estimated start of the SSO), and again mid-morning on April 8, 2007 (during the SSO but prior to discovery) (Attachment 8). The Discharger's *Sewer System Management Plan* identifies tasks that are to be completed during routine preventive maintenance at sewage lift stations (Attachment 4). One of the tasks listed is to check the operation of all recording devices and charts. The Discharger failed to detect the force main rupture during the inspection on April 8, 2007 when the recording device charts were supposed to be checked. These are the same charts that the Discharger used after the spill to identify when the spill started. Based on this information it is reasonable to conclude that checking the charts during the inspection should have lead to the discovery of the SSO. The Discharger has since installed alarm set points in the Supervisory Control and Data Acquisition (SCADA) that alert staff to an unusually high pump discharge flow at the Ortega Lift Station.

The cause of the SSO was a broken PVC flange on a ductile-iron pipe force main. The PVC flange and ductile-iron pipe have been in place since 1991. It is not standard practice to mix metal and plastic materials at the same connection pipe. It is noted, however, this is the first problem encountered by the Discharger with these PVC flanges.

Because the Discharger is solely responsible for the safe maintenance and operation of its system and because it should have detected the spill earlier, it has a high degree of culpability for this spill. However, newly-installed preventative measures should enhance early spill detection in the future. Accordingly, this penalty factor weighs in favor of imposing a substantial penalty.

#### **4.2.1.8 Economic Savings**

At this time, the Regional Board does not have information to determine the specific amount of economic benefit or savings of avoiding the cost of needed measures to prevent and reduce the sewage discharges.

#### **4.2.1.9 Other Matters as Justice May Require**

To date, the Regional Board costs for investigating this SSO incidents and preparing the necessary enforcement orders and directives have been \$19,500 as of the date of this complaint.

### **4.2.2 July 3-4, 2007 Talega Force Main Sanitary Sewer Overflow**

#### **4.2.2.1 Nature, Circumstances, Extent, and Gravity of the Violation**

The SSO was discovered on July 4, 2007, at approximately 10:00 a.m. by an employee of the Discharger during an inspection. The employee discovered the discharge after noticing the pump discharge flow from the Talega Lift Station was abnormally high and determined that a force main break had caused the abnormality.

The Regional Board inspected the site on July 5, 2008 (Attachment 9), and issued Investigative Order No. R9-2007-0108 on July 20, 2007 (Attachment 10). The Discharger submitted its Technical Report in response to Order No. R9-2007-0108 on September 11, 2007 (Attachment 11), and submitted additional information requested by the Regional Board on October 12, 2007 (Attachment 12.)



According to the Discharger's report, based on a review of the pumping charts of the Talega Lift Station, the discharge of untreated sewage likely began on July 3, 2007 at 11:30 a.m. The pumping charts documented a maximum flow rate of 1,100 gallons per minute (gpm) and the pump hours as 3.4 hours. The majority of the sewage discharge, occurring prior to diverting the sewer flow from the failed 16-inch diameter force main to the back up 10-inch diameter force main, was calculated as 224,000 gallons.

After the diversion to the back-up force main, residual sewage drained out of the 16-inch diameter force main by gravity through the broken section of pipe. Based on the diameter and length of the force main from the broken section, the Discharger calculated 175,534 gallons of residual untreated sewage drained out of the force main pipe.

After the diversion to the back-up force main was completed, the Discharger discovered that the 10-inch diameter force main was leaking into the 16-inch diameter force main. The leak occurred at a joint summit manhole where both of the force mains end from the isolation valve of the 16-inch diameter force main. Based on visual observation, the Discharger estimated flow of untreated sewage at 200 gpm was leaking from the 10-inch diameter force main into the 16-inch diameter force main and out of the broken section of pipe. This leak occurred for eight hours resulting in an estimated discharge of 96,000 gallons.

According to the Discharger, Cristianitos Creek was dry at the time of the spill and the discharge quickly soaked into the ground. The Discharger did not collect samples at that time.

Approximately a month after the discharge, a contractor was hired by the Discharger to evaluate the environmental impacts of the discharge. The contractor concluded that potential impacts to aestivating toads resulting from percolation would be low in areas that support aestivating toads. The contractor did not evaluate potential impacts until a month after the discharge.

The discharge of large amounts of raw sewage to occupied endangered species habitat and waters of the state with beneficial uses, including wildlife habitat, warm and cold freshwater habitat and contact and non-contact recreation, the nature, extent and gravity of the violation indicate a substantial penalty should be imposed.

#### **4.2.2.2 Susceptibility to Cleanup or Abatement**

The Discharger reports that approximately 15,000 gallons of sewage (approximately 3% of the spill) was recovered from a V-notch weir in the creek that was contained by sand bags being place around the weir. Accordingly, this penalty factor is neutral, and does not weigh either for or against a substantial penalty.

#### **4.2.2.3 Degree of Toxicity**

The USFWS has provided information indicating that the discharge of raw sewage into the arroyo toad habitat could result in harmful effects on the federally protected species (see Section 4.1.3). The Discharger did not perform any sampling to determine the nature and impact of the release. A month after the overflow, a biologist was hired to help evaluate the impact(s) to the arroyo toad and its habitat. Since the Discharger failed to perform timely sampling to determine the short or long term effects of the release on beneficial uses, including wildlife habitat, this penalty factor indicates a substantial penalty should be imposed.

#### **4.2.2.4 Ability to Pay and Ability to Continue in Business**

See Section 4.2.1, above, for analysis of this penalty factor.

#### **4.2.2.5 Voluntary Cleanup Efforts**

The Discharger reported that the following actions were taken once the SSO was identified:

1. Sewage flow in the sewer line was diverted to a backup ten-inch diameter Talega Force Main prior to reaching the failed 16-inch diameter Talega Force Main;
2. Constructed a make-shift berm prior to the Cristianitos Creek in a failed attempt to stop the flow;
3. Constructed a berm in the Cristianitos Creek at a V-notch weir to prevent downstream migration;
4. Recovered 15,000 gallons of the untreated sewage;
5. Cleaned up visible sewage debris; and
6. Positioned two Vactor trucks at two lift stations that are tributary to the Talega Force Main, to reduce the amount of flow reaching the damaged force main.

Because the Discharger made substantial voluntary cleanup efforts, this penalty factors weighs in favor of a substantial reduction from the statutory maximum penalty amount.

#### **4.2.2.6 Prior History of Violation**

See Section 4.2.1, above, for an analysis of this penalty factor.

#### **4.2.2.7 Degree of Culpability**

The cause of the SSO was a catastrophic failure of an entire joint of pipe, possible due to a water-hammer effect. Because the Discharger is solely responsible for the safe maintenance and operation of its system, it has a high degree of culpability for this spill. Accordingly, this penalty factor weighs in favor of imposing a substantial penalty.

#### **4.2.2.8 Economic Savings**

At this time, the Regional Board does not have information to determine the specific amount of economic benefit or savings of avoiding the cost of needed measures to prevent and reduce the sewage discharges.

#### **4.2.2.9 Other Matters as Justice May Require**

See Section 4.2.1 above for an analysis of this penalty factor.

### **4.3 Proposed Civil Liability Per Violation**

#### **4.3.1 April 5 - 8, 2007 Ortega Force Main Sanitary Sewer Overflow**

Based on this analysis of the statutory penalty factors, the proposed civil liability is fifteen cents (\$0.15) per gallon for 392,000 gallons for a total of \$58,800 for the April 5 to 8, 2007 Ortega Force Main SSO.

#### **4.3.2 July 3 and 4, 2007 Talega Force Main Sanitary Sewage Overflow**

Based on this analysis of the statutory penalty factors, the proposed civil liability is fifteen cents (\$0.15) per gallon for 495,934 gallons for a total of seventy four thousand three hundred ninety dollars (\$74,390) for the July 3 and 4, 2007 Talega Force Main SSO.

### **4.4. Total Proposed Civil Liability**

The total proposed civil liability in this matter is one hundred thirty three thousand one hundred ninety dollars (\$133,190).

**PROPOSED DRAFT**

NOTICE OF PUBLIC HEARING  
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

NO. R9-2008-0057  
ISSUED TO

**Santa Margarita Water District**

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD  
BEFORE THE REGIONAL WATER QUALITY CONTROL BOARD,  
SAN DIEGO REGION, ON DECEMBER 10, 2008**

**Background**

The Assistant Executive Officer of the Regional Water Quality Control Board, San Diego Region (Regional Board) has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13350 (CWC) against Santa Margarita Water District (Discharger) alleging that it has violated CWC Section 13350 by failing to comply with provisions of State Board Order No. 2006-0003-DWQ and Regional Board Order No. R9-2007-0005. The Complaint proposes that administrative civil liability in the amount of \$133,190 be imposed as authorized by CWC Section 13350(e)(1). Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the Regional Board during its meeting of December 10, 2008, in San Diego.

**Purpose of Hearing**

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Regional Board will consider whether to adopt, modify, or reject the proposed assessment, or whether to refer the matter to the Attorney General's Office to seek recovery of judicial civil liability. If it adopts an assessment, the Regional Board will issue an Administrative Civil Liability Order.

The public hearing on December 10, 2008, will commence as announced in our Regional Water Board meeting agenda. The meeting will be held at the Regional Board Office at 9174 Sky Park Court, Suite 100, in San Diego. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Regional Board's web page at: [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego).

## **Hearing Procedures**

A copy of the procedures governing an adjudicatory hearing before the Regional Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Regional Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY FROM THE HEARING.

## **Hearing Participation**

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Regional Board, staff or others, at the discretion of the Board.

The following participants are hereby designated as parties in this proceeding:

- (1) San Diego Regional Water Board Prosecution Staff
- (2) Santa Margarita Water District

## **Contacts**

### **Advisory Staff:**

Catherine Hagan (George), Esq.  
Senior Staff Counsel  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353  
CGeorge@Waterboards.ca.gov

John Robertus  
Executive Officer  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

**Prosecution Staff:**

Christian Carrigan  
Senior Staff Counsel  
State Water Resources Control Board  
Office of Enforcement  
P.O. Box 100  
Sacramento, CA 95812

Michael McCann  
Assistant Executive Officer  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

Mark Alpert  
Acting Environmental Program Manager  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

Jeremy Haas  
Acting Senior of the Compliance Assurance Unit  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

Joann Cofrancesco  
Water Resource Control Engineer  
Regional Water Quality Control Board, San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

**Discharger:**

Mr. Dan Ferons  
Chief Engineer of Engineering Operations  
Santa Margarita Water District  
P.O. Box 7005  
Mission Viejo, CA 92690-7005

**Separation of Functions**

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration

by the Regional Board (Prosecution Staff) have been separated from those who will provide advice to the Board (Advisory Staff). Members of the Advisory Staff are: Catherine George, Senior Staff Counsel, and John Robertus, Executive Officer. Members of the Prosecution Staff are: Christian Carrigan, Senior Staff Counsel, Michael McCann, Assistant Executive Officer, Mark Alpert, Acting Environmental Program Manager, Jeremy Haas, Acting Senior of the Compliance Assurance Unit, and Joann Cofrancesco, Water Resource Control Engineer. **Unless the Discharger objects to and/or comments on this notice to Advisory Staff Member Catherine Hagan by October 1, 2008 or the Advisory Staff issues an alternative Notice of Hearing Procedure, the procedures set forth herein will govern the December 10, 2008 ACL Complaint Hearing.**

### **Ex Parte Communications**

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Regional Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

### **Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party, and not already be listed above, shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on **October 10, 2008**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Regional Board affect the person) and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on **October 17, 2008**. The parties will be notified by 5 p.m. on **October 22, 2008**, as to whether the request has been granted or denied.

### **Hearing Time limits**

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 20 minutes

to testify, present evidence, and cross-examine witnesses, and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

### **Written Evidence, Exhibits and Policy Statements**

Designated parties shall submit in writing 20 copies of the following information to Catherine Hagan at the above-referenced address no later than 5 p.m. on **November 21, 2008**.

1. All documentary evidence and exhibits proposed to be offered at the hearing.
2. All legal and technical arguments or analysis.

In addition to the foregoing, each designated party shall send (1) one copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on **November 21, 2008**.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

### **Evidentiary Objections**

A designated party objecting to evidence proposed by another party must submit a written objection by 5 p.m. on **December 1, 2008**, to Catherine Hagan, Senior Staff Counsel, at the above-referenced address, with a copy to all other designated parties. The Advisory Staff will notify the parties about further action to be taken on such objections.

### **Questions**

Questions concerning this proceeding may be addressed to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812.

### **IMPORTANT DEADLINES**

September 22, 2008

ACL Complaint issued to Discharger by Prosecution Team; Prosecution Team Sends draft Hearing Notice to Discharger and Advisory Team.



October 1, 2008	Comments due on draft Hearing Notice
October 10, 2008	Deadline for submission of request for designated party status.
October 17, 2008	Deadline for opposition to request for designated party status.
October 22, 2008	Decision issued on request for designated party status, if any.
November 21, 2008	Deadline for submission of evidence and legal argument.
December 1, 2008	Deadline for submission of evidentiary objections.
December 8, 2008	Rulings on evidentiary objections, if any.
December 10, 2008	Hearing Date

draft

John Robertus  
Executive Officer

DATE