

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:)
)
Shasta CSA #17) **Order No. R5-2011-1001 (Proposed)**
Cottonwood WWTP)
)
Administrative Civil Liability) **Settlement Agreement and Stipulation**
Complaint No. R5-2011-0580) **for Entry of Order; Order (Proposed)**
_____)

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Order”) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (“Central Valley Water Board”), on behalf of the Central Valley Water Board Prosecution Staff (“Prosecution Staff”), and Shasta County Service Area No. 17, Cottonwood Wastewater Treatment Plant (“Discharger”) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system, and provides sewerage service to the community of Cottonwood. Treated municipal wastewater is discharged year-round to Cottonwood Creek, a water of the United States, and tributary to the Sacramento River.
2. On 17 March 2005, the Central Valley Water Board adopted Waste Discharge Requirements Order R5-2005-0037 (NPDES No. CA0081507), replaced by Waste Discharge Requirements Order R5-2010-0044 (NPDES No. CA0081507) on 27 May 2010, for Shasta County Service Area No. 17, Cottonwood Wastewater Treatment Plant, to regulate the discharge of treated municipal wastewater.
3. WDRs Order R5-2005-0037 Effluent Limitations B.1 and B.3 state, in part:

B. Effluent Limitations

1. The effluent discharge to Cottonwood Creek shall not exceed the following limitations:

Settlement Agreement
 Shasta County Service Area No. 17
 Cottonwood Wastewater Treatment Plant

Constituent	Units	Monthly Average	Weekly Average	Monthly Maximum	Daily Maximum	Hourly Average	4-day Average
BOD ₅	mg/L	10	15	--	30	--	--
	lbs/day ²	36	54	--	108	--	--
Total Suspended Solids	mg/L	10	15	--	30	--	--
	lbs/day ²	36	54	--	108	--	--
Settleable Solids	mL/L	0.1	--	--	0.2	--	--
Chlorine Residual ³	mg/L	--	--	--		0.02	0.01
Total Coliform Organisms ^{3,4}	MPN/100 mL	--	23 ⁶	240 ⁵	500	--	--
Copper (Total Recoverable)	µg/l	Must Calculate	--	--	Must Calculate	--	--
	lbs/day ²	Must Calculate	--	--	Must Calculate	--	--
Zinc (Total Recoverable)	µg/l	Must Calculate	--	--	Must Calculate	--	--
	lbs/day ²	Must Calculate	--	--	Must Calculate	--	--

¹ 5-day, 20°C biochemical oxygen demand
² Based upon a design flow of 0.43 mgd. Calculate lbs/day by multiplying concentration (9mg/L) by 0.43 mgd flow and by 8.34 conversion factor.
³ Chlorine residual and total coliform shall be measured at the chlorine contact chamber discharge or other location approved by the Executive Officer. Effluent chlorine residual shall be measured continuously.
⁴ The effluent coliform sample shall be taken during the period when the highest daily effluent flow occurs.
⁵ Shall not exceed more than once in any 30 day period.
⁶ As a 7-day median average.

3. The discharge shall not have a pH less than 6.0 nor greater than 9.0 units.
4. Cease and Desist Order R5-2005-0038 contains interim effluent limitations for copper and zinc as follows:

Parameter	Unit	Daily Maximum
Total Copper	µg/l	37
Total Zinc	µg/l	162

4. On 9 September 2009, the Central Valley Water Board issued the Discharger a Draft Record of Violations (2009 DROV) for effluent limitation violations for the period 27 September 2005 to 1 July 2009. The 2009 DROV informed the Discharger that a draft Administrative Civil Liability Complaint (ACLC) was being prepared for Mandatory Minimum Penalties (MMPs) totaling \$21,000. On 18 October 2010, Central Valley Water Board staff issued the Discharger a second Draft Record of Violations (2010 DROV) for effluent limitation violations and late report submittals for the period of 27 September 2005 through July 2010. The 2010 DROV informed the discharger that a draft ACLC was being prepared for MMPs totaling \$45,000. The Discharger provided evidence to discount a reported violation which occurred on 17 December 2007, which was dismissed. Further investigation by Central Valley Water Board staff revealed that the discharger was liable for three (3) additional MMPs not included in the 18 October 2010 report. The Discharger has incurred a total of **\$54,000** in mandatory minimum penalties for effluent violations and late-reporting (Attachment A).

5. The Central Valley Water Board has determined that the Discharger meets the requirements under California Water Code (CWC) Section 13385(k) and the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) as a publicly-owned treatment works (POTW) serving a small community with a financial hardship. In accordance with the CWC and Enforcement Policy, the discharger may propose a Compliance Project in lieu of paying monetary penalties. The Central Valley Water Board may approve a Compliance Project if it determines that it meets the requirements of the CWC and the Enforcement Policy and will address the underlying POTW water treatment problems resulting in violations.
6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the Alleged ACL Violations is fair and reasonable and fulfills its requirement to impose mandatory penalties under the CWC, that no further action is warranted concerning the violations alleged in the Complaint except as provided in this Stipulated Order.
7. To resolve the violations alleged in the Complaint by consent and without further administrative proceedings, the Parties have agreed to suspend all MMPs and have agreed to allow the discharger to spend an equivalent amount toward the completion of a Compliance Project. The project was submitted by the discharger and is included in Attachment B. Central Valley Water Board Staff have determined that it meets the requirements under CWC 13385(k) and the 2010 Enforcement Policy.
8. The suspension of mandatory minimum penalties identified in Attachment A of this Order is based on a showing by the Respondents that its compliance project meets the requirements under the Enforcement Policy.

Section III: STIPULATIONS

The Parties stipulate to the following:

9. **ADMINISTRATIVE CIVIL LIABILITY** Discharger shall be subject to administrative civil liability in the amount of **\$54,000** in mandatory minimum penalties, the total of which will be directed to a compliance project (Compliance Project Amount), and will be treated as a Suspended Administrative Civil Liability.
10. **FUNDING OF COMPLIANCE PROJECTS** Discharger agrees to direct the entire Compliance Project Amount to fund the compliance project as described in more detail below in Paragraph 12. Discharger shall submit proof that the money spent toward the Compliance Project was equal to or greater than the Suspended Administrative Liability. Proof of the Compliance Project Amount is due before thirty (30) days after the effective date of the Order.

11. DESCRIPTION OF THE COMPLIANCE PROJECT The Prosecution Staff issued Record of Violation on 18 September 2009, and Expedited Payment Letter on 22 December 2010 which detailed the violations cited in Attachment A. In response, the discharger proposed a compliance project on 14 January 2011. The project is designed to correct the effluent violations as required in CWC Section 13385(k)(1)(A). The County of Shasta has already purchased equipment, including a Pre-CCB Chlorine Analyzer, a post-CCB Chlorine Analyzer, a Post-CCB Sulfur Dioxide Analyzer, a Pre CCB-Chlorine Gas Feeder, a post CCB Sulfur Dioxide Gas feeder, and a clarifier. All of this equipment is designed to address Total Coliform, a parameter in excess of permit limits as detailed on Appendix A. The County of Shasta also plans to clean the WWTP filter, replace the sand and coal in the filter, install an inline flow meter, and install an inline pH meter. These measures will address both total coliform and pH violations which are detailed in Appendix A. The total cost for this project is \$97,030. The project completion date is **31 October 2011** (Compliance Project Completion Date).

12. REPRESENTATIONS AND AGREEMENTS REGARDING COMPLIANCE PROJECTS

A. Discharger performing compliance project

- i. Representation of the Discharger** As a material consideration for the Central Valley Water Board's acceptance of this Stipulation, the Discharger represents that it will utilize the funds outlined in Paragraph 11 to implement the compliance project in accordance with the Schedule for Performance (attached hereto as Attachment "B"). The Discharger understands that its promise to implement the compliance project, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Central Valley Water Board.
- ii. Agreement of Discharger to Implement Compliance Project**
The Discharger represents that: 1) it will spend the Compliance Project Amount as described in this Stipulation; 2) it will provide certified, written reports to the Central Valley Water Board consistent with the terms of this Stipulation and Order detailing the implementation of the compliance project; and 3) Discharger will guarantee implementation of the compliance project by remaining liable for \$54,000 of suspended administrative liability until the compliance project is completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the compliance project. Discharger shall permit inspection of the compliance project by the Central Valley Water Board staff at any time without notice.

13. AUDITS AND CERTIFICATION OF COMPLIANCE PROJECT

- A. Certification of Expenditures** On or before 30 days following completion of the project, Discharger shall submit a certified statement by a responsible agency official representing the Discharger documenting the expenditures by Discharger during the

completion period for the compliance project. The expenditures may be external payments to outside vendors or contractors implementing the compliance project. If applicable, the expenditures may include the costs of internal Environmental Management resources and internal Business Unit resources, provided that such expenditures are directly related to development and implementation of the compliance project. In making such certification, the official may rely upon normal agency project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. Discharger shall provide any additional information requested by the Central Valley Water Board which is reasonably necessary to verify Discharger's compliance project expenditures.

B. Certification of Performance of Work On or before 30 days following completion of the project, the Discharger shall submit a report, signed under penalty of perjury, stating that the compliance project has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board staff to evaluate the completion of the compliance project and the costs incurred by the Discharger.

14. REGIONAL BOARD ACCEPTANCE OF COMPLETED COMPLIANCE PROJECT

Upon the Discharger's satisfaction of its obligations under this Stipulation and Order, the completion of the compliance project and any audits, the Designated Water Board Representative, with notice to the regional Enforcement Coordinator, shall request that the Central Valley Water Board issue a "Satisfaction of Order". The issuance of the Satisfaction of Order shall terminate any further obligations of the Settling Discharger under this Stipulation and Order.

15. FAILURE TO EXPEND ALL SUSPENDED ADMINISTRATIVE CIVIL LIABILITY FUNDS ON THE APPROVED COMPLIANCE PROJECT

In the event that Discharger is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board staff that it has spent the entire Compliance Project Amount for the completed compliance project, Discharger shall pay the difference between the Suspended Administrative Civil Liability and the amount Discharger can demonstrate it actually spent on the compliance project, as an administrative civil liability. The Discharger shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board's determination that the Discharger has failed to demonstrate that the entire Compliance Project Amount has been spent to complete the compliance project.

16. FAILURE TO COMPLETE THE COMPLIANCE PROJECT

If the compliance project is not fully implemented by the Compliance Project Completion Date required by this Stipulation and Order or there has been a material failure to satisfy a Milestone Requirement, the Designated Water Board Representative shall issue a Notice of Violation.

As a consequence, Discharger shall be liable to pay the entire suspended liability or, some portion thereof. The Prosecution Staff may act as follows:

A. The Prosecution Staff elects for the payment of the Suspended Liability:

Discharger may not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the compliance project prior to the date of the "Notice of Violation" by the Central Valley Water Board. The amount of the suspended liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board. Upon a determination by the Central Valley Water Board of the amount of the suspended liability assessed, the amount owed shall be paid to the State Water Resources Control Board Cleanup and Abatement Account within thirty (30) days after the service of the Central Valley Water Board's determination. In addition, the Discharger shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Discharger's obligations to implement the compliance project.

B. The Prosecution Staff elects for the completion of the compliance project: The Prosecution Staff shall file a "Motion to Enforce the Compliance Project" before the Central Valley Water Board against the Discharger. Upon the identification by the Central Valley Water Board of the remaining work of the compliance project to be performed, the Discharger agrees that the Central Valley Water Board may order the Discharger to perform that work.

17. CENTRAL VALLEY WATER BOARD IS NOT LIABLE Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order.

The Discharger covenants not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the ACL, this Stipulation and Order, or the compliance project.

18. COMPLIANCE WITH APPLICABLE LAWS: The Discharger understands that the completion of the compliance project in accordance with the terms of this Stipulated Order or the payment of the previously suspended administrative civil liability, is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Record of Violation or the Expedited Payment Letter may subject it to further enforcement, including additional administrative civil liability.

**19. Party Contacts for Communications related to Stipulated Order:
For the Central Valley Water Board:**

Pamela Creedon, Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone (916) 464-3291 fax: (916) 464-4645

Robert Crandall, Assistant Executive Officer
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For the Respondents:

Patrick j. Minturn, Director
C. Troy Bartolomei, Deputy Director
Shasta County Department of Public Works
1855 Placer Street
Redding CA 96001-1759

Randy Gillichbauer
Shasta CSA #17
Cottonwood Wastewater Treatment Plant
Shasta County Department of Public Works
1855 Placer Street
Redding CA 96001

- 20. ATTORNEY'S FEES AND COSTS:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
- 21. MATTERS ADDRESSED BY STIPULATION:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations specifically identified in Attachment A as being subject to mandatory minimum penalties ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 5.
- 22. PUBLIC NOTICE:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board. If significant new information is received that reasonably affects the

propriety of presenting this Stipulated Order to the Central Valley Water Board, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board. The Discharger agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

23. **ADDRESSING OBJECTIONS DURING PUBLIC COMMENT PERIOD:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
24. **NO WAIVER OF RIGHT TO ENFORCE:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
25. **INTERPRETATION:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
26. **MODIFICATION:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
27. **IF ORDER DOES NOT TAKE EFFECT:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

IT IS SO STIPULATED

California Regional Water Quality Control Board Prosecution Staff
Central Valley Region

By: _____
Robert A. Crandall
Assistant Executive Officer

Date: _____

By: _____
Patrick J. Minturn
Director
Shasta County Department of Public Works

Date: _____

Order of the Central Valley Water Board

- a. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13351. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.
- 36. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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

Pamela C. Creedon
Executive Officer

Date: _____