

1 0010, and WDRs Order R7-2013-0009 (NPDES Permit No. CA0104841) (collectively,
2 "WDRs Orders") when the violations alleged in the Complaint occurred. The
3 Colorado River Basin Water Board currently regulates the Discharger under
4 WDRs Order R7-2013-0009.

5 The Complaint contains violations cited in Administrative Civil
6 Liability Complaint R7-2015-0001 and the corresponding proposed
7 Administrative Civil Liability Order R7-2015-0029, which the Colorado River
8 Basin Water Board considered during its Hearing on May 13, 2015. The Board
9 did not adopt proposed Administrative Civil Liability Order R7-2015-0029 and
10 directed the Prosecution Team to investigate the matter as justice may
11 require to provide the Board with, in addition to mandatory minimum
12 penalties, options to assess discretionary penalties under California Water
13 Code ("Water Code") section 13385. The Complaint is a product of this
14 investigation. The Prosecution Team formally withdrew Administrative Civil
15 Liability Complaint R7-2015-0001 through issuance of the Complaint.

16 The Prosecution Team seeks penalties under Water Code section 13385 in
17 the amount of \$623,457 for the Discharger's violations of effluent
18 limitations and monitoring and reporting requirements set forth in the WDRs
19 Orders. The total amount of mandatory minimum penalties ("MMPs") for the
20 violations identified in the Complaint and Complaint Exhibits A (\$75,000), B
21 (\$36,000), and C (\$90,000) is \$201,000. The Prosecution Team further seeks
22 discretionary penalties in the amount \$422,457 for the Discharger's failure
23 to meet WDRs Orders monitoring requirements ("non-MMP failure to monitor
24 violations"), as identified in the Complaint and Complaint Exhibits D and E.
25 The maximum liability the Board may assess for the non-MMP failure to monitor
26 violations is \$950,000.

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1 TECHNICAL ARGUMENT/ANALYSIS

2 Prior to issuing the Complaint, Colorado River Basin Water Board staff
3 conducted a detailed review of the Discharger's self-monitoring reports from
4 May 2003 through April 2015 (the "reviewing period"). Colorado River Basin
5 Water Board staff identified: (a) thirty-five (35) occasions when the
6 Discharger exceeded effluent limitations for total suspended solids; (b)
7 twenty-seven (27) occasions when the Discharger exceeded effluent limitations
8 for bacteria; and (c) nine (9) occasions when the Discharger submitted late
9 self-monitoring reports. As explained in the Complaint and in the Legal
10 Arguments/Analysis section below, the Discharger's exceedance of effluent
11 limitations and late reporting results in sixty-seven (67) violations subject
12 to MMPs.

13 LEGAL ARGUMENTS/ANALYSIS

14 First, the Prosecution Team presents the alleged violations subject to
15 MMPs. Second, the Prosecution Team presents the alleged violations subject
16 to discretionary administrative civil liability and proposes a liability
17 amount for the non-MMP failure to monitor violations.

18
19 **I. Violations subject to Mandatory Minimum Penalties**

20 The Colorado River Basin Water Board must assess a MMP of three
21 thousand dollars (\$3,000) for each serious violation. (Wat. Code, § 13385,
22 subd.(h)(1).) Two types of serious violation apply to this enforcement
23 action.

24 A "serious violation" is "any waste discharge that violates the
25 effluent limitations contained in the applicable waste discharge requirements
26 for a Group II pollutant, as specified in Appendix A to [40 C.F.R. § 123.45],
27 by 20 percent or more or for a Group I pollutant, as specified in Appendix A
28 to [40 C.F.R. § 123.45], by 40 percent or more." (Wat. Code, § 13385, subd.

1 (h) (2).) A "serious violation" also includes "a failure to file a discharge
2 monitoring report required pursuant to Section 13383 for each complete period
3 of 30 days following the deadline for submitting the report, if the report is
4 designed to ensure compliance with limitations contained in waste discharge
5 requirements that contain effluent limitations." (Wat. Code, § 13385.1,
6 subd. (a).)

7 The Colorado River Basin Water Board must also assess a MMP of three
8 thousand dollars (\$3,000) for each violation, not counting the first three
9 violations, if the Discharger violates a waste discharge requirement effluent
10 limitation four or more times in a period of six consecutive months ("chronic
11 violation"). (Wat. Code, § 13385, subd. (i) (1) (A).)

12
13 *a. Effluent Limitations*

14 The WDRs Orders set effluent limitations for and average monthly
15 percent removal of Total Suspended Solids ("TSS"), a Group I pollutant as
16 specified in the Code of Federal Regulations. The effluent limitation
17 violations identified in Exhibit A to the Complaint concern average monthly
18 percent removal, average monthly and weekly concentration, and average weekly
19 and monthly load. All the violations discussed below occurred during the
20 reviewing period.

21 The removal efficiency requirement for TSS is expressed as a minimum
22 effluent limitation, in terms of percent solids removal (i.e., 85 percent
23 removal). To facilitate the determination of whether violations of this
24 limitation are "serious" pursuant to Water Code section 13385, subdivision
25 (h) (2), the limitation is converted to its equivalent maximum limit, in terms
26 of percent solids remaining (i.e., 15 percent remaining), as shown and noted
27 in Exhibit A to the Complaint.

1 The Discharger exceeded effluent limitations for TSS by 40 percent or
2 more on twenty (20) separate occasions. Each of these twenty (20) serious
3 violations is subject to a \$3,000 MMP. The Discharger also exceeded TSS
4 effluent limitations on fifteen (15) separate occasions, five (5) of which
5 are chronic violations subject to a \$3,000 MMP. These TSS serious and
6 chronic violations are further explained in Exhibit A.

7 The Discharger exceeded effluent limitations for bacteria on twenty-
8 seven (27) occasions, twelve (12) of which are chronic violations subject to
9 a \$3,000 MMP. These bacteria chronic violations are further explained in
10 Exhibit B to the Complaint.

11
12 *b. Late Self-Monitoring Reports*

13 Discharger submitted the May 2011 monthly self-monitoring report, due 1
14 July 2011, on 6 September 2011 (67 days late). Sixty-seven (67) days is two
15 (2) complete periods of 30 days following the deadline for submitting the
16 report. Two (2) serious violations result from this late submittal, both of
17 which are subject to a \$3,000 MMP.

18 Board staff records indicate that from on or about September 2014 to
19 June 2015, the Discharger was without an accurate duly authorized
20 representative (or legally responsible office) ("LRO") to submit reports as
21 required by WDRs R7-2013-0009. The electronic self-monitoring reports during
22 this time period were neither signed nor certified by the Discharger or a LRO
23 and therefore, the Discharger did not timely submit self-monitoring reports
24 for 8 months. From September 2014 to April 2015, the Discharger submitted
25 self-monitoring reports a total of 30 complete periods of 30 days following
26 the deadline for submitting these reports. Each complete 30 day period is
27 subject to a \$3,000 MMP. These late reporting violations are further
28 explained in Exhibit C to the Complaint.

1 Therefore, the above sixty-seven (67) violations are subject to MMPs
2 under Water Code section 13385. Accordingly, the Prosecution Team proposes
3 \$201,000 (67 x \$3,000) in administrative civil liability to fully resolve
4 these outstanding violations.

5
6 **II. Violations Subject to Discretionary Administrative Civil**
7 **Liability**

8 A person who violates a waste discharge requirement issued for
9 compliance with the provisions of the federal Clean Water Act shall be
10 civilly liable. (Wat. Code, § 13385, subd. (a)(2).) The Colorado River
11 Basin Water Board may impose administrative civil liability in an amount not
12 to exceed the sum of both of the following: (1) ten thousand dollars
13 (\$10,000) for each day in which the violation occurs; and (2) where there is
14 a discharge, an additional liability not to exceed ten dollars (\$10) for each
15 gallon exceeding 1,000 gallons that is discharged and not cleaned up. (Wat.
16 Code, § 13385, subd. (c).)

17 In determining the amount of liability imposed under Water Code section
18 13385, the Colorado River Basin Water Board shall:

19 [T]ake into account the nature, circumstances, extent, and
20 gravity of the violation or violations, whether the discharge is
21 susceptible to cleanup or abatement, the degree of toxicity of
22 the discharge, and, with respect to the violator, the ability to
23 pay, the effect on its ability to continue its business, any
24 voluntary cleanup efforts undertaken, and prior history of
25 violations, the degree of culpability, economic benefit or
26 savings, if any, resulting from the violation, and other matters
27 as justice may require. At a minimum, liability shall be
28 assessed at a level that recovers the economic benefits, if any
derived from the acts that constitute the violation. (Wat. Code,
§ 13385, subd. (e); see Wat. Code, § 13327.)

26 On November 17, 2009, the State Water Resources Control Board
27 adopted Resolution 2009-0083 amending the Water Quality Enforcement
28 Policy ("Enforcement Policy"). The Enforcement Policy was approved by

1 the Office of Administrative Law and became effective on May 20, 2010.
2 The Enforcement Policy establishes a methodology for assessing
3 administrative civil liability that addresses the factors required by
4 Water Code sections 13327 and 13385. The Prosecution Team utilized
5 this methodology in Exhibit E to the Complaint to assess liability
6 against the Discharger. Exhibit E summarizes each violation subject to
7 a MMP, does not propose liability for fourteen (14) minor effluent
8 limit violations, and proposes liability for the Discharger's non-MMP
9 failure to monitor violations.

10 As identified in Exhibit D and E to the Complaint, the Discharger
11 has committed ninety-five (95) non-MMP failure to monitor violations,
12 each of which may be subject to a maximum ten thousand dollars
13 (\$10,000) per day penalty. The breakdown on the non-MMP failure to
14 monitor violations, in increasing order of importance or significance
15 is as follows:

- 16 1. Four (4) for failure to monitor the receiving waters for
17 hardness;
- 18 2. Thirty (30) for failure to monitor for flow;
- 19 3. Five (5) for failure to report on the receiving water
20 conditions;
- 21 4. Twelve (12) for failure to monitor the receiving waters for
22 bacteria;
- 23 5. Three (3) for failure to monitor wastewater treatment plant
24 effluent for toxicity; and
- 25 6. Forty-one (41) for failure to monitor wastewater treatment
26 effluent for bacteria.

27 The maximum and minimum liability amounts of the above monitoring
28 violations allowed by Water Code section 13385 is nine hundred fifty

1 thousand dollars (\$950,000) (\$10,000 x 95 days of violation) and ten
2 thousand four hundred and fifty-four dollars (\$10,454) respectively.¹

3 Exhibit E to the Complaint analyzes the above monitoring
4 violations under the methodology set forth in the Enforcement Policy to
5 propose a Final Liability Amount of \$422,457. The Prosecution Team
6 increased the Total Baseline Liability of \$408,082 to account for the
7 Discharger's moderately high degree of culpability, lack of cleanup and
8 cooperation, and history of violations. The Total Baseline Liability
9 was also increased to factor in the Board staff costs incurred to
10 investigate and enforce on the matter (\$14,375).

11 The Enforcement Policy provides that the Colorado River Basin
12 Water Board may adjust the liability amount under the provision "other
13 factors as just may require," if the Board believes that the amount
14 determined is inappropriate and makes express findings. Examples of
15 circumstances warranting an adjustment include:

- 16 1. The discharger has provided, or Water Board staff has
17 identified, other pertinent information not previously
18 considered that indicates a higher or lower amount is
justified.
- 19 2. A consideration of the issues of environmental justice
20 indicates that the amount would have a disproportionate impact
21 on a particular disadvantaged group.
- 22 3. The calculated amount is disproportionate to assessments for
23 similar conduct made in the recent past using the same
24 Enforcement Policy.

25 The Prosecution Team, at the time of its submission of legal and
26 technical arguments, does not have any information cited above or any
27 information suggesting that the Discharger does not have the ability to

28 ¹ The Enforcement Policy requires the Board to recover, at a minimum,
ten percent more than the economic benefit. As explained in Exhibit E to the
Complaint, the Discharger received an economic benefit of \$9,504 in avoided
costs from the omissions that constitute the violations. The minimum
liability amount is \$10,454 (rounded) (\$9,504 x 1.1).

1 pay and remain in business. Accordingly, based on the above and the
2 reasons set forth in Exhibit E to the Complaint, the Prosecution Team
3 proposes \$422,457 in administrative civil liability to fully resolve
4 these outstanding monitoring violations.

5
6 **CONCLUSION**

7 Based on the Prosecution Team's evidence submitted in accordance with
8 the Hearing Procedures specified in this enforcement action, the Complaint,
9 including all attachments, relevant testimony and additional submissions, the
10 Prosecution Team respectfully requests the Colorado River Basin Water Board
11 to impose MMPs in the amount of \$201,000 and to impose \$422,457 in
12 discretionary administrative civil liability against the Discharger for the
13 violations set forth above and in the Complaint.

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17 _____
18 Paul D. Ciccarelli
19 Staff Attorney
20 On Behalf of the Prosecution Team
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