



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: SETTLEMENT OF CLAIM BY
CALIFORNIA RIVER WATCH**

DATE: December 11, 2024

RECOMMENDATION

Approve the settlement of California River Watch's 60-day Notice of Intent to Sue for certain affirmative relief and attorney's fees and costs and authorize the City Attorney to execute a settlement agreement.

OUTCOME

Settlement of the allegations in California River Watch's (River Watch) 60-day Notice of Intent to Sue (Notice) for affirmative relief and attorney's fees and costs avoids litigation, caps the exposure to penalties and fees, and reduces administrative burden.

BACKGROUND

River Watch served the City of San José (City) with a 60-day Notice of Intent to Sue (Notice) alleging various violations of the Federal Clean Water Act arising out of the ownership and operation of the San José-Santa Clara Regional Wastewater Facility and the City's collection system. The Notice alleges that the City's sanitary sewer lines overflowed resulting in discharges to local creeks and the San Francisco Bay. The Notice also claims the City improperly reported sanitary overflows or failed to secure areas where the overflows occurred. The City denies allegations in the Notice and further asserts that the operation and management of its wastewater collection system meets all Clean Water Act requirements and all permit conditions.

ANALYSIS

This is a negotiated settlement between the parties to avoid a lawsuit and inherent risk in litigation. Under the proposed settlement, the City does not admit that any violation occurred, and agrees to take actions related to the sanitary sewer system, including repair sanitary sewer lines, train employees regarding overflows, post notices, and report on chemical root control and unsheltered homeless in the waterways. In addition

to this affirmative relief, the City agrees to pay \$60,000.00 as a negotiated settlement of River Watch's attorney's fees and costs.

PUBLIC OUTREACH/INTEREST

This memorandum has been posted on the City's website for the December 17, 2024 agenda.

COST SUMMARY

The monetary settlement will be paid from sanitary sewer fees collected in the Sewer Service and Use Charge Fund.

COORDINATION

This settlement has been coordinated with the Public Works and the Environmental Services departments, the Department of Transportation, and the City Manager's Budget Office.

BUDGET REFERENCE

The table below identifies the fund and appropriation adjustments necessary to pay the settlement recommended in this memorandum.

Fund No.	Appn No.	Appropriation. Name	Total Appropriation	Rec. Budget Action	2024- 2024 Adopted Operating Page	Last Budget Action (Date, Ord. No.)
541	2445	Major Litigation Costs	\$1,500,000	\$60,000	1017	06/18/2024, 31102

CEQA

Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/ Nora Frimann
NORA FRIMANN
City Attorney

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900