

Lahontan Regional Water Quality Control Board

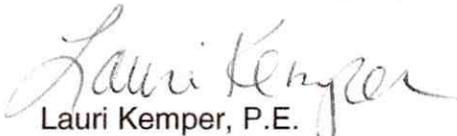
June 18, 2012

Patty Z. Kouyoumdjian, Executive Officer  
Regional Water Quality Control Board, Lahontan Region  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

**TRANSMITTAL OF LAHONTAN WATER BOARD PROSECUTION TEAM'S WRITTEN  
REBUTTAL FOR CONSIDERATION OF ADMINISTRATIVE CIVIL LIABILITY  
COMPLAINT NO. R6T-2012-0010, ISSUED TO NORTH TAHOE PUBLIC UTILITY  
DISTRICT - PLACER COUNTY, WDID NO. 6SSO11110**

Pursuant to the April 19, 2012 Hearing Procedures, I am submitting an original, 15 copies, and an electronic copy of the Lahontan Water Board Prosecution Team's written rebuttal to you for the above-referenced case. Additional copies are also provided to Lauri Kemper, Andrew Tauriainen, Kimberly Niemeyer, Paul Schultz, and Neil Eskind in accordance with the Hearing Procedures.

Please contact me at (530) 542-5436 if you have any questions regarding this matter.



Lauri Kemper, P.E.  
Assistant Executive Officer

Enclosure: Lahontan Water Board Prosecution Team's Written Materials

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EJT/adw/T:/\_Agenda Items/2012/6-June/NTPUD/ NTPUD, Written Evidentiary Rebuttal Cover Letter, 2012-6-18  
File Under: 6SSO11110

DON JARDINE, CHAIR | HAROLD SINGER, EXECUTIVE OFFICER

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BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

In the Matter of: ) ACL COMPLAINT R6T-2012-0010  
NORTH TAHOE PUBLIC UTILITY )  
DISTRICT'S DECEMBER 19, 2010, ) PROSECUTION TEAM'S WRITTEN  
DISCHARGE INTO LAKE TAHOE ) REBUTTAL

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1 **I. INTRODUCTION**

2 The Prosecution Team submits this Written Rebuttal in accordance with Part F.3 of  
3 the Hearing Procedures issued by the California Regional Water Quality Control Board,  
4 Lahontan Region ("Regional Board" or "Board") for consideration of Administrative Civil  
5 Liability Complaint No. R6T-2012-0010 ("Complaint") against the North Tahoe Public  
6 Utility District ("Discharger").

7 **II. BACKGROUND**

8 The fundamental and undisputed facts are set forth in the Spill Report<sup>1</sup> and other  
9 documents provided by the Discharger: On December 19, 2010, the Discharger released  
10 approximately 130,000 gallons of raw sewage from its Dollar Hill Pump Station over  
11 private property and through the residence at 3730 North Lake Boulevard when a backup  
12 generator fuel system failed during a commercial power outage. (Spill Report, at ES-1.<sup>2</sup>)  
13 About 500 gallons remained in the residence and was later recovered. (Discharger's Spill  
14 Volume Estimate dated 1/22/11, attached to the Complaint as Attachment 2.) The rest,  
15 about 129,500 gallons, flowed into Lake Tahoe and could not be recovered. (Spill  
16 Report, at ES-1.) The discharge damaged the inside and outside of the affected property,  
17 necessitating, among other things, removal of raw sewage from the floors and walls,  
18 sanitation of surfaces and soil, structural repairs and landscaping. (Discharger's June 29,  
19 2011, Memo Regarding 3730 North Lake Tahoe Boulevard, Tahoe City, attached to the  
20 Complaint as Attachment 3.)

21 \_\_\_\_\_  
22 <sup>1</sup> "Investigation and Report on the Cause, Extent, and Responsibility for the Electrical  
23 Failure and Subsequent Sewage Overflow on December 19, 2010, at and near the North  
24 Tahoe Public Utility District Dollar Hill Pump Station, Placer County, California" ("Spill  
25 Report"), dated March 21, 2011, prepared by John Larson and William Ettlich. The  
26 Prosecution Team submitted the Spill Report as Attachment 1 to the Complaint. The  
27 Discharger submitted the Spill Report as Exhibit 34.

28 <sup>2</sup> The Spill Report estimates the total spill volume as 136,000 gallons. (Spill Report, ES-  
1.) The Discharger later revised this estimate to approximately 133,000 gallons.  
(Complaint, Attachment 2.) The Prosecution Team used a more conservative estimate  
based on the significant digits used in the calculations, and rounded the estimated spill  
volume down to 130,000 gallons.

1           The Complaint describes the several violations of state and federal law resulting  
2 from the discharge. The discharge violated California Water Code section 13376  
3 because the Discharger failed to file a report of waste discharge. (Complaint, ¶ 23.) The  
4 discharge violated the *Water Quality Control Plan for the Lahontan Region* (“Basin Plan”),  
5 which prohibits discharges of raw sewage into the surface waters of the Lake Tahoe  
6 Basin. (*Id.* at ¶ 24.) The discharge violated Section 301 of the federal Clean Water Act  
7 because the Discharger failed to obtain an NPDES permit. (*Id.*)

8           These violations are subject to administrative civil liability under Water Code  
9 section 13385, subdivisions (a)(1), (4) and (5), respectively.<sup>3</sup> Water Code section 13385,  
10 subdivision (c), authorizes a maximum administrative civil liability for these violations of  
11 \$1,295,000. After applying and analyzing the factors set forth in the State Water Board’s  
12 Water Quality Enforcement Policy (“Enforcement Policy”), the Complaint proposes  
13 administrative civil liability in the amount of **\$232,100**. (Complaint, ¶ 36 and Attachment B  
14 [“Liability Methodology”].)

15           The Discharger disagrees with the Complaint’s proposed liability amount and the  
16 analysis set forth in the accompanying Administrative Civil Liability Methodology (“Liability  
17 Methodology,” Complaint, Attachment B) and on June 6, 2012, submitted its “Written  
18 Materials for Consideration of Administrative Civil Liability Complaint No. R6T-2012-0010  
19 for North Tahoe Public Utility District, Placer County” (“Discharger’s Submittals”). The  
20 Discharger’s Submittals do not contain witness testimony or statements of fact or law.  
21 This Rebuttal addresses the Discharger’s “Summary of Testimony of Witnesses.”  
22

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23  
24 <sup>3</sup> The Complaint also describes how the discharge violated Paragraph C.1 of State Water  
25 Board Order No. 2006-0003-DWQ (“SSO Order”), which prohibits sanitary sewer  
26 overflows that result in discharges of raw sewage to waters of the United States, including  
27 Lake Tahoe, and Paragraph C.2 of the SSO Order, which prohibits raw sewage  
28 discharges that create a public or private nuisance. (Complaint, ¶¶ 25-26.) These  
violations are subject to administrative civil liability under Water Code section 13350, but  
the Complaint holds them in the alternative given the Water Code section 13385  
violations. (*Id.* at ¶ 31.)

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**III. ARGUMENT**

**A. THE RECORD DEMONSTRATES THE DISCHARGER'S FAILURES  
SUFFICIENTLY TO SUPPORT THE PROPOSED CULPABILITY FINDING**

The Discharger asserts that it "was not a culpable party for the cause" of the discharge. (Discharger's Submittals, § II, fourth bullet point.) Discharger's Exhibits 34 through 40 appear to be offered in support. This point and these exhibits are relevant only to the "culpability" adjustment factor in Step 4 of the Enforcement Policy methodology.

The Enforcement Policy provides that the Board consider the "Discharger's degree of culpability regarding the violation. Higher liabilities should result from intentional or negligent violations than for accidental, non-negligent violations." (Enforcement Policy, at 17.) "The test is what a reasonable and prudent person would have done or not done under similar circumstances." (*Id.*) The culpability factor is a multiplier that can be applied to adjust the initial liability amount, ranging from 0.5 to 1.5 (a 50% reduction up to a 50% increase). (*Id.*) The Liability Methodology examines the record and concludes that the Discharger's failure to properly oversee its contractors and to properly operate and maintain the Dollar Hill Pump Station backup generator fuel system likely contributed to the cause of the discharge, and that a culpability multiplier of 1.1 (a 10% increase) is appropriate. (Liability Methodology, at 9-10.)

The discharge was caused by the failure of the electrical power supply to the fuel pump that serves the backup generator's day tank, from which the generator draws fuel to operate. (Spill Report, at ES-1.) The failed backup generator fuel system was installed in early 2010 and handed to the Discharger for operation in June, 2010, about six months prior to the discharge. (*Id.* at 3.) The Discharger had sole possession and control over the Pump Station at the time of the spill, and for at least six months prior. All culpability for the discharge should be imputed to the Discharger.

The Discharger, apparently motivated by a desire to shape the outcome of future civil litigation with the contractors, seeks to blame the contractors for the discharge.

1 Likewise, the contractors blame the District. Specifically, the Discharger claims that the  
2 contractor, Stantec, and the subcontractor, Dinter, did not properly design or construct the  
3 emergency generator and fuel system day tank equipment that caused the discharge.  
4 (Spill Report, at 13-14.) Stantec and Dinter, on the other hand, claim that the Discharger  
5 operated the day fuel tank system in the wrong mode, that the Discharger failed to  
6 implement a standard protocol of testing the system, that the design specifications for the  
7 system were not as the Discharger now claims, and that the Discharger's staff was not  
8 properly trained to operate or trouble-shoot the completed system. (Letter from Dinter  
9 dated August 12, 2011, included as Attachment 5 to the Complaint.)

10 This ACL hearing is not the proper forum for allocating liability between the  
11 Discharger and the contractors. The question before the Board is whether the record  
12 shows that the Discharger's culpability justifies an adjustment to the liability amount.  
13 Substantial evidence in the record supports a finding that the Discharger was likely at  
14 least partially at fault for the discharge. A 10% culpability factor increase is appropriate, if  
15 not generous to the Discharger.

16 **B. THE DISCHARGER'S ABILITY TO PAY THE PROPOSED LIABILITY IS**  
17 **BEYOND REASONABLE DISPUTE**

18 The Discharger asserts that it serves a small community with a financial hardship.  
19 (Discharger's Submittals, § II, first two bullet points.) Discharger's Exhibits 25 through 33  
20 appear to be offered in support these assertions. These points and exhibits are relevant  
21 only to Step 6 in the Liability Methodology, regarding the Discharger's ability to pay and  
22 ability to continue in business. The Enforcement Policy allows the Water Boards to adjust  
23 the liability amount if the record contains sufficient financial information to determine that  
24 the proposed liability would cause undue hardship to the service population or to the  
25 discharger. (Enforcement Policy, at 19.) "The ability of a discharger to pay an ACL is  
26 determined by its revenues and assets." (*Id.*) The Enforcement Policy directs Board staff  
27 to "conduct a simple preliminary asset search prior to issuing the ACL compliant." (*Id.*)  
28

1 Prior to issuing the Complaint, the Prosecution Team examined the financial  
2 statements and reports available on the Discharger's website.<sup>4</sup> The Liability Methodology  
3 describes the findings and concludes that the Discharger has the ability to pay the  
4 proposed liability through financial reserves or through assessment of fees. (Liability  
5 Methodology, at 12.) The Discharger's points and exhibits do not change this finding.

6  
7 **1. The Discharger's Status as Serving a Small Community with Financial  
Hardship is Not Applicable to Water Code § 13385(c) Penalties**

8 The Discharger's status as serving a small community with a financial hardship is  
9 not applicable to the Water Code section 13385, subdivision (c) penalties set forth in the  
10 Complaint. As described in Section VII of the Enforcement Policy, Water Code section  
11 13385, subdivisions (h) and (i) set forth mandatory minimum penalties ("MMPs") for  
12 specified violations of NPDES permits.<sup>5</sup> Water Boards must impose MMPs in an amount  
13 of \$3,000 for each of the specified violations, except that under Water Code section  
14 13385, subdivision (k), the Boards may allow a Publicly Owned Treatment Work  
15 ("POTW") serving a small community that has a financial hardship to spend an equivalent  
16 amount toward a corrective "compliance project" within the community. Section VIII of the  
17 Enforcement Policy sets forth the conditions that apply to proposed MMP compliance  
18 projects.

19 The penalties proposed here are brought under Water Code section 13385,  
20 subdivision (c), not under subdivisions (h) and (i). The considerations in Water Code  
21 section 13385, subdivision (k) do not apply. The Enforcement Policy is clear:  
22 "[compliance projects] are expressly authorized by statute only in connection with MMPs  
23 for small communities with a financial hardship. (Wat. Code, § 13385, subd. (k).) Unless  
24 expressly authorized by future legislation, [compliance projects] may not be considered in  
25

26 <sup>4</sup> [www.ntpud.org/financial.php](http://www.ntpud.org/financial.php)

27 <sup>5</sup> The Discharger does not have an NPDES permit covering the December 19, 2010,  
28 discharge, so the MMP penalty provisions cannot apply.

1 connection with other ACLs." (Enforcement Policy, at 28.)

2 **2. The Discharger's Ability to Pay the Proposed Liability is Firmly**  
3 **Established by the Ability to Assess Fees and the District's Substantial**  
4 **Assets**

5 The Discharger is a public agency that provides sewer and other services to its  
6 constituents. As such, it has the power to assess fees and could pay the full \$232,100  
7 liability amount through a special fee assessment, should it choose to do so. As of 2009,  
8 the Discharger served 4,010 actual sewer connections.<sup>6</sup> Thus, the Discharger could  
9 collect the full amount through a one-time assessment of around \$58 per connection.  
10 However, it would be perhaps more realistic for the District to collect the liability amount  
11 over twelve months, in order to avoid any potential undue hardship to the service  
12 population. In that case, the assessment would drop to less than \$5/month per  
13 connection. Should this amount cause potential hardship, the District could impose an  
14 even lower assessment over a longer period.

15 But the Discharger could easily pay the liability without imposing any new  
16 assessment on its constituents, using only its substantial unrestricted net assets. The  
17 Discharger's most recent Financial Auditor's Report,<sup>7</sup> released in 2011, states that, during  
18 the covered period, the Discharger's Sewer Fund's "Unrestricted Net Assets increased  
19 \$773,173 from \$8,011,168 to \$8,784,341." (2011 Financial Auditor's Report, at 6.)  
20 According to the definitions used in the report, "unrestricted net assets" are those that are  
21 not "restricted" (e.g., subject to external constraints on spending) or "invested in capital  
22 assets, net of related debt." (*Id.* at 20.) In other words, the Discharger's unrestricted net  
23 assets are assets it has available to spend as it wishes. The proposed liability amount of

24 \_\_\_\_\_  
25 <sup>6</sup> "About the North Tahoe Public Utility District," Exhibit 1 to Declaration of Eric Taxer in  
26 Support of Written Rebuttal ("Taxer Declaration"), filed concurrently herewith.

27 <sup>7</sup> "Management's Discussion and Analysis Financial Statements Supplementary  
28 Information & Independent Auditor's Report for the Fiscal Years Ended June 30, 2011  
and 2010" ("2011 Financial Auditor's Report"), attached as Exhibit No. 3 to the  
Prosecution Team's Written Materials.

1 \$232,100 represents less than three percent (3%) of the Discharger's unrestricted net  
2 assets.

3 The Discharger's previous Financial Auditor's Reports demonstrate continually  
4 increasing Sewer Fund Unrestricted Net Assets. The Discharger's 2010 Financial  
5 Auditor's Report states that "[Sewer Fund] Unrestricted Net Assets increased \$806,420  
6 from \$7,204,748 to \$8,011,168."<sup>8</sup> The Discharger's 2009 Financial Auditor's Report  
7 states that "[Sewer Fund] Unrestricted Net Assets increased from \$6,476,150 to  
8 \$7,204,748."<sup>9</sup> The Discharger's 2008 Financial Auditor's Report states that "[Sewer  
9 Fund] Unrestricted Net Assets increased in each of two categories. Those Designated for  
10 Board Reserves increased from \$197,997 to \$594,322, while those which are  
11 Undesignated increased from \$5,605,687 to \$5,881,828. Total Net Assets grew by  
12 \$813,651 [to a total of \$6,476,150]."<sup>10</sup>

13 The record contains substantial evidence for the Regional Board to find that the  
14 Discharger has assets available to pay the full proposed liability amount many times over  
15 without causing undue hardship to the service population or to the Discharger.

16 **C. THE CIRCUMSTANCES WARRANT THE USE OF \$10 PER GALLON IN THE**  
17 **ENFORCEMENT POLICY PENALTY CALCULATIONS**

18 The Discharger asserts that "the overflow was a High Volume Discharge" and that  
19 "the overflow occurred at a time when there was an extraordinary and unusually high

20 \_\_\_\_\_  
21 <sup>8</sup> "Management's Discussion and Analysis Financial Statements Supplementary  
22 Information & Independent Auditor's Report for the Fiscal Years Ended June 30, 2010  
23 and 2009," at 5. Page 5 is attached as Exhibit 2 to the Taxer Declaration; the full report is  
24 available in the Regional Board's files and submitted by reference.

25 <sup>9</sup> "Management's Discussion and Analysis Financial Statements Supplementary  
26 Information & Independent Auditor's Report for the Fiscal Years Ended June 30, 2009  
27 and 2008," at 5. Page 5 is attached as Exhibit 3 to the Taxer Declaration; the full report is  
28 available in the Regional Board's files and submitted by reference.

<sup>10</sup> "Management's Discussion and Analysis Financial Statements Supplementary  
Information & Independent Auditor's Report for the Fiscal Years Ended June 30, 2008  
and 2007," at 5. Page 5 is attached as Exhibit 4 to the Taxer Declaration; the full report is  
available in the Regional Board's files and submitted by reference.

1 volume of stormwater" in the Discharger's "sewer system and storm flows significantly  
2 diluted the discharge." (Discharger's Submittals, § II, fifth and sixth bullet points.)  
3 Discharger's Exhibits 1 through 23 and 40 through 48 appear to be offered in support of  
4 these assertions. These points and exhibits are relevant to the per gallon liability  
5 assessment in Step 2 of the Enforcement Policy Liability Methodology.

6 Water Code section 13385, subdivision (c)(2), provides a maximum liability of \$10  
7 for each gallon discharged but not cleaned up above 1,000 gallons. The Enforcement  
8 Policy methodology applies various factors to this per gallon amount to determine the  
9 appropriate penalty amount for discharge violations. The Enforcement Policy's High  
10 Volume Discharges provision describes the Board's discretion to use lower per gallon  
11 amounts in some circumstances. The Liability Methodology, at pages 7-8, describes why  
12 the discharge is not subject to the High Volume Discharge provision, and applies the  
13 methodology to an initial liability amount based on \$10 per gallon.

#### 14 **1. The Discharger Seeks an Inappropriately Small Penalty**

15 The Discharger appears poised to argue that the Board must impose a per gallon  
16 liability of \$2 or less. The Discharger misreads the High Volume Discharges provision.  
17 The High Volume Discharge provision states that:

18 The Water Boards shall apply the above per gallon factor to the  
19 maximum per gallon amounts allowed under statute for the violations  
20 involved. Since the volume of sewage spills and releases of stormwater  
21 from construction sites and municipalities can be very large for sewage  
22 spills and releases of municipal stormwater or stormwater from  
23 construction sites, a maximum amount of \$2.00 per gallon should be  
24 used with the above factor to determine the per gallon amount for  
25 sewage spills and stormwater. Similarly, for releases of recycled water  
26 that has been treated for reuse, a maximum amount of \$1.00 per gallon  
27 should be used with the above factor. Where reducing these maximum  
28 amounts results in an inappropriately small penalty, such as dry weather  
discharges or small volume discharges that impact beneficial uses, a  
higher amount, up to the maximum per gallon amount, may be used.

26 (Enforcement Policy, at 14 [emphasis added].)

27 The December 19, 2010, discharge was not a wet weather discharge because  
28 storm flows were not a factor in causing or contributing to the discharge. (Liability

1 Methodology, at 7-8.) Moreover, the use of \$2 per gallon would reduce the final liability to  
2 approximately \$46,420, which would be inappropriately small given that the bulk of the  
3 discharge reached Lake Tahoe and impacted beneficial uses. The Discharger's calls to  
4 reduce the per gallon assessment using the High Volume Discharge provision should be  
5 rejected.

## 6 **2. The Board Should Not Adopt a Bright Line High Volume Discharge Limit**

7 The Discharger's Exhibits, particularly Exhibit 17, appear geared towards an  
8 argument that the Board should adopt a bright line of perhaps 100,000 gallons for  
9 applying the High Volume Discharge provision. This is a bad idea. The Enforcement  
10 Policy does not establish a bright line volume for High Volume Discharges because, if one  
11 existed, all dischargers would have a significant incentive to allow discharges to reach or  
12 exceed that amount. This could be a real risk in discharges like the one here, where the  
13 Discharger could well have been able to stop the spill short of 100,000 gallons with proper  
14 staff training and monitoring, but might have chosen not to do so in order to take  
15 advantage of the High Volume Discharge policy. No other Board has ever adopted a  
16 bright line High Volume Discharge amount. This Board should not do so.

## 17 **3. The High Volume Discharge Provision Does Not Apply to the District's 18 Inflow and Infiltration Problems**

19 Discharger's Exhibits, particularly Exhibits 4 through 23, appear geared towards an  
20 argument that any storm water in the discharge should be credited towards a reduced per  
21 gallon assessment. In effect, the Discharger would have the Board reduce the per gallon  
22 assessment based on what it purports to be a significant problem with inflow and  
23 infiltration ("I/I"). The High Volume Discharge provision does not support such a  
24 reduction.

25 The commercial power failure at the Dollar Hill Pump Station occurred during a  
26 storm event, but the storm event did not cause or contribute to the discharge. The  
27 proximate cause of this discharge was a failure in the backup generator fuel system,  
28 which was unrelated to weather. Thus, this discharge should be considered a "dry  
weather discharge," and a penalty based on an initial liability amount of less than \$10 per

1 gallon would be inappropriately small.

2 Moreover, the evidence in the record supports a conclusion that the discharge was  
3 predominately undiluted raw sewage. Even the Discharger concedes that it was at least  
4 60% raw sewage (see Discharger's Exhibit 22).<sup>11</sup> The actual percentage was  
5 undoubtedly higher. Most, if not all, of the precipitation during the period fell in the form of  
6 snow. (Prosecution Team's Exhibit 2.)<sup>12</sup> December 19, 2010, was the Sunday of the last  
7 full weekend before the Christmas holiday. By then most, if not all, schools had let out for  
8 winter break. By late December, 2010, the Lake Tahoe region had experienced  
9 extremely high snow levels, and the ski season was in full swing. It is safe to assume that  
10 on December 19, 2010, the Discharger's service area was full of seasonal visitors,  
11 perhaps as full as it is ever likely to get.

12 In contrast, by December 19, 2011, which the Discharger uses as a reference, the  
13 region had received no measurable precipitation during the month, and the ski season  
14 had scarcely begun. In addition, December 19, 2011, was a Monday, when it is  
15 reasonable to expect that most or all of the few weekend ski visitors would have left. It is  
16 reasonable to conclude that on December 19, 2011, the Discharger's service area had  
17 significantly fewer visitors than it had on the same day the year before. This alone could  
18 explain most of the differences between the flows measured in 2010 and 2011.

19 The Discharger, like other municipal sewer providers, appears to have trouble  
20 operating and maintaining its system to prevent at least some storm flows from entering  
21 the system. But the fact remains that the system was not designed or constructed to  
22 collect or transport significant storm flows, and any I/I related flow increases on December  
23

24 <sup>11</sup> The Prosecution Team reserves the right to object to the Discharger's charts and  
25 graphs as inadmissible hearsay should the Discharger fail to authenticate the source and  
26 provide the raw data.

27 <sup>12</sup> The Prosecution Team's Exhibit 2 includes weather data from Tahoe City, the nearest  
28 reporting station. Significant amounts of snow was measured on the ground each day in  
December, 2010. On December 19, there were 19 inches measured at Tahoe City  
(compared to 16 the day before and 23 the day after).

1 19, 2010, are the result of the Discharger's own failures. The High Volume Discharge  
2 provision should not be invoked to benefit the Discharger here.

3 **4. The Proposed Liability is Consistent with Prior Orders from this and other**  
4 **Regional Boards**

5 Discharger's Exhibits 42 through 48 contain portions of Administrative Civil Liability  
6 complaints and related documents from other regions, apparently offered in an attempt to  
7 distinguish this Complaint from sewage spills in other regions. The proposed liability  
8 amount of \$232,100 here is in line with prior orders of this Board, as well as orders from  
9 other Regional Boards.

10 The best comparison case comes from this Board, which issued Order No. R6T-  
11 2006-0046 on October 11, 2006.<sup>13</sup> On July 19, 2005, a contractor working for a private  
12 landowner punctured a 14-inch sewer force main near the North Tahoe Public Utility  
13 District's Secline Avenue Pump Station, resulting in the discharge of approximately  
14 120,000 gallons of raw sewage into Lake Tahoe. (Complaint R6T-2005-0029, at 2.) That  
15 complaint, which was not issued against the Discharger here, proposed administrative  
16 civil liability in the amount of \$700,000. (*Id.* at 6.) After the initial estimated discharge  
17 volume was corrected to 56,000 gallons, the parties ultimately settled for a total of  
18 \$325,000, of which \$26,840 went to the Waste Discharge Permit Fund, and \$298,160  
19 went to the North Tahoe Public Utility District for the purchase of a portable sewer bypass  
20 hose reel system. (Order No. R6T-2006-0046, at ¶ 3 and fn 1.)

21 The 2005 discharge prosecution occurred prior to the current Enforcement Policy  
22 but, given the relative similarity in the size of the spill, it may serve as a useful comparison  
23 to determine whether the current proposed liability is an appropriate size, or whether it is  
24 inappropriately small or large. The 2005 discharge settled a 56,000 gallon discharge for a  
25 total of \$325,000, or around \$5.78 per gallon. Here, the Complaint proposes a total

26  
27 <sup>13</sup> A copy of Order No. R6T-2006-0046, Complaint No. R6T-2005-0029, and attachments  
28 are included as Exhibit 5 to the Taxer Declaration.

1 liability amount of \$232,100 for a 130,000 gallon spill, roughly \$1.78 per gallon.<sup>14</sup>

2 The Complaint is generally in line with the 2005 Order. The lower total proposed  
3 liability here is attributable to the below-moderate harm to beneficial uses factor score,  
4 because the spill occurred during a period in which contact recreation was unlikely.  
5 (Liability Methodology, at 2-4.) Had the 2010 discharge occurred at any other time, it is  
6 likely that the harm to beneficial uses score and the final liability amount would have been  
7 much higher.

8 The Discharger offers Complaint No. R9-2010-0085 (Discharger's Exhibit 42),  
9 presumably because that case involved a sewer discharge triggered in part by failure to  
10 properly monitor a facility and by the failure of the district to properly train staff.  
11 (Complaint No. R9-2010-0085, Technical Analysis, at 1.) That spill totaled approximately  
12 2.39 million gallons, of which approximately 966,800 gallons were recovered. (*Id.*) That  
13 complaint invoked the High Volume Discharge provision, and used \$2 per gallon to  
14 calculate the initial liability. (*Id.* at 12.)

15 Complaint No. R9-2010-0085 is distinguishable from the present case for at least  
16 two reasons. First, at 2.39 million gallons, that discharge was over eighteen (18) times  
17 the size of the December 19, 2010, discharge, and unquestionably "high volume."  
18 Second, that discharge did not reach a surface water body. (*Id.* at 7.) Here, on the other  
19 hand, almost the entire discharge reached Lake Tahoe, a water of the State and water of  
20 the United States. It would be inappropriate to apply the High Volume Discharge the  
21 same way.

22 The other documents offered by the Discharger generally involve spill volumes  
23 similar to or higher than R9-2010-0085, and are thus clearly high volume. It is important

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24  
25 <sup>14</sup> The Prosecution Team does not suggest that the Board consider only the "bottom line"  
26 in determining a final penalty amount. The Enforcement Policy requires consideration of  
27 each applicable factor in a manner that is not outcome-oriented. But, given that the 2005  
28 discharge occurred before the current Enforcement Policy, it is appropriate to compare  
the end results for purposes of understanding whether the proposed penalty here is  
inappropriately small.

1 to note that at least one Region recommend a per gallon assessment of greater than \$2  
2 for a spill larger than the current one. (See Discharger's Exhibit 46 [recommending a final  
3 liability amount of \$519,990 for a 142,500 gallon discharge because "A lesser per gallon  
4 assessment would have resulted in an inappropriately small penalty...."]<sup>15</sup>)

5 Other recent orders not cited by the Discharger support the application of the full  
6 \$10 per gallon base liability calculation here. Region 8 issued Order R8-2010-0073, in  
7 the matter of Irvine Ranch Water District, which imposed a liability of \$43,099 for a  
8 discharge 260,725 gallons. (Order R8-2010-0073 [Taxer Declaration, Exhibit 7], at 1-2.)  
9 The underlying complaint calculated the initial liability amount using \$10 per gallon.  
10 (Complaint R8-2010-0059 [Taxer Declaration, Exhibit 8], at 3.) Similarly, Region 2 issued  
11 Order R2-2011-0014, imposing a liability of \$280,000 for a combination of unrecovered  
12 discharges totaling 61,000 gallons and reporting violations. (Order No. R2-2011-0014  
13 [Taxer Declaration, Exhibit 9], at 6.) There, the Regional Board approved of the use of  
14 "the statutory maximum of \$10 per gallon to calculate the proposed administrative civil  
15 liability because all four SSOs were dry weather discharges." (*Id.* at 4.)

16 The proposed liability amount of \$232,100 is consistent with prior orders of this  
17 and other Regional Boards.

#### 18 **IV. CONCLUSION**

19 The proposed liability of \$232,100 is fair under the circumstances, and consistent  
20 with similar orders from this and other Regional Boards. The Prosecution Team  
21 respectfully requests that the Regional Board find that the violations in the Complaint  
22 occurred as alleged, and approve staff's recommended civil liability, with the additional  
23 inclusion of all staff costs.

24  
25  
26 <sup>15</sup> Discharger's Exhibits 46 and 47 involve the same matter. The first complaint, issued  
27 against the City of Sebastopol, was rescinded in favor of the second complaint against  
28 the contractor. (Taxer Declaration, Exhibit 6.) The operative complaint has not yet been  
subject to an order by the relevant Regional Board.

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Date: June 18, 2012



Andrew Tauriainen, Senior Staff Counsel  
California Regional Water Quality Control Board,  
Lahontan Region, Prosecution Team

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5 Sacramento, California 95814  
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8 E-mail: atauriainen@waterboards.ca.gov

9 Attorney for the Prosecution Team

10  
11 BEFORE THE CALIFORNIA WATER QUALITY CONTROL BOARD

12 LAHONTAN REGION

13 In the Matter of: ) ACL COMPLAINT R6T-2012-0010  
14 NORTH TAHOE PUBLIC UTILITY )  
15 DISTRICT'S DECEMBER 19, 2010, ) DECLARATION OF ERIC J. TAXER  
16 DISCHARGE INTO LAKE TAHOE ) IN SUPPORT OF WRITTEN REBUTTAL

17 I, Eric J. Taxer, declare as follows:

- 18 1. I am employed at the California Regional Water Quality Control Board, Lahontan  
19 Region ("Regional Board") as a Water Resources Control Engineer, and have been  
20 employed with the Regional Board for a total of 18 years. I graduated from Oregon State  
21 University in 1986 with a Bachelor of Science in Civil Engineering. I work primarily in the  
22 Enforcement and Special Projects Unit.
- 23 2. I am the primary Enforcement and Special Projects Unit staff assigned to the North  
24 Tahoe Public Utility District ("Discharger") December 19, 2010, discharge into Lake  
25 Tahoe, the subject of Administrative Civil Liability Complaint R6T-2012-0010  
26 ("Complaint"). I maintain the physical file, and I prepared the Complaint Exhibits and the  
27 May 2, 2012 Prosecution Team Written Evidentiary Submittals ("Written Submittals").
- 28 3. A true and correct copy of the "Investigation and Report on the Cause, Extent, and

1 Responsibility for the Electrical Failure and Subsequent Sewage Overflow on December  
2 19, 2010, at and near the North Tahoe Public Utility District Dollar Hill Pump Station,  
3 Placer County, California" ("Spill Report"), dated March 21, 2011, prepared by John  
4 Larson and William Ettlich, as submitted to the Regional Board by the Discharger (minus  
5 appendices), is attached to the Complaint as Attachment 1.

6 4. True and correct copies of the Discharger's spill volume calculations and re-  
7 calculations, as submitted to the Regional Board by the Discharger, are attached to the  
8 Complaint as Attachment 2.

9 5. A true and correct copy of the Discharger's June 29, 2011, Memorandum to File  
10 Regarding 3730 North Lake Tahoe Boulevard, as submitted to the Regional Board by the  
11 Discharger, is attached to the Complaint as Attachment 3.

12 6. A true and correct copy of the Regional Board's July 7, 2011, letter to Stantec  
13 Consulting and Dinter requesting information and response to the Spill Report is attached  
14 to the Complaint as Attachment 4.

15 7. True and correct copies of the August 12, 2011, responses from Stantec  
16 Consulting and Dinter, as submitted to the Regional Board by Stantec Consulting and  
17 Dinter, are attached to the Complaint as Attachment 5.

18 8. A true and correct copy of the Regional Board's September 14, 2011, letter to the  
19 Discharger requesting information and response to the responses from Stantec and  
20 Dinter, is attached to the Complaint as Attachment 6.

21 9. True and correct copies of the responses from the Discharger and Larson  
22 Consulting are attached to the Complaint as Attachment 7.

23 10. A true and correct copy of State Water Resources Control Board Order No. 2006-  
24 0003-DWQ is attached to the Written Submittals at Exhibit 1.  
25  
26  
27  
28

1 11. True and correct copies of email correspondence between myself and staff with  
2 the National Oceanic and Atmospheric Administration ("NOAA") regarding the Tahoe City  
3 weather records for December, 2010, as well as copies of the NOAA records for Tahoe  
4 City during that period, are attached to the Written Submittals at Exhibit 2.

5 12. A true and correct copy of the Discharger's "Management's Discussion and  
6 Analysis Financial Statements Supplementary Information & Independent Auditor's  
7 Report for the Fiscal Years Ended June 30, 2011 and 2010" ("2011 Financial Auditor's  
8 Report"), as downloaded from the Discharger's website ([www.ntpud.org/financial.php](http://www.ntpud.org/financial.php), last  
9 visited March 2, 2012), is attached to the Written Submittals as Exhibit 3.

10 13. True and correct copies of excerpts from the Discharger's July 2009 "Main Sewer  
11 Pump Station Master Plan," downloaded from the Discharger's website  
12 ([www.ntpud.org/master-plans.php](http://www.ntpud.org/master-plans.php), last visited March 2, 2012), is attached to the Written  
13 Submittals as Exhibit 4.

14 14. A true and correct copy of the "About the North Tahoe Public Utility District" page  
15 ([www.ntpud.org/about.php](http://www.ntpud.org/about.php), last visited June 13, 2012) is attached hereto as Exhibit 1.

16 17. A true and correct copy of page 5 of the Discharger's "Management's Discussion  
18 and Analysis Financial Statements Supplementary Information & Independent Auditor's  
19 Report for the Fiscal Years Ended June 30, 2010 and 2009," is attached hereto as Exhibit  
20 2; the full report is available in the Regional Board's enforcement file.

21 16. A true and correct copy of page 5 of the Discharger's "Management's Discussion  
22 and Analysis Financial Statements Supplementary Information & Independent Auditor's  
23 Report for the Fiscal Years Ended June 30, 2009 and 2008," is attached hereto as Exhibit  
24 3; the full report is available in the Regional Board's enforcement file.

25 17. A true and correct copy of page 5 of the Discharger's "Management's Discussion  
26 and Analysis Financial Statements Supplementary Information & Independent Auditor's  
27  
28

1 Report for the Fiscal Years Ended June 30, 2008 and 2007," is attached hereto as Exhibit  
2 4; the full report is available in the Regional Board's enforcement file.

3 18. True and correct copies of Order No. R6T-2006-0046, Complaint No. R6T-2005-  
4 0029, and attachments are attached hereto as Exhibit 5.

5 19. A true and correct copy of the North Coast Regional Water Quality Control Board's  
6 letter dated April 12, 2011, withdrawing Administrative Civil Liability Complaint No. R1-  
7 2010-0081, is attached hereto as Exhibit 6.

8 20. A true and correct copy of Order R8-2010-0073 is attached hereto as Exhibit 7.

9 21. A true and correct copy of Complaint No. R8-2010-0059 is attached hereto as  
10 Exhibit 8.  
11

12 22. A true and correct copy of Order R2-2011-0014 is attached hereto as Exhibit 9.

13 I declare under penalty of perjury pursuant to the laws of the State of California  
14 that the foregoing is true and correct.

15 Executed this 18<sup>th</sup> day of June, 2012, at South Lake Tahoe, California.

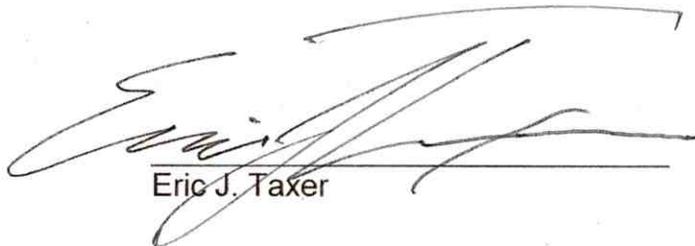
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EXHIBIT NO. 1



## About the North Tahoe Public Utility District

Following are the mission statement, vision statement, and core values statement for the North Tahoe Public Utility District. *Adopted July 2006.*

### Mission Statement

To provide sewer and water service, consistent with standards set for public health, safety, and the environment in an efficient and accountable manner. To provide, promote and support local and regional recreational and conference facilities and activities for the use and enjoyment of residents and visitors. To acknowledge and continue the District's role as an advocate for the economic well being of our community.

### Vision Statement

The VISION for the North Tahoe Public Utility District is:

- to rehabilitate our sewer and water infrastructure to current standards and continue to efficiently provide for future demands.
- to provide expanded and improve existing recreational facilities for our community.
- to be an active voice for our Community in areas of redevelopment and existing and future community services.
- to foster a positive long term employer/employee relationships.
- to provide an economically viable Conference Center.

### Core Values

- Open Communications - be open to all points of view
- Customer Service - be ever respectful of those whom we serve
- Honesty - be fair, straightforward and factual
- Public Trust - be committed to earning this every day
- Protecting the Environment - be good stewards of what we have been given
- Cooperation - efficiencies come from teamwork
- Financial Reporting and Accountability - be deliberate, accurate and clear
- Fiscal Recording - exercise careful watch/care over public funds

District Facts	Sewer Department	Water Department	Recreation & Parks Department
Founded	July 1948	November 1967	May 1968
Service Area	4,160 acres, 6.5 square miles	2,186 acres, 3.4 square miles, some areas of the District are served by Agate or Fulton Water companies	4,160 acres, 6.5 square miles

Number of Connections (2009)	4010 (Actual Connections) 5524 (Total customers)	3,871	5456 Parcels contribute to CFD 94-1
Length of Gravity Lines	74.8 miles	53.8 miles	
Average Age of Lines	27.1 years	32.1 years	
Length of Force Mains	6.62 miles	N/A	
Number of Manholes (2009)	1,753	N/A	
Range of Pipe Size	6" to 36" diameter	1" to 14" diameter	
Number of Main Pumping Facilities	4	3: 1 lake source, 2 well sources	
Number of Satellite / Booster Stations	14	3	
Number of Tanks/Capacity	6.0 million gallons per day at Dollar Lift Station	8 tanks, 3,500,000 gallons	
Average Daily Flow (2008)	861,000 gallons	1,460,000 gallons	
High Monthly Flow (2008)	October 35 million gallons		
2008 Annual Flow	315 million gallons		
High Daily Flow (2008)	1,390 million gallons per day		
Water Production (2008)		536 million gallons	
2008 Highest Water Production Month		August 70 million gallons	
2009-2010 Annual Operating Budget	\$3,206,893	\$3,929,908	\$933,509

### District Owned Property

- [North Tahoe Regional Park](#)
- [North Tahoe Event Center](#)
- Tahoe Vista Offices & Corporate Yard
- National Avenue Community Center
- Dollar Hill (Firestone) Property
- [Tahoe Vista Recreation Area](#)
- Stoker Property in Kings Beach

875 National Ave, PO Box 139, Tahoe Vista, CA 96148 • [ntpud@ntpud.org](mailto:ntpud@ntpud.org) • p (530) 546-4212 • f (530) 546-2652 • [Privacy Policy](#)

*Note: Email addresses are not monitored 24/7. If an emergency, please call the District.*

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EXHIBIT NO. 2

## North Tahoe Public Utility District

### MANAGEMENT'S DISCUSSION AND ANALYSIS

June 30, 2010

As management of the North Tahoe Public Utility District (NTPUD), we offer readers of NTPUD's financial statements this narrative overview and analysis of NTPUD's financial performance during the fiscal year ending June 30, 2010. Please read it in conjunction with NTPUD's financial statements, which follow this section.

#### FINANCIAL HIGHLIGHTS - CONSOLIDATED DISTRICT

The District's Current Assets increased \$388,524 from \$9,710,255 to \$10,098,779. Net Capital Assets rose from \$43,701,790 to \$43,896,844, an increase of \$195,054. The District's Total Assets increased by \$625,122 to \$55,557,989. Current Liabilities (Payable from Current Assets) increased by \$124,398 to \$1,487,704. Current Liabilities payable from Restricted Assets increased from \$252,460 to \$716,329. Long Term Liabilities decreased by \$689,862 to \$2,125,310 due primarily to making the principal payment on the Water department's Certificate of Participation. Net Assets Invested in Capital Assets increased \$871,599. Restricted Net Assets decreased by \$322,096 driven by completion of capital projects. Unrestricted Net Assets increased by \$177,216. These improvements to the District's Net Assets are attributed in part to increased fees in the Sewer and Water Departments.

#### FINANCIAL HIGHLIGHTS - SEWER FUND

Current Unrestricted Assets increased \$852,330 from \$7,732,095 to \$8,584,425. Restricted Assets decreased \$474,060 from \$688,766 to \$214,706. Net Capital Assets decreased by \$312,678 from \$15,711,388 to \$15,398,710 as Accumulated Depreciation increased more than the additions to Capital Assets. The Dollar Main Generator Installation and Carnelian Force Main Valve projects contributed to the increase by adding \$262,139 and \$51,876 respectively to the sewer system. Current Liabilities increased \$49,241 from \$598,880 to \$648,121. Current Liabilities (Payable from Restricted Assets) increased by \$60,817. Noncurrent Liabilities decreased from \$235,172 to \$160,310. Unrestricted Net Assets increased \$806,420 from \$7,204,748 to \$8,011,168. Total Net Assets increased by \$30,396. Operating Revenues increased by \$74,375 from \$1,534,090 to \$1,608,465 due to a 4.5% rate increase halfway through the year on base rates and on the System Replacement Fee. Total Operating Expenses were \$833,371 higher than 2009. Property Tax revenue of \$3,301,983 lagged the prior year amount by \$285,592 due to the state postponement of proposition 1A and declines in property value assessments. Investment income increased by \$25,034. Grant revenue decreased by \$72,175 over 2009. The total Change in Net Assets for 2010 was an increase of \$30,396 a \$1,132,646 deterioration over 2009.

#### FINANCIAL HIGHLIGHTS - WATER FUND

Current Assets decreased by \$361,181 bringing the total to \$1,089,096 down from \$1,450,277. Restricted Assets increased by \$415,376. Net Capital Assets increased by a net of \$1,088,380

EXHIBIT NO. 3

## North Tahoe Public Utility District

### MANAGEMENT'S DISCUSSION AND ANALYSIS

June 30, 2009

As management of the North Tahoe Public Utility District (NTPUD), we offer readers of NTPUD's financial statements this narrative overview and analysis of NTPUD's financial performance during the fiscal year ending June 30, 2009. Please read it in conjunction with NTPUD's financial statements, which follow this section.

#### FINANCIAL HIGHLIGHTS - CONSOLIDATED DISTRICT

The District's Current Assets decreased \$519,958 from \$10,230,213 to \$9,710,255. Net Capital Assets rose from \$42,594,519 to \$43,701,790, an increase of \$1,107,271. The District's Total Assets increased by \$1,052,365 to \$54,932,867. Current Liabilities (Payable from Current Assets) decreased by \$86,101 to \$1,363,306. Current Liabilities payable from Restricted Assets decreased from \$455,800 to \$252,460. Long Term Liabilities decreased by \$679,805 to \$2,815,172 due primarily to making the principal payment on the Water department's Certificate of Participation. Net Assets Invested in Capital Assets increased \$1,760,648. Restricted Net Assets increased by \$615,378 while Unrestricted Net Assets increased by \$354,415. These improvements to the District's Net Assets are attributed in part to increased fees in the Sewer and Water Departments.

#### FINANCIAL HIGHLIGHTS - SEWER FUND

Current Unrestricted Assets increased \$676,675 from \$7,055,420 to \$7,732,095. Restricted Assets increased \$649,056 from \$39,710 to \$688,766. Net Capital Assets decreased by \$249,448 from \$15,960,836 to \$15,711,388 as Accumulated Depreciation increased more than the additions Capital Assets. The Main Station Pump and Motor project added \$331,302 to our sewer system. Current Liabilities decreased \$45,508 from \$644,388 to \$598,880. Current Liabilities (Payable from Restricted Assets) increased by \$33,554. Noncurrent Liabilities decreased from \$309,977 to \$235,172. Unrestricted Net Assets increased from \$6,476,150 to \$7,204,748. Total Net Assets grew by \$1,163,042. Operating Revenues increased by \$263,523 from \$1,270,567 to \$1,534,090 due to a 4% rate increase on base rates and on the System Replacement Fee. Total Operating Expenses were \$85,865 higher than 2008. Property Tax revenue of \$3,587,575 exceeded the prior year by \$93,379. Investment Income was lower by \$25,655. Grant revenue increased by \$65,198 over 2008. The total Change in Net Assets for 2009 was \$1,163,042 a \$349,390 improvement over 2008.

#### FINANCIAL HIGHLIGHTS - WATER FUND

Current Assets decreased by \$1,176,135 bringing the total to \$1,450,577 down from \$2,626,412. Restricted Assets increased by \$18,750. Net Capital Assets increased by a net of \$1,669,331 due to additions of \$2,270,992, exceeding an increase in accumulated depreciation of \$601,661. Current Liabilities (Payable from Current Assets) increased from \$659,213 to \$672,968. Current Liabilities (Payable from Restricted Assets) increased by \$19,360. Long-Term Liabilities

EXHIBIT NO. 4

North Tahoe Public Utility District

MANAGEMENT'S DISCUSSION AND ANALYSIS

June 30, 2008

As management of the North Tahoe Public Utility District (NTPUD), we offer readers of NTPUD's financial statements this narrative overview and analysis of NTPUD's financial performance during the fiscal year ending June 30, 2008. Please read it in conjunction with NTPUD's financial statements, which follow this section.

FINANCIAL HIGHLIGHTS - CONSOLIDATED DISTRICT

The District's Current Assets increased \$410,750 from \$9,819,463 to \$10,230,213. Net Capital Assets rose from \$41,406,991 to \$42,594,519, an increase of \$1,187,528. The District's Total Assets increased by \$1,674,417 to \$53,880,502. Current Liabilities payable from Current Assets decreased by \$424,011 to \$1,449,407. Current Liabilities payable from Restricted Assets increased from \$199,240 to \$455,800. Long Term Liabilities decreased by \$490,315 to \$3,494,977 decreasing by the principal payment made on Water department's Certificate of Participation and increasing due to the lease of a truck in the amount of \$159,803. Net Assets Invested in Capital Assets increased \$1,639,756. Restricted Net Assets decreased by \$227,637 while Unrestricted Net Assets increased by \$920,064. These improvements to the District's Net Assets are attributed to the District's implementation of new fees and increased fees in the Sewer and Water Departments and grant revenue in the Recreation Department.

FINANCIAL HIGHLIGHTS - SEWER FUND

Current Unrestricted Assets increased from \$6,646,788 to \$7,055,420. Restricted Assets decreased from \$59,528 to \$39,710. Net Capital Assets increased from \$15,660,625 to \$15,960,836 as additions to Capital Assets exceeded increases in Accumulated Depreciation by \$300,211. The Beaver Street Sewer Line added \$837,726 to our sewer system. Current Liabilities Payable from Current Assets decreased from \$880,438 to \$644,388. Noncurrent Liabilities increased from \$215,292 to \$309,977. Unrestricted Net Assets increased in each of two categories. Those Designated for Board Reserves increased from \$197,997 to \$594,322, while those which are Undesignated increased from \$5,605,687 to \$5,881,828. Total Net Assets grew by \$813,651. Operating Revenues increased from \$851,011 to \$1,270,567 due to a 6% rate increase on base rates and the new System Replacement Fee and the new Federal and State Mandate Fee. These new fees are earmarked for specific expenditures. Total Operating Expenses were lower than 2007 by \$75,756. Property Tax revenue of \$3,494,196 exceeded the prior year by \$170,484. Investment Income was lower by \$80,079. The total Change in Net Assets for 2008 was \$813,652 a \$580,223 improvement over 2007.

FINANCIAL HIGHLIGHTS - WATER FUND

Current Assets increased by only \$7,267 bringing the total to \$2,626,412. Restricted Assets decreased by \$150,606. Net Capital Assets increased by \$72,886 due to additions of \$642,459 exceeding an increase in accumulated depreciation of \$569,573. Current Liabilities (Payable from Current Assets) decreased from \$840,095 to \$659,213. Current Liabilities (Payable from Restricted Assets) decreased by \$102,759. Long-Term Liabilities decreased by \$585,000 due to the annual principal payment on the Certificates of Participation. Unrestricted Net Assets Total Net Assets increased by \$245,365 bringing the new amount to \$2,599,415. Operating Revenues grew by \$590,006 principally due to new System Replacement Fee.

EXHIBIT NO. 5

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION**

**ORDER NO. R6T-2006-0046**

**APPROVING A SETTLEMENT OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R6T-2005-0029,  
PROPOSED BY THE DISCHARGERS  
C. GEOFFREY AND CHRISTINE DAVIS, HANS AND MARGARET COFFENG, AND  
PACIFIC BUILT, INC.  
FOR VIOLATION OF WASTE DISCHARGE PROHIBITIONS PRESCRIBED IN THE  
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION,  
FOR THE UNAUTHORIZED DISCHARGE OF UNTREATED DOMESTIC  
WASTEWATER TO LANDS BELOW THE HIGH-WATER RIM OF LAKE TAHOE ON  
JULY 19, 2005 AT  
7770 AND 7780 NORTH LAKE BOULEVARD, KINGS BEACH,  
PLACER COUNTY ASSESSOR'S PARCEL NUMBERS 117-180-017 AND -018,  
WDID NO. 6A310408003**

---

Pursuant to California Water Code ("Water Code") Sections 13323 and 13350 and California Government Code Section 11415.60, the California Regional Water Quality Control Board, Lahontan Region ("Water Board") hereby finds:

1. The Water Board has been presented with a proposal to settle Administrative Civil Liability Complaint No. R6T-2005-0029<sup>1</sup> (see Attachment I, which is made a part of this Order), which proposal has been negotiated between the Water Board's Prosecution Staff on the one hand and on the other hand, C. Geoffrey and Christine Davis, Hans and Margaret Coffeng, and Pacific Built, Inc. (hereafter collectively referred to as the "Dischargers").
2. The settlement proposal would resolve both the above-referenced Administrative Civil Liability Complaint against the Dischargers and the litigation currently pending between the Dischargers and the North Tahoe Public Utility District ("NTPUD").
3. The settlement proposal states that if approved by the Water Board, the Dischargers will pay \$26,840.00 to the Waste Discharge Permit Fund and \$298,160.00 to the NTPUD for the NTPUD's purchase of a portable sewer bypass hose reel system, as specified in the settlement agreement between NTPUD and the Dischargers (see Attachment II, which is made a part of this Order), as a Supplemental Environmental Project ("SEP"), with both payments to be made within 30 days from the date of receipt of a signed order which provides that the Water Board has approved the

---

<sup>1</sup> The Water Board's Assistant Executive Officer reduced the recommended amount of administrative civil liability during the Water Board's May 11, 2006 public hearing from \$700,000 to \$325,000 due to a correction in the alleged discharge volume.

proposed settlement of the Administrative Civil Liability Complaint against the Dischargers, as specified herein and including attachments.

4. The Dischargers have provided adequate assurance to the Water Board that they will make the above-referenced payments within 30 days from the date of receipt of a signed order which provides that the Water Board has approved the proposed settlement of the Administrative Civil Liability Complaint against the Dischargers, as specified herein and including attachments.
5. The NTPUD has provided adequate assurance to the Water Board that:
  - 1) The NTPUD is committed to ordering the specified portable sewer bypass hose reel system within 30 days of receiving payment from the Dischargers,
  - 2) The equipment will be delivered to the NTPUD within 120 days of placing the order,
  - 3) The NTPUD is committed to providing training for all necessary personnel (NTPUD staff and staffs of the sewer collection entities in the Lake Tahoe and Truckee area that are part of the regional mutual aid agreement) within 45 days of NTPUD's receipt of the equipment,
  - 4) The NTPUD is committed to making the portable sewer bypass hose reel system available for emergency use only by all of the sewer collection entities within the Lake Tahoe and Truckee area that are part of the regional mutual aid agreement, and
  - 5) The NTPUD will maintain the system in good working order and in a manner that ensures its availability for emergency response (see Attachment III, which is made a part of this Order).
6. The SEP meets the criteria established by the State Water Resources Control Board ("State Board") in its *Water Quality Enforcement Policy*, dated February 19, 2002.
7. The Water Board desires to conclude all existing disputes between the Dischargers and the Water Board.
8. The Dischargers deny and dispute all liability in the Administrative Civil Liability Complaint against them, as well as the amount of discharge alleged, and in the litigation currently pending between them and the NTPUD, but without admitting or conceding any liability in either proceeding, the Dischargers have proposed the settlement specified herein to resolve both proceedings.
9. The settlement of the Administrative Civil Liability Complaint as proposed herein, including attachments, is supported by the Water Board's Prosecution Staff, the Dischargers and the NTPUD.
10. The Dischargers agree that if the Water Board approves the settlement as specified herein, including attachments, and if the Water Board adopts this Order approving

the settlement specified herein, including attachments, none of them will petition the State Board to review or otherwise challenge this Order.

11. The action to adopt an Order approving this settlement proposal which resolves the Administrative Civil Liability Complaint, is exempt from the provisions of the California Environmental Quality Act, in accordance with Title 14, California Code of Regulations (Enforcement Actions by Regulatory Agencies), Section 15321(a)(2).
12. Any aggrieved person may petition the State Board to review this action by the Water Board in accordance with Water Code section 13320 and the State Board's regulations. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions are available at <http://www.waterboards.ca.gov/wqpetitions/index.html> and will also be provided upon request.

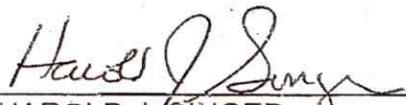
**IT IS HEREBY ORDERED THAT:**

1. The California Regional Water Quality Control Board, Lahontan Region, hereby approves the proposed settlement of the Administrative Civil Liability Complaint against the Dischargers, as specified herein and including attachments.
2. Subject to the provisions of the next paragraph, the Dischargers must make payment in the amounts specified to both the Waste Discharge Permit Fund and the NTPUD within 30 days from the date of receipt of a signed order which provides that the Water Board has approved the proposed settlement of the Administrative Civil Liability Complaint against the Dischargers, as specified herein and including attachments. If these specified payments are not timely made, the Dischargers must pay \$325,000 to the Waste Discharge Permit Fund within 60 days from the date of receipt of a signed order which provides that the Water Board has approved the proposed settlement of the Administrative Civil Liability Complaint against the Dischargers, as specified herein and including attachments.
3. The Water Board's Executive Officer is authorized to extend the compliance dates specified in the preceding paragraph if the Executive Officer determines that circumstances beyond the control of the Dischargers have prevented them from satisfying any obligation specified in the preceding paragraph, despite the Dischargers' best efforts to fulfill the obligation. In the event that such a situation develops, the Dischargers must submit to the Executive Officer a written notice providing a description of the circumstances they believe have or will prevent them from satisfying any obligation specified in the preceding paragraph, an explanation of how the circumstances have or will cause the delay, the anticipated duration of the delay, and a description of all actions the Dischargers have taken or will take to prevent or minimize the delay and a schedule of such actions. This written notice must be submitted within 21 days of identifying the circumstances, or within 5 days of becoming past due of the relevant compliance dates specified in the preceding paragraph, whichever period is shorter.

Within 21 days of receiving such a notice, the Executive Officer will notify the Dischargers in writing if the Executive Officer agrees or disagrees with the Dischargers' assertions regarding the circumstances effect upon the Dischargers' ability to meet their obligations specified in the preceding paragraph. If the Executive Officer agrees with the Dischargers' assertions, the Executive Officer will provide revised compliance dates in the above-referenced notification. If the Executive Officer disagrees with the Dischargers' assertions, the Executive Officer will provide the reasons for denying an extension of the compliance dates in the above-referenced notification.

4. If the Dischargers fail to make the specified payments to the Waste Discharge Permit Fund and to the NTPUD within the time limits specified in this order, or as may be specified by the Water Board's Executive Officer pursuant to the provisions of the preceding paragraph, the Water Board may enforce this Order approving the settlement by applying for a judgment in the amount of \$325,000 pursuant to Water Code section 13328 and further, the Dischargers agree not to oppose the issuance of a clerk's judgment pursuant to Water Code section 13328 for the amount due as provided by this Order approving the settlement. The Water Board's Executive Officer is hereby authorized to collect as any other civil judgment the full amount due under the settlement in any manner permitted by California law, including a referral to the Attorney General's Office.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Lahontan Region, on October 11, 2006.

  
\_\_\_\_\_  
HAROLD J. SINGER,  
EXECUTIVE OFFICER

- Attachments:
- I. Administrative Civil Liability Complaint No. R6T-2005-0029
  - II. August 7, 2006 Settlement Proposal and Supporting Documents
  - III. North Tahoe Public Utility District Assurances

# **ATTACHMENT I**

**December 14, 2005  
Administrative Civil Liability Complaint  
No. R6T-2005-0029**



# California Regional Water Quality Control Board

## Lahontan Region



Alan C. Lloyd, Ph.D.  
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger  
Governor

December 14, 2005

Thomas J. Ragan, President/RMO  
Pacific Built Inc.  
P.O. Box 6694  
Tahoe City, California 96145

Certified Mail: 7099 3220 0003 9762 2249

C. Geoffrey and Christine Davis  
547 El Arroyo Road  
Hillsborough, California 94010

Certified Mail: 7099 3220 0003 9761 9997

Hans and Margaret Coffeng  
310 15<sup>th</sup> Avenue  
Santa Cruz, California 95062-4828

Certified Mail: 7099 3220 0003 9762 2225

**COMPLAINT NO. R6T-2005-0029, ISSUED TO C. GEOFFREY AND CHRISTINE DAVIS, HANS AND MARGARET COFFENG, AND PACIFIC BUILT, INC., FOR THE UNAUTHORIZED DISCHARGE OF UNTREATED DOMESTIC WASTEWATER TO LAKE TAHOE, LOCATED AT 7770 AND 7780 NORTH LAKE BOULEVARD, KINGS BEACH - PLACER COUNTY ASSESSOR'S PARCEL NOS. 117-180-017 AND -018, U.S. ARMY CORPS OF ENGINEERS IDENTIFICATION NO. 200400589, WDID NO. 6A310408003**

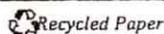
Enclosed for your immediate consideration is the above-referenced Complaint. The Complaint is issued in response to the discharge of raw sewage to lands below the high-water rim of Lake Tahoe. The discharge occurred when your contractor punctured a sewer force main while driving a piling for a pier support. The discharge volume is estimated to be at least 120,000 gallons. The discharge occurred on July 19, 2005.

The July 19, 2005 discharge was in violation of Waste Discharge Prohibitions specified in the *Water Quality Control Plan for the Lahontan Region*.

If you decide to waive a hearing regarding this matter and remit payment to the Regional Board, sign and return the original WAIVER OF HEARING form (enclosed) to our South Lake Tahoe office. In accordance with 40 CFR Section 123.27(a), a 30-day public comment period will be required for a proposed settlement of administrative civil liability.

If you choose not to waive the hearing, it will be held at the Regional Board's February 8 and 9, 2006 meeting in Kings Beach. To ensure the Regional Board has the opportunity to fully study and consider written material, all material must be submitted at least ten (10) days before the hearing. This will allow distribution of material to the Board Members in advance

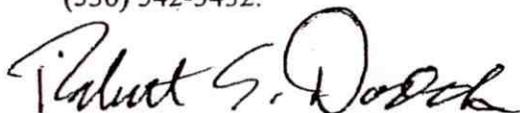
*California Environmental Protection Agency*



of the hearing. Pursuant to Title 23 California Code of Regulations Section 648.4, the Regional Board may refuse to admit written testimony into evidence if submitted late, unless the proponent can demonstrate why he or she was unable to submit the material on time or that compliance with the deadline would otherwise create a hardship. If any other party demonstrates prejudice resulting from the late admission of the written testimony, the Regional Board may refuse to admit it.

You may petition the State Water Resources Control Board to review the decision of the Regional Board in accordance with Section 13320 of the California Water Code and Title 23, California Code of Regulations, Section 2050. The State Board must receive the petition within 30 days after the Regional Board meeting at which the action will be taken. Copies of the law and regulations applicable to filing petitions will be provided upon request.

If you have any questions or comments regarding this matter, please contact Eric J. Taxer, Water Resource Control Engineer, at (530) 542-5434, or Scott Ferguson, Senior Engineer, at (530) 542-5432.



ROBERT S. DODDS  
ASSISTANT EXECUTIVE OFFICER

Enclosures: Complaint No. R6T-2005-0029  
Waiver of Hearing Form

Cc(w/ACL Complaint):

Regional Board Members  
David Coupe, Office of Chief Counsel, State Water Resources Control Board  
Steven Blum, Office of Chief Counsel, State Water Resources Control Board  
Mark Bradley, Office of Statewide Initiatives, State Water Resources Control Board  
Oscar Balaguer, State Water Resources Control Board, Division of Water Quality  
Mary Hays, California State Lands Commission  
Tom Cavanaugh, US Army Corps of Engineers, Sacramento District  
Richard Gebhart, U.S. Army Corps of Engineers (Reno)  
Vada Camacho, California Department of Fish and Game  
Alan Breuch, Placer County Planning Department  
Brian Jones, Placer County Environmental Health Department  
Vickie M. Sandoval, Placer County Department of Health and Human Services  
Lindsay Cunningham, Placer County Department of Health and Human Services  
Dick Simmons, Emergency Services Coordinator, Placer County Office of Emergency Services  
Dennis M. Zabaglo, Tahoe Regional Planning Agency  
Brian Judge, Tahoe Regional Planning Agency  
Joanne Marchetta, Agency Counsel, Tahoe Regional Planning Agency  
Leah Kaufman, Leah Kaufman Planning & Consulting Services  
Mark D. Hudak, Carr McClellan Ingersoll Thompson & Horn

Drew Briner, Briner Law Offices

Steven R. Rogers, General Manager, North Tahoe Public Utility District

Ken Greenberg, U.S. Environmental Protection Agency, Region IX/Wetlands  
Regulatory Office (WTR-8)

Leo Drozdoff, Administrator, Nevada Division of Environmental Protection

Jane Freeman, US EPA, c/o TRPA

EJT/didT:/Enforcement Orders/ACL / Davis-Coffeng, ACL Cover Letter

[File Under: 401/Davis & Coffeng Multiple Use Pier/WDID No. 6A310408003]

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STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

In the matter of C. Geoffrey and Christine Davis, )  
Hans and Margaret Coffeng, and Pacific Built, Inc.: Violation )  
of Waste Discharge Prohibitions prescribed in the *Water* ) COMPLAINT NO.  
*Quality Control Plan for the Lahontan Region*, for the ) R6T-2005-0029  
Unauthorized Discharge of Untreated Domestic Wastewater ) FOR ADMINISTRATIVE  
to Lake Tahoe, at 7770 and 7780 North Lake Boulevard, ) CIVIL LIABILITY  
Kings Beach, Placer County Assessor's Parcel Numbers )  
117-180-017 and -018 WDID No. 6A310408003 )

**C. GEOFFREY AND CHRISTINE DAVIS, HANS AND MARGARET COFFENG, AND  
PACIFIC BUILT, INC.**

**YOU ARE HEREBY GIVEN NOTICE THAT:**

1. You are charged with violating provisions of law for which the Regional Board may impose administrative civil liability pursuant to Section 13350 of the California Water Code (Water Code).
2. Unless waived, a hearing on this matter will be held before the Regional Board within 90 days following the issuance of this Complaint. You, or your representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda showing the approximate time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify (either increase or decrease) the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

**ALLEGATIONS**

4. Dischargers

Hans and Margaret Coffeng are the legal owners of Placer County Assessor's Parcel Number 117-180-017. C. Geoffrey and Christine Davis are the legal owners of Placer County Assessor's Parcel Number 117-180-018. Pacific Built, Inc., is a contractor hired by Hans and Margaret Coffeng, and C. Geoffrey and Christine Davis to construct a multiple use pier. Hans and Margaret Coffeng, C. Geoffrey and Christine Davis, and Pacific Built, Inc., are hereinafter referred to as the Dischargers.

5. Project

The Dischargers are constructing or have completed construction of a single multiple-use pier

along the shared property line between the two parcels owned by the Coffeng and Davis families. The pier is located in Kings Beach, on the north shore of Lake Tahoe.

6. Facts

On July 19, 2005, Pacific Built Inc., punctured a 14-inch sewer force main while driving a pile for a pier support. The puncture occurred between 1:45 p.m. and 2:00 p.m. The North Tahoe Public Utility District (NTPUD) owns the sewer force main. The affected force main section is pressurized from a down gradient pump station (the Secline Avenue pump station).

It is estimated that a minimum of 120,000 gallons of untreated wastewater was released from the punctured force main, which is located below the high-water rim of Lake Tahoe. The discharge volume is calculated from information collected on the size of the puncture opening, the affects of the puncture size and shape on the discharge velocity, the pump cycling at the Secline Avenue pump station, the hydrostatic pressure at the point of puncture, and the volume of the force main. The "Discharge Volume Calculations and Assumptions" are attached to this Complaint.

The affected force main section (and, therefore, the point of discharge) is buried at an elevation below the high water rim of Lake Tahoe. The force main puncture resulted in a discharge of untreated domestic wastewater below the high water rim of Lake Tahoe. All areas below the high water rim are waters of the United States and are waters of the State.

A portion of the discharge was recovered and returned to the sewage collection system, and the remaining amount flowed directly into the surface waters of Lake Tahoe.

The NTPUD was able to stop the flow of wastewater directly to the surface waters of Lake Tahoe approximately five hours after the discharge began. The discharge was fully controlled (i.e., flow from the puncture was entirely contained at the site and returned to the sewage collection system) by 6:45 pm. At 10:14 pm, the valve up gradient from the puncture was closed, but the wastewater that remained in the pipe continued to discharge from the puncture (and was contained on site and pumped back into the sewage collection system) until the pipe was drained. The pipeline was completely repaired at 12:40 a.m. on July 20, 2005.

Some amount of the discharge percolated through the beach sand and entered Lake Tahoe through the groundwater. However, this volume is considered to be insignificant when compared to the discharge volumes and the volumes pumped back into the sewage collection system.

Five North Lake Tahoe beaches were closed to the public as a result of the discharge of untreated domestic wastewater. The affected beaches were Kings Beach State Recreation Area, Coon Street Boat Launch, North Tahoe Beach Center, Secline Beach, and the public beach at the end of Deer Street. Additionally, all private beaches between the public beaches were closed. Four public beaches (Kings Beach State Recreation Area, Coon Street Boat Launch, Secline Beach, and the public beach at the end of Deer Street) were re-opened on July 29, 2005, ten days after the contamination by the discharge. The North Tahoe Beach Center was reopened on August 4, 2005, after being closed for sixteen days.

## 7. Violations

The Dischargers violated the following prohibitions specified in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), adopted pursuant to Water Code Section 13243.

- A. "The discharge of treated or untreated domestic sewage, garbage or other solid wastes, or any other deleterious material to the surface waters of the Lake Tahoe Basin is prohibited."
- B. "The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited."

The Dischargers violated the prohibitions cited above when 120,000 gallons of untreated domestic wastewater was discharged to lands below the highwater rim of Lake Tahoe on July 19, 2005. The Regional Board did not authorize the discharge of the untreated domestic wastewater to lands below the highwater rim of Lake Tahoe.

### PROPOSED CIVIL LIABILITY

#### 8. Civil Liability – California Water Code

For the discharge of wastes to surface waters that violated Basin Plan prohibitions, the Regional Board may impose civil liability pursuant to Water Code Section 13350(e)(2). Water Code Section 13350(e)(2) states, "The civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged."

In this matter, the maximum civil liability under Section 13350(e)(2) is \$1,200,000 for the discharge of 120,000 gallons of untreated domestic wastewater to lands below the highwater rim of Lake Tahoe on July 19, 2005.

#### 9. Factors Affecting the Amount of Civil Liability

Water Code section 13327 requires the Regional Board to consider enumerated factors when it decides the amount of civil liability for a discharge covered by section 13350. The Assistant Executive Officer of the Regional Board considered those factors in recommending the amount of the administrative civil liability:

- a. The nature, circumstances, extent, and gravity of the violations;

Lake Tahoe has been designated an Outstanding National Resource Water. The Lake's clarity has been reduced due to nutrient and fine sediment discharges. As a result, Lake Tahoe is listed on the Federal Clean Water Act Section 303(d) list as impaired due to excessive sediment and nutrients. The spill discharged approximately 120,000 gallons of untreated domestic wastewater containing nutrients and bacteria to lands below the highwater rim of Lake Tahoe.

The Tahoe Truckee Sanitation Agency is the regional wastewater treatment facility that, in part, receives untreated wastewater from the Kings Beach area. Influent sampling conducted by the Tahoe Truckee Sanitation Agency indicates that the typical raw sewage contained approximately 40 milligrams per liter (mg/L) of total nitrogen and approximately 6.6 mg/L of total phosphorus. The amount of wastewater that was not recovered contained approximately 8.5 kilograms (19 pounds) of total nitrogen, and approximately 1.4 kilograms (3.1 pounds) of total phosphorus.

Water samples collected from beach areas surrounding the spill site had fecal coliform concentrations of up to 35,000 colony forming units per 100 milliliters (cfu/100ml). The Regional Board's water quality objective for coliform bacteria within the Lake Tahoe Basin is a 30-day log-normalized average of 20 cfu/100 ml. This objective is established to protect the designated beneficial use of public water-contact recreation. Persistent violation of the water quality objective resulted in the 10-day closure of four public beaches and the 16-day closure of a fifth public beach. The beach closures had a significant impact on the people and businesses in the area.

The NTPUD expended efforts to repair the damaged force main, to isolate and/or eliminate flows discharging from the broken force main, to clean up areas contaminated from the untreated domestic wastewater, and to monitor water quality. NTPUD is still incurring expenses at the time of issuing this complaint, and to date has expended approximately \$248,000. Placer County provided emergency response oversight and environmental health management for the discharge of untreated domestic wastewater. Placer County agencies have expended a minimum of \$74,000. Many businesses suffered economic loss due to reduced tourism, a direct result of the discharge of untreated domestic wastewater. The North Tahoe Business Association and the Placer County Economic Development Department surveyed area businesses to determine the extent of the economic loss. Local businesses reported a loss of \$80,000 as a result of the discharge of untreated domestic wastewater. Total agency and business impact is, at a minimum, \$354,000. In addition, many individuals were prevented from enjoying the affected beaches.

- b. Whether discharge is susceptible to cleanup or abatement;

It is estimated that a minimum of 120,000 gallons of untreated domestic wastewater was discharged from the punctured force main during this incident. Of this amount, it is estimated that 56,000 gallons was not susceptible to cleanup.

- c. The degree of toxicity of the discharge;

There were no analyses performed to determine the degree of toxicity of the discharge. Untreated domestic wastewater contains pathogens that can cause sickness and (rarely) death in humans that ingest or are otherwise exposed to such materials. Bacteriological contamination exceeded standards set for drinking water and water-contact recreation.

d. Ability to pay;

The Dischargers have not provided financial data to the Regional Board to show an inability to pay the proposed liability.

e. The effect on the Discharger's ability to continue its business;

The Dischargers do not operate a business on the referenced properties. The properties are private residences.

f. Any voluntary clean up efforts undertaken by the violator;

The Dischargers' consultant, Pacific Built Inc., immediately contacted the NTPUD to report the puncture and resulting discharge of untreated domestic wastewater. Pacific Built employees provided assistance to the NTPUD to immediately evacuate the beach area and to construct sand berms to divert the discharge to existing pond areas. Additionally, Pacific Built employees offered immediate assistance to the NTPUD to excavate around the punctured force main and to install vector pumps at the point of puncture (rather than at the containment ponds). NTPUD elected not to accept such assistance.

g. Prior history of violations;

The Dischargers have no recorded prior violations.

h. Degree of culpability;

C. Geoffrey and Christine Davis and Hans and Margaret Coffeng are the property owners of the noted properties (see allegation No. 4 of this complaint) and are also the permit holders for the pier project. They are, therefore, directly and ultimately responsible for all actions related to the pier project.

Pacific Built, Inc. is the contractor hired by the Davis' and the Coffeng's to construct the pier. Pacific Built, Inc., did not contact the Underground Service Alert of Northern California and State of Nevada (USA North) prior to commencing excavation activities in order to locate any underground utilities on the properties. Pacific Built, Inc., punctured the NTPUD sewer force main while driving a pile for a pier support. Pacific Built, Inc., is therefore directly responsible for the discharge of untreated wastewater because it failed to exercise a typical standard of care to locate underground utilities prior to commencing an excavation activity.

i. Economic savings resulting from the violation; and,

The Regional Board is unaware of any avoided costs associated with the discharge.

j. Other matters as justice may require.

Regional Board staff have spent time responding to the incident and preparing the

administrative civil liability. Estimated staff costs for incident response and complaint preparation are \$17,300.

10. Amount of Civil Liability

The Assistant Executive Officer of the Regional Board considered the above factors and proposes that administrative civil liability be imposed by the Regional Board in the amount of \$700,000, pursuant to Section 13350(e)(2) of the California Water Code.

**WAIVER OF HEARING**

You may waive the right to a hearing. Waiver of your right to a hearing constitutes acceptance of the assessment of civil liability in the amount set forth within the Complaint. If you wish to waive your right to a hearing, an authorized person must sign the waiver form below, and send it with a cashier's check or money order for the full amount of the civil liability assessment, made payable to the **California State Water Resources Control Board, Waste Discharge Permit Fund** and mailed, to the address below. Your signed waiver form and payment must be received no later than February 8, 2006. Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided pursuant to federal National Pollutant Discharge Elimination System (NPDES) regulations (40 Code of Federal Regulation [CFR] Parts 122, 123, and 124). The Regional Board will notify interested persons of any proposed settlement for the recommended liability and will solicit comments on the settlement for a period of thirty (30) days.

California Regional Water Quality  
Control Board – Lahontan Region  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

In accordance with 40 CFR Section 123.27(a), a 30-day public comment period will be required for a proposed settlement of administrative civil liability.

Ordered by:  Dated: December 14, 2005  
ROBERT S. DODDS  
ASSISTANT EXECUTIVE OFFICER

Attachment: Discharge Volume Calculations and Assumptions

**California Regional Water Quality Control Board  
Lahontan Region**

**ATTACHMENT TO  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R6T-2005-0029**

**DISCHARGE VOLUME CALCULATIONS AND  
ASSUMPTIONS**

**FOR THE**

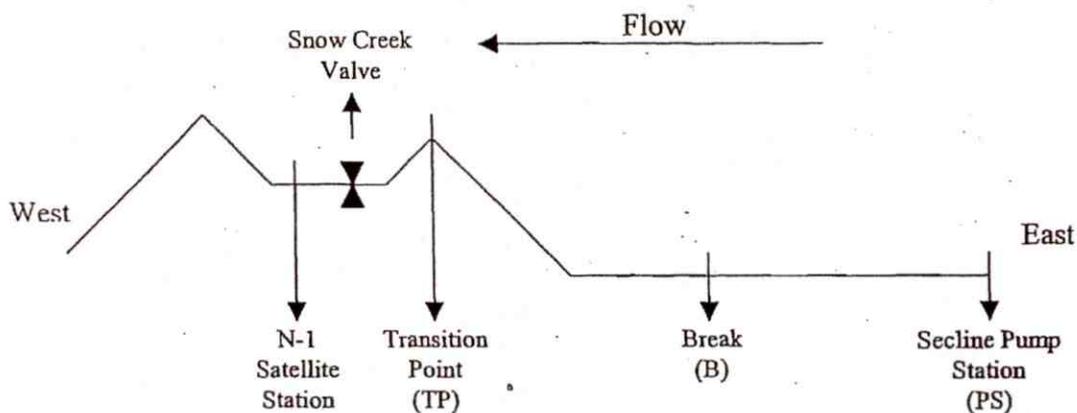
**UNAUTHORIZED DISCHARGE OF UNTREATED  
DOMESTIC WASTEWATER TO LAKE TAHOE,  
LOCATED AT 7770 AND 7780 NORTH LAKE  
BOULEVARD, KINGS BEACH, PLACER COUNTY  
ASSESSOR'S PARCEL NUMBERS 117-180-017 AND -018**

**December 7, 2005**

**Eric J. Taxer, P.E.  
Water Resource Control Engineer  
Enforcement and Special Projects Unit**

**Reviewed by: Chuck Curtis, P.E.  
Supervising Water Resource Control Engineer**

**Schematic:**



The North Tahoe Public Utilities District (NTPUD) calculated the orifice area,  $A$ , of the break at 3.98 in<sup>2</sup>, or 0.0276 ft<sup>2</sup>

**Timeline:**

- Dischargers recorded puncture at 1:45 pm.
- NTPUD recorded puncture at 2:00 pm.
- NTPUD recorded discharge containment at 6:45 pm.
- NTPUD recorded final Secline pump event at 6:53 pm.
- Snow Creek Valve turned off at 10:14 pm.

**Theory Applied:**

Bernoulli's Energy Equation is used to estimate the discharge volume:

$$\frac{P_1}{\gamma} + \frac{v_1^2}{2g} + z_1 + E_F = \frac{P_2}{\gamma} + \frac{v_2^2}{2g} + z_2 + E_A$$

- Where:
- $P$  = pressure
  - $v$  = velocity
  - $z$  = head elevation
  - $E_A$  = energy input (from a pump)
  - $E_F$  = energy loss from friction

$$\begin{aligned}\gamma &= \text{specific weight of water (62.4 lb/ft}^3\text{)} \\ g &= \text{gravity} = 32.1 \text{ ft/s}^2\end{aligned}$$

Two discharge flow regimes are considered up until the point of discharge containment:

1. Dynamic condition (Secline Pump Station turned on); and
2. Static condition (Secline Pump Station turned off, pipe is kept full from N-1 Satellite Station).

**For the Dynamic Head Condition:**

$v_b$  = velocity of discharge at pipe break

$P_b$  = pressure at pipe break  
= atmospheric  
= 0

$z_b$  = elevation of the pipe break = 6228 ft.

$$E_F = (0.6) \left( \frac{v_b^2}{2g} \right)$$

The King & Prater Hydraulics Handbook states a head loss for a sharp-edged pipe entrance condition. This is the closest condition to the shear break in the force main wall. The head loss is stated to be six-tenths of the velocity head.

$v_s$  = velocity at Secline pump station = 0

$P_s$  = pressure at Secline pump station  
= atmospheric  
= 0

$z_s$  = elevation at the Secline Pump Station = 6228 ft.

$E_A$  = pump energy added, as reported by NTPUD  
= 30 lb/in<sup>2</sup>

Dividing by specific weight of water to convert to feet of head,

$$\begin{aligned}&= \left( 30 \frac{\text{lb}}{\text{in}^2} \right) \left( \frac{1}{62.4 \text{ lb/ft}^3} \right) \left( \frac{12 \text{ in}}{1 \text{ ft}} \right)^2 \\ &= 69.2 \text{ ft}\end{aligned}$$

Thus,

$$\begin{aligned}\frac{P_b}{\gamma} + \frac{v_b^2}{2g} + z_b + E_F &= \frac{P_s}{\gamma} + \frac{v_s^2}{2g} + z_s + E_A \\ \frac{P_b}{\gamma} + \frac{v_b^2}{2g} + z_b + (0.6) \left( \frac{v_b^2}{2g} \right) &= \frac{P_s}{\gamma} + \frac{v_s^2}{2g} + z_s + E_A \\ 0 + 6228 \text{ ft} + (1.6) \left( \frac{v_b^2}{2g} \right) &= 0 + 0 + 6228 \text{ ft} + 69.2 \text{ ft} \\ v_b &= \sqrt{\frac{(2)(g)(69.2 \text{ ft})}{1.6}} \\ v_b &= \sqrt{\frac{(2)(32.1 \text{ ft/s}^2)(69.2 \text{ ft})}{1.6}} \\ v_b &= 52.7 \text{ ft/s}\end{aligned}$$

The flow due to dynamic conditions,  $Q_D$ , is

$$\begin{aligned}Q_D &= (v_b)(A) \\ Q_D &= \left( 52.7 \frac{\text{ft}}{\text{s}} \right) \left( 0.0276 \text{ ft}^2 \right) \left( \frac{1 \text{ gallon}}{0.1337 \text{ ft}^3} \right) \\ Q_D &= 10.9 \frac{\text{gallons}}{\text{s}} \quad \text{or} \quad 10.9 \text{ gps}\end{aligned}$$

Per NTPUD, the Secline Main Sewer Pump Station log indicates a total pump time of 875 seconds. This is from time of puncture to time of containment. The volume,  $V_D$ , due to dynamic conditions is:

$$\begin{aligned}V_D &= \left( 10.9 \frac{\text{gal}}{\text{s}} \right) (875 \text{ s}) \\ V_D &= 9,500 \text{ gallons}\end{aligned}$$

#### Static Head Condition:

It is assumed that the N-1 Satellite Station maintains a constant static head over the transition point. It is further assumed that there is no or negligible backflow from N-1 Satellite Station. Further assume negligible frictional loss.

$$\begin{aligned}v_b &= \text{velocity of discharge at pipe break} \\ P_b &= \text{pressure at pipe break} = \text{atmospheric} = 0\end{aligned}$$

$$\begin{aligned}z_b &= 6228 \text{ ft} \\v_t &= \text{velocity of flow at transition point} = 0 \\P_t &= \text{pressure at transition point} = \text{atmospheric} = 0 \\z_t &= 6244 \text{ ft} \\E_A &= 0 \text{ (static conditions)}\end{aligned}$$

Thus,

$$\begin{aligned}\frac{P_b}{\gamma} + \frac{v_b^2}{2g} + z_b + E_F &= \frac{P_t}{\gamma} + \frac{v_t^2}{2g} + z_t + E_A \\0 + \frac{v_b^2}{2g} + 6228 \text{ ft} + (0.6) \left( \frac{v_b^2}{2g} \right) &= 0 + 0 + 6244 \text{ ft} + 0 \\(1.6) \left( \frac{v_b^2}{2g} \right) &= 16 \text{ ft} \\v_b &= \sqrt{\frac{(2)(32.1 \text{ ft/s}^2)(16 \text{ ft})}{1.6}} \\v_b &= 25.3 \text{ ft/s}\end{aligned}$$

The flow due to static conditions,  $Q_s$ , is:

$$\begin{aligned}Q_s &= (v_b)(A) \\Q_s &= \left( 25.3 \frac{\text{ft}}{\text{s}} \right) \left( 0.0276 \text{ ft}^2 \right) \left( \frac{1 \text{ gallon}}{0.1337 \text{ ft}^3} \right) \\Q_s &= 5.23 \text{ gps}\end{aligned}$$

The total time from recorded puncture (2:00 pm) to discharge containment (6:45 pm) is 4h 45m, or 285 minutes. The duration of the force main under static pressure is 285 minutes less the 875 seconds total pump time at the Secline Station:

$$\begin{aligned}\text{Duration} &= (285 \text{ min}) \left( \frac{60 \text{ s}}{\text{min}} \right) - 875 \text{ sec} \\&= 16,225 \text{ sec}\end{aligned}$$

The volume due to static conditions,  $V_s$ , is:

$$\begin{aligned}V_s &= \left( 5.23 \frac{\text{gal}}{\text{s}} \right) (16,225 \text{ s}) \\V_s &= 85,000 \text{ gallons}\end{aligned}$$

The total volume discharged prior to containment,  $V_{TOT}$ , is:

$$\begin{aligned}V_{TOT} &= V_S + V_D \\ &= 85,000 \text{ gal} + 9,500 \text{ gal} \\ &= 95,000 \text{ gallons}\end{aligned}$$

### Upper Volume Boundary, Prior to Containment

1. The Discharger's chronology indicates that the puncture occurred at 1:45 pm (an additional 15 minutes under dynamic head conditions). The additional volume discharged under dynamic conditions,  $V_{D,Adl}$ , is:

$$\begin{aligned}V_{D,Adl} &= (Q_D)(T) \\ &= \left(10.9 \frac{\text{gal}}{\text{s}}\right) \left(15 \text{ min}\right) \left(60 \frac{\text{s}}{\text{min}}\right) \\ &= 9,800 \text{ gallons}\end{aligned}$$

2. The control of discharge is agreed to have occurred at 6:45 pm. However, pump records for the Secline Pump Station indicate that the last pumping event occurred at 6:53 pm (8 minutes later). (The pump time associated with this last event is already factored into  $V_D$ .) The 8 additional minutes of potential discharge occurred under static conditions. The potential additional volume discharged under static conditions,  $V_{S,Adl}$ , is:

$$\begin{aligned}V_{S,Adl} &= (Q_S)(T) \\ &= \left(5.23 \frac{\text{gal}}{\text{s}}\right) \left(8 \text{ min}\right) \left(60 \frac{\text{s}}{\text{min}}\right) \\ &= 2,500 \text{ gallons}\end{aligned}$$

Therefore, the upper boundary of the volume discharged prior to containment,  $V_{TOT,UB}$ , is:

$$\begin{aligned}V_{TOT,UB} &= V_{TOT} + V_{D,Adl} + V_{S,Adl} \\ &= 95,000 \text{ gal} + 9,800 \text{ gal} + 2,500 \text{ gal} \\ &= 107,000 \text{ gallons}\end{aligned}$$

### Amount Released After Discharge Containment:

1. The Secline Pump Station did not pump after 6:53 pm, and this effect is already considered in the upper limit. The additional volume of 2,500 gallons ( $V_{S,Adl}$ ) should therefore only be incorporated in calculating the total minimum discharge (see below—Total Minimum Volume calculation).

2. At 10:14 pm, the Snow Creek Valve was shut. Between 6:53 pm and 10:14 pm, any volume of sewage added to the ruptured section is due to the N-1 Pump Station. There are two pumps (a 100 gpm pump and a 300 gpm pump). NTPUD reported that the 100 gpm operated for a total of 24 minutes during this period. The maximum discharge associated with this pump,  $V_{N-1,max}$ , during post containment is:

$$\begin{aligned} V_{N-1,max} &= \left(100 \frac{\text{gal}}{\text{min}}\right)(24 \text{ min}) \\ &= 2400 \text{ gallons} \end{aligned}$$

The transition to the National Station is higher than the transition to the Secline Station. At most,  $\frac{1}{2}$  of this maximum volume made it to the National Station. The minimum volume that discharged post containment would be perhaps  $\frac{1}{2}$  of the maximum volume, or:

$$V_{N-1,min} = 1200 \text{ gallons}$$

3. After 10:14 pm, the affected force main section drained in its entirety, from the Secline Pump Station to the transition point. NTPUD reports the pipe length to be 2590 feet, and the pipe area to be  $1.07 \text{ ft}^2$ . The pipe volume,  $V_{pipe}$ , is:

$$\begin{aligned} V_{pipe} &= (2590 \text{ ft})(1.07 \text{ ft}^2) \left(\frac{\text{gal}}{0.1337 \text{ ft}^3}\right) \\ &= 21,000 \text{ gallons} \end{aligned}$$

4. The total minimum volume discharged,  $V_{MIN}$ , is:

$$\begin{aligned} V_{MIN} &= V_{TOT} + V_{N-1,min} + V_{pipe} + V_{S,Adl} \\ &= 95,000 \text{ gal} + 1200 \text{ gal} + 21,000 \text{ gal} + 2500 \text{ gal} \\ &= 120,000 \text{ gallons} \end{aligned}$$

5. The total maximum volume discharged,  $V_{MAX}$ , is:

$$\begin{aligned} V_{MAX} &= V_{TOT,UB} + V_{N-1,max} + V_{pipe} \\ &= 107,000 \text{ gal} + 2400 \text{ gal} + 21,000 \text{ gal} \\ &= 130,000 \text{ gallons} \end{aligned}$$

#### Volume Captured:

NTPUD reported 39,000 gallons collected from the area, up until 6:45 pm.

After 6:45 pm, NTPUD reported complete capture of all discharges from the puncture.  
(Infiltration is considered to be negligible given total discharge quantities.)

#### Volume Released to the Surface Waters of Lake Tahoe:

The discharge range is based on the lower and upper discharge volumes that occurred prior to NTPUD achieving full containment of the discharge, less the 39,000 gallon recovered quantity.

The minimum discharge is:

$$\begin{aligned} V_{Min\ Disch} &= V_{TOT} - 39,000 \\ &= 95,000 - 39,000 \\ &= 56,000 \text{ gallons} \end{aligned}$$

The maximum discharge is:

$$\begin{aligned} V_{Max\ Disch} &= V_{TOT,UB} - 39,000 \\ &= 107,000 - 39,000 \\ &= 68,000 \text{ gallons} \end{aligned}$$



California Regional Water Quality Control Board  
Lahontan Region



Alan C. Lloyd, Ph.D.  
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
<http://www.waterboards.ca.gov/lahontan>

Arnold Schwarzenegger  
Governor

**WAIVER  
OF RIGHT TO A  
PUBLIC HEARING**

C. Geoffrey and Christine Davis  
547 El Arroyo Road  
Hillsborough, California 94010

Complaint No. R6T-2005-0029  
For  
Administrative Civil Liability  
\$700,000

Hans and Margaret Coffeng  
310 15<sup>th</sup> Avenue  
Santa Cruz, California 95062-4828

Thomas J. Ragan, President/RMO  
Pacific Built, Inc.  
P.O. Box 6694  
Tahoe City, California 96145

By signing below, we agree that we waive our right to request a hearing before the California Regional Water Quality Control Board, Lahontan Region (Board) with regard to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. If you remit payment, please make the check payable to the "State Water Resources Control Board, Waste Discharge Permit Fund."

We understand that even though this waiver of a right to a hearing has been signed, that the Regional Board may hold a hearing to determine if it will accept the settlement. This hearing will be limited to a consideration of whether the settlement is in the public interest. The Board may accept or reject the settlement or it may reject the Administrative Civil Liability Complaint (Complaint). If the Board accepts the settlement or rejects the Complaint, no further hearing will be required. If the Board rejects the settlement, the Board will schedule a full factual hearing at a subsequent meeting. If the Board holds a hearing, it will be noticed and all parties will have the opportunity to present evidence to the Board.

*California Environmental Protection Agency*

\_\_\_\_\_  
Signature

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Title

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Date

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Print your name

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Signature

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Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print your name

Send this signed form and settlement check to:  
Robert S. Dodds, Assistant Executive Officer  
California Regional Water Quality Control Board – Lahontan Region  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, CA 96150

EJT/didT:/Enforcement Orders/ACL / Davis-Coffeng, ACL Waiver  
[File Under: 401/Davis & Coffeng Multiple Use Pier/WDID No. 6A310408003]





## **ATTACHMENT II**

### **August 7, 2006 Settlement Proposal and Supporting Documents**

#### Settlement Proposal

- a. Lewis Brisbois Bisgaard & Smith LLP August 7, 2006 Letter
- b. North Tahoe Public Utility District August 7, 2006 Cover Letter and Technical Specifications
- c. Lewis Brisbois Bisgaard & Smith LLP August 31, 2006 Letter

#### Supporting Document

- d. North Tahoe Public Utility District August 21, 2006 Document

**ATTACHMENT II.a**

**Lewis Brisbois Bisgaard & Smith LLP  
August 7, 2006 Letter**

# LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

2500 VENTURE OAKS WAY, SUITE 200, SACRAMENTO, CA 95833  
PHONE: 916.564.5400 | FAX: 916.564.5444 | WEBSITE: www.lbbsslw.com

BRUCE L. SHAFFER  
DIRECT DIAL: 916.646.8203  
E-MAIL: shaffer@lbbsslw.com

August 7, 2006

FILE NO.  
25116-23

## CONFIDENTIAL SETTLEMENT PROPOSAL

### VIA E-MAIL & U.S. MAIL

Steven H. Blum, Senior Staff Counsel  
STATE WATER RESOURCES  
CONTROL BOARD  
Office of Chief Counsel  
1001 "T" Street  
Sacramento, California 95814-2828

Neil Eskind, Esq.  
1345 North Lake Boulevard  
P.O. Drawer Z  
Tahoe City, California 95730

Re: LRWQCB Administrative Civil Liability Complaint #R6T-2005-029  
*North Tahoe Public Utility District v. Pacific Built, Inc., et al.*  
Placer County Superior Court Case No.: TCV 1122 [Tahoe Division]

Dear Messrs. Eskind and Blum:

As you know, the hearing on the LRWQCB's Administrative Civil Liability Complaint will re-commence on October 11, 2006. Additionally, there is currently pending the above-described Placer County Superior Court case filed on behalf of the North Tahoe Public Utility District (NTPUD).

On July 26, 2006, we were all present at the LRWQCB's hearing and, on behalf of Pacific Built, Inc. and the Davis and Coffeng families we requested a continuance of the hearing in order to more fully explore a Supplementary Environmental Project (SEP) which would be acceptable to the Regional Board and the NTPUD. The continuance was granted.

We subsequently received a letter from the Board Staff setting an August 9, 2006 deadline for submission of a proposed SEP to the prosecution team.

Please consider this letter as the Pacific Built, Inc./Davis/Coffeng SEP proposal and proposal to globally resolve both the pending ACL proceeding as well as the pending NTPUD

LOS ANGELES	SAN FRANCISCO	SAN DIEGO	COSTA MESA	INLAND EMPIRE	NEW YORK	LAS VEGAS	PHOENIX	TUCSON	CHICAGO
213.250.1800	415.362.2580	619.233.1006	714.545.9200	909.387.1130	212.232.1300	702.893.3383	602.385.1040	520.202.2565	312.345.1718

4819-0449-9201.1

Steven H. Blum/Neil Eskind, Esq.

Re: LRWQCB Administrative Civil Liability Complaint #R6T-2005-029  
*North Tahoe Public Utility District v. Pacific Built, Inc., et al.*  
Placer County Superior Court Case No.: TCV 1122 [Tahoe Division]

August 7, 2006

Page 2

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Placer County Superior Court action described above. For many reasons which cannot be described herein, it is a condition of the proposal that a global resolution be agreed upon.

You should be advised that this letter is to be considered a confidential settlement proposal and that the provisions of Evidence Code section 1152 and other law which may apply to administrative proceedings is considered to be in force. Depending on circumstances, we may grant consent to disclose its contents to Harold Singer and other members of the Advisory Team. The request for such disclosure must be made in writing or by e-mail.

The SEP proposed by Pacific Built, Inc./Davis/Coffeng consists of the purchase of a sewer bypass hose reel system from the North American Fire Hose Corporation. The hose reel system would be made available by NTPUD to all agencies within the Tahoe Basin and will provide significant benefit to the basin as it gives all agencies the capability of bypassing segments of force mains and other facilities in the event of disruptions in various systems.

The cost of the hose reel system is \$298,160. Additional details concerning the equipment to be provided are described in a June 22, 2006 letter from Neil Eskind, a copy of which is attached hereto. You will see that the system consists of very significant lengths of bypass hose as well as other equipment.

It is our understanding that Mr. Eskind has the technical specifications for the system and will be providing those specifications and other pertinent information to you within the next few days.

In addition to providing the above-described hose reel system, a payment of \$26,840 would be made to the Regional Board.

The proposal, if accepted, would resolve both the LRWQCB Administrative Civil Liability action and the NTPUD's Placer County Superior Court case in their entirety. Appropriate closing documentation would be required, including formal documentation of the settlement with the Board in appropriate form, dismissal with prejudice of the NTPUD's entire complaint (including the claims against the architect) and releases in standard form. In other words, the proposal contemplates a global and complete resolution all parties of these two proceedings.

LEWIS BRISBOIS BISGAARD & SMITH LLP

Steven H. Blum/Neil Eskin, Esq.

Re: LRWQCB Administrative Civil Liability Complaint #R6T-2005-029

*North Tahoe Public Utility District v. Pacific Built, Inc., et al.*

Placer County Superior Court Case No.: TCV 1122 [Tahoe Division]

August 7, 2006

Page 3

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We would appreciate your favorable consideration. You can rest assured that a substantial amount of effort has been made to move Pacific Built and the Davis and Coffeng families into position to enable them to make this proposal.

Thank you and we look forward to hearing from you shortly.

Yours very truly,



Bruce L. Shaffer of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

BLS/pea

Enclosure(s): As indicated above.

cc: Drew Briner (w/enc.)

Tom Ragan, Pacific Built, Inc., (w/enc.)

Mark Hudak, Carr McClelland, et al., (w/enc.)

James R. Donahue, Caulfield, Davis & Donahue, (w/enc.)

NEIL A. ESKIND

Attorney at Law

1345 North Lake Boulevard  
Post Office Drawer Z  
Tahoe City, California 96145-1906

530.583.5536  
Fax: 530.583.8880  
Email: [eskind@tahoe-city.com](mailto:eskind@tahoe-city.com)

June 22, 2006

Bruce L. Shaffer  
Attorney at Law  
Lewis Bisbois Bisgaard & Smith LLP  
2500 Venture Oaks Way, Suite 200  
Sacramento, CA 95833

Via email to [shaffer@lbbslaw.com](mailto:shaffer@lbbslaw.com)

Re: July 19, 2005 Sewer Spill

Dear Bruce,

For your information, the specifications for the Hose Reel System are as follows:

- 1 ea Base Trailer System w/Two (2) A-Frame Auxiliary Reels
- 3300' (5/660') 10" Wasteline 600 Green w/Field Attach Vict ends
- 525' (1/525') 10" Wasteline 600 Green w/Field Attach Vict ends
- 600' (1/600') 8" Wasteline 600 Green w/Field Attach Vict ends
- 1 ea 10" Alum - Mender
- 2 ea HRC-B Hose Reel Protective Cover - Blue
- 2 ea #741-10 Adapter 10" Vict X Flange

Including CA State Sales Tax and Freight to 875 National Ave., Tahoe Vista CA 96148

The total cost of the above is \$298,160.

I am informed that the length of hose in this system gives the District the capability of bypassing the longest segment of force main within the NTPUD service area, except for the Dollar Force Main where redundant force mains already exist. This includes bypassing all the near shore force main and pump station facilities, the latter with the use of the District's existing sewage bypass pump.

The system supplier is North American Fire Hose Corporation, Portable Pipeline Systems. The contact person is David Jackson, Sales Manager - Western Region, in Huntington Beach, CA, telephone 714-840-3740.

Bruce L. Shaffer  
Attorney at Law  
June 22, 2006  
Page 2

As per our telephone conversation, I put in a call to David Jackson to let him know that you would be calling and that he could provide you any information you needed. I reached his answering system and left my telephone number, so as of the time I am sending you this I have not had any contact with him.

Please let me know if I can provide anything further.

Sincerely yours,

Neil A. Eskind

NAE:c

## **ATTACHMENT II.b**

**North Tahoe Public Utility District  
August 7, 2006 Cover Letter and  
Technical Specifications**



## NORTH TAHOE PUBLIC UTILITY DISTRICT

August 7, 2006

Mr. Robert S. Dodds  
Assistant Executive Officer  
Regional Water Quality Control Board  
Lahontan Region  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, California 96150

Re: Regional Board ACL Complaint No. R6T-2005-0029 (C. Geoffrey and Christine Davis, Hans and Margaret Coffeng, and Pacific Built, Inc.)

Dear Bob,

Enclosed you will find a detailed Report and Description of Supplemental Environmental Project Relative to R6T-2005-0029. This is being submitted pursuant to Eric Taxer's telephone call to North Tahoe Public Utility District General Manager Steve Rogers on the afternoon of July 26 inviting the NTPUD to resubmit information relative to the Hose Reel System SEP.

You will note that the Report includes a detailed analysis of how the state of the art sewer bypass hose reel system will operate to prevent and reduce pollution and confirms the regional need for such a piece of equipment through letters of support from the Tahoe City Public Utility District and the Incline Village General Improvement District as requested by Eric.

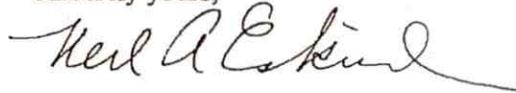
In addition, on August 7, 2006, counsel for Pacific Built, Inc., Mr. and Mrs. Davis and Mr. and Mrs. Coffeng by letter to my office and Steven Blum proposed a settlement which includes agreement to a \$325,000 package incorporating the SEP suggested by the NTPUD. Counsel for Pacific Built, Inc., Mr. and Mrs. Davis and Mr. and Mrs. Coffeng has also requested that the attached Report be treated with the same confidentiality requested in their letter.

Mr. Robert S. Dodds  
Assistant Executive Officer  
Regional Water Quality Control Board  
Lahontan Region  
August 7, 2996  
Page 2

NTPUD staff looks at the settlement proposal as a significant positive development worthy of serious consideration. Its acceptance would lead to a speedy conclusion to the various pending events at the numeric level proposed by your team without further objections or arguments.

We have attempted to make the Report detailed and complete. The NTPUD is confident that there will be universal support for the acquisition of the equipment from the sewer collection and transportation community of agencies and that it would become one of the most valuable tools for preventing and reducing pollution within our region. If you have any questions or require anything additional, please let me know.

Sincerely yours,



Neil A. Eskin

NAE:c

cc: Steven R. Rogers, General Manager/CEO  
enclosure



# NORTH TAHOE PUBLIC UTILITY DISTRICT

August 7, 2006

## Report and Description of Supplemental Environmental Project Relative to R6T-2005-0029

The North Tahoe Public Utility District is pleased to submit information and material relative to a Supplemental Environmental Project (SEP) proposed to be incorporated in and become part of the resolution of Regional Board ACL Complaint No. R6T-2005-0029 (C. Geoffrey and Christine Davis, Hans and Margaret Coffeng, and Pacific Built, Inc.).

As is noted herein, this proposed SEP has the following characteristics and benefits to the environment:

1. The SEP is a unique, state of the art, piece of equipment which will provide with certainty a measurable environmental benefit to Lake Tahoe.
2. The SEP meets the General SEP Qualification Criteria set forth by the State Water Resources Control Board.
3. The SEP has regional support, including written support from the Tahoe City Public Utility District and the Incline Village General Improvement District.
4. The SEP has the support of the North Tahoe Public Utility District.
5. The SEP has been formally proposed by Mr. and Mrs. Davis, Mr. and Mrs. Coffeng and Pacific Built, Inc. pursuant to a letter dated August 7, 2007.

This Report is divided into the following Sections, with supporting Appendices:

1. A description of the SEP, including a detailed product description and literature in an attached Appendix.
2. Analysis of the SEP's environmental benefit to Lake Tahoe, including a copy of the Tahoe Truckee Area Emergency Contingency Plan Agreement for Mutual Emergency Aid and Recommendations from the *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation*, US Army Corps of Engineers, April 2003, in attached Appendices.

PO Box 139, Tahoe Vista, CA 96148 • (530) 546-4212 • FAX (530) 546-2652 • 875 National Ave.

e-mail: [ntpud@ntpud.org](mailto:ntpud@ntpud.org) • website: [www.ntpud.org](http://www.ntpud.org)

3. An analysis detailing the SEP's conformance to the State Water Resources Control Board General SEP Qualification Criteria with the full General SEP Qualification Criteria in an attached Appendix.
4. Letters of regional support, including details on specific benefits the SEP would provide.

## 1. Summary of Sewer Bypass Hose Reel System SEP

### A. Summary Description of Project:

Although based upon the newest evolving technology, the concept is very straightforward. A trailer mounted hose reel system holds easily and quickly deployable 660 foot lengths of strong and durable hose capable of transporting sewage at rates in excess of 1,600 gallons per minute when used in combination with existing pumps.

The benefits of the system include:

1. The system features rapid deployment. 1,000 feet of bypass hose can be deployed in under 8 minutes.
2. The hose is in modular 660 foot sections which can be interconnected in minutes. Sections can be field cut and fittings installed in minutes to accommodate all length requirements without damage to the hose.
3. The hose is lightweight when empty and can be easily adjusted by one person.
4. The hose is flexible and can be deployed over difficult terrain, including hillsides, without requiring bedding.
5. The hose does not require pressurization prior to use and, once deployed and connected to existing pumps through standard fittings, can be placed in service immediately.
6. The system is trailer mounted, allowing fast transport to the scene of an incident.

These attributes make such equipment particularly useful for a small crew deployment and use, substantially decreasing the time to initiate an emergency bypass operation.

The proposed sewer bypass hose reel system would include the following at an estimated cost of \$298,160 based on current research and quotes of prices to the District:

Base Trailer System  
Power Package  
Two A-Frame Reel System  
Lifting Bar

3,825 feet of 10" hose, 600 feet of 8" hose with couplings, mending accessories, and protective covers.

Technical specifications and product literature on the proposed hose bypass reel system are included in Appendix A.

The system was designed to meet the needs of all but the most extreme situations which could occur within the regional area. Presently, such a system does not exist within the Lake Tahoe basin area and this type of equipment and trained personnel are not available for use in an emergency through the regional mutual aid area<sup>1</sup>.

## **B. Applications for the SEP**

### **(1) Emergency Bypass Operations**

Deployment of the sewer bypass hose reel bypass to locations of pipe damage will substantially decrease the amount of sewage discharged from line breaks thereby helping to protect the environment and water clarity of Lake Tahoe.

### **(2) Planned Maintenance Operations**

Use of the bypass will allow activities such as sewer main inspections, sewer main replacement projects, repair of third party damage to a sewer mains, manhole repair or replacement, pump station repairs, provision of redundant capacity in high risk situations, and damage or repair to sections of force mains.

### **(3) Regional and Mutual Aid Use**

Once acquired, the equipment becomes part of the inventory available as part of the regional mutual aid system to all collection entities in the area. These other agencies will have the ability to use the equipment in the same manner detailed above. A very important attribute of the equipment is that is a modular system. As other regional needs arise, other agencies can augment the system by purchasing additional sections of hose and accessories, further increasing the protection of the waters of Lake Tahoe and meeting the recommendations of the US Army Corps of Engineers Study. This SEP has every potential for being the starting point for a regionally distributed state-of-the-art pollution elimination system designed to provide maximum emergency protection and maintenance capability.

Letters of support from other agencies for this SEP have been obtained and are found in Section 4 below.

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<sup>1</sup> The Truckee Sanitary District has a 1,700-foot length of 6" hose which, while suitable for its design needs, is not adequate for the type of circumstances this SEP is designed to address. Due to the modular nature of this SEP system, its shorter and smaller hose can be interconnected with the larger, more robust hose in this SEP to increase versatility.

## 2. Analysis of Sewer Bypass Hose Reel System's Environmental Benefit to Lake Tahoe

### A. Existing Bypass Systems in Use Throughout the Lake Tahoe Basin

To better understand the District's interest in the proposed hose bypass system, a comparison of the current approach used for sewer bypass operations and the proposed hose reel bypass system is helpful.

The first line of sewer line bypass technique now the standard approach throughout the region is the use of Vacuum (Vactor) and Tank Truck brigades<sup>2</sup>. This approach has certain difficulties as follows:

1. Obtaining the appropriate number of vacuum and tank trucks requires activation of the mutual aid system and the use of private haulers. There is a risk that sufficient resources may not be available.
2. It can take considerable time to marshal and deploy the necessary vehicles to the incident site in an emergency situation, particularly during weekend and night periods. It is estimated that the time delay before commencement of a bypass operation is approximately 3.5 hours and that full bypass capability requires an additional 1.5 hours after the operation is started, resulting in 5 hours before full bypass capacity is reached.
3. Due to physical constraints, there is a practical limit of about 800 gallons per minute bypass capability using vacuum and tank trucks. Currently, any bypass above that number will require installation of a rigid pipeline.

Where the trucking approach will not handle the volume, the only available solution is the use of a temporary rigid 12-inch aluminum pipeline. This also has certain difficulties as follows:

1. The NTPUD has 1,500 feet of this rigid pipeline with another 2,500 available on call from the Tahoe-Truckee Sanitation Agency. The pipeline is in 40-foot sections and must be moved incrementally on available trailers.
2. This application is very labor intensive and time consuming for installation. The pipeline must be bedded, joined together and pressurized before use. As such, its use is primarily for planned maintenance activities where there is the time available

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<sup>2</sup> Much has been said about the function of a circle clamp as a defense. While useful in many instances as a temporary fix pending the bypass which is thereafter necessarily required to effect a permanent repair, the use of a circle clamp is inappropriate in situations where the damage cannot be evaluated sufficiently to determine its propriety, the subject pipe is not of constant diameter at the point of damage or its installation would place personnel at risk due to the possibility of unstable earth. The use or nonuse of a circle clamp does not affect the value of the Sewer Bypass Hose Reel System as a substantial environmental improvement over current bypass technology.

to install the bypass. In an emergency situation, installation of this type of bypass actually diverts resources from the emergency repair and remediation. In addition, there is the possibility of leakage from the joints at each pipe section interval.

3. The time to move, assemble, pressurize and place a 3,000-foot length of aluminum pipeline in use as a bypass is estimated to be 17 hours.

#### **B. Reduction in Discharges Expected Through Deployment of Sewer Bypass Hose Reel System Technology**

In contrast to the shortcomings of the vacuum and tanker truck or rigid pipe solutions, the flexible sewer bypass hose reel system offers many advantages and environmental benefits. These are:

1. The system can be moved on one trailer and, once on site, rapidly deployed.
2. Terrain is not an issue.
3. Once deployed it can be placed in service immediately without excessive joining of sections together or pressurizing.
4. The time from initial call to full bypass capacity for a 3,000-foot bypass is estimated to be under 2 hours.
5. Once the need for the bypass is over, retraction is simple and fast, thereby freeing up staff for any necessary remediation tasks.

Two examples of expected reductions in discharges are detailed below. Example 1 is modeled after the July 19, 2005 incident. Example 2 is modeled after an event with an average 1,000 gallon per minute discharge, larger than can be remedied by the use of vacuum and tanker trucks alone, thereby requiring the use of the rigid aluminum pipeline.

Example 1:

Figure 1 models the July 19, 2005 event, showing the average discharge over the approximate 4.5 hours the bypass operation too. The total discharge is shown on Line 1 on Table 2 as being 56,000 gallons.

Figure 2 models the July 19, 2005 event as if the sewer bypass hose reel system had been available. It shows that the bypass would have been accomplished in 2 hours, reducing the total discharge to 29,400 gallons as shown on Line 2 of Table 2. This represents a 47% reduction in discharge over present methodology by having the more efficient and quicker bypass afforded by the hose reel system.

Example 2:

Figure 3 models a larger event with a 1,000 gallon per minute breach. It shows the use of vacuum and tanker trucks to bypass the first 800 gallons per minute and the concurrent installation of rigid pipeline to bypass the balance. Because of the long installation time of the rigid pipeline, the total discharge, as shown on Line 3 of Table 2, is 408,000 gallons, a major pollution event.

Figure 4 models the larger event with the use of the sewer bypass hose reel system. It shows that the hose reel system bypass was installed and operable in 2 hours with the capability of bypassing all the discharge. Line 4 on Table 2 shown that the total discharge would have been reduced to 120,000 gallons, a 70% reduction over present methodology through the use of the hose reel system.

The conclusions to be reached by these examples is that the sewer bypass hose reel system represents a substantial environmental benefit by reducing the amount of pollution over current methodology.

Figure 1

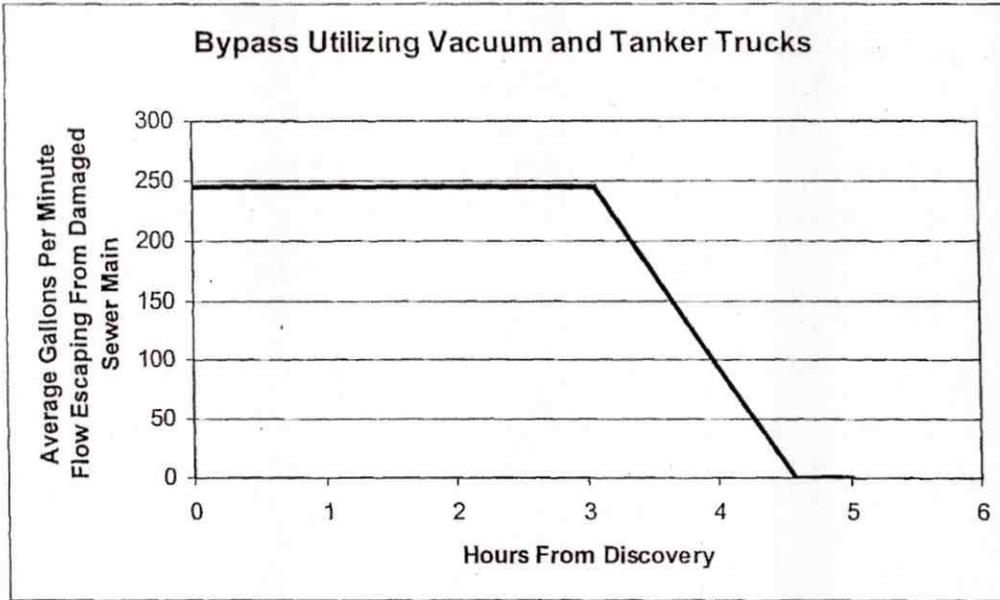


Figure 2

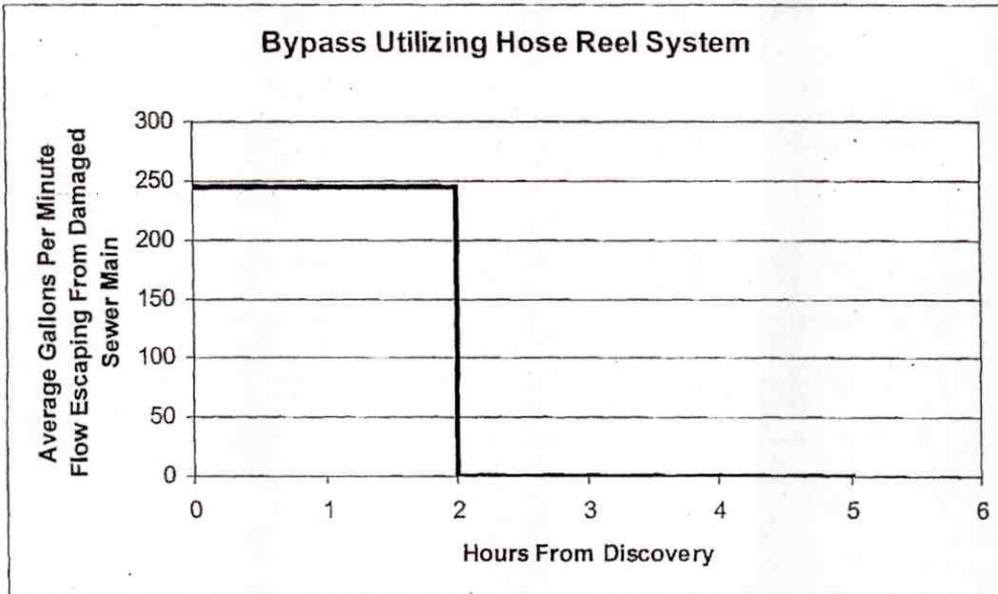


Figure 3

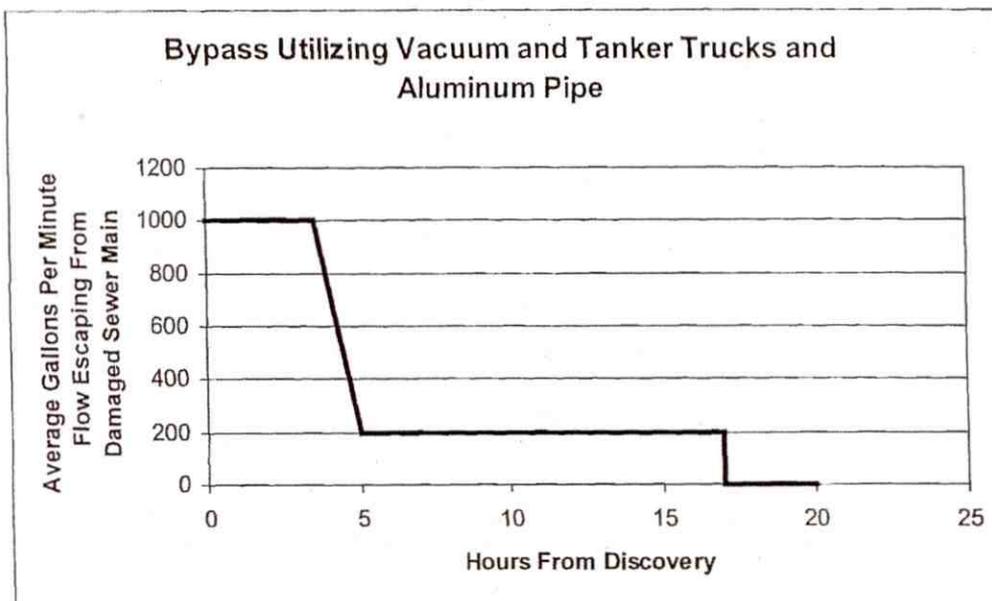


Figure 4

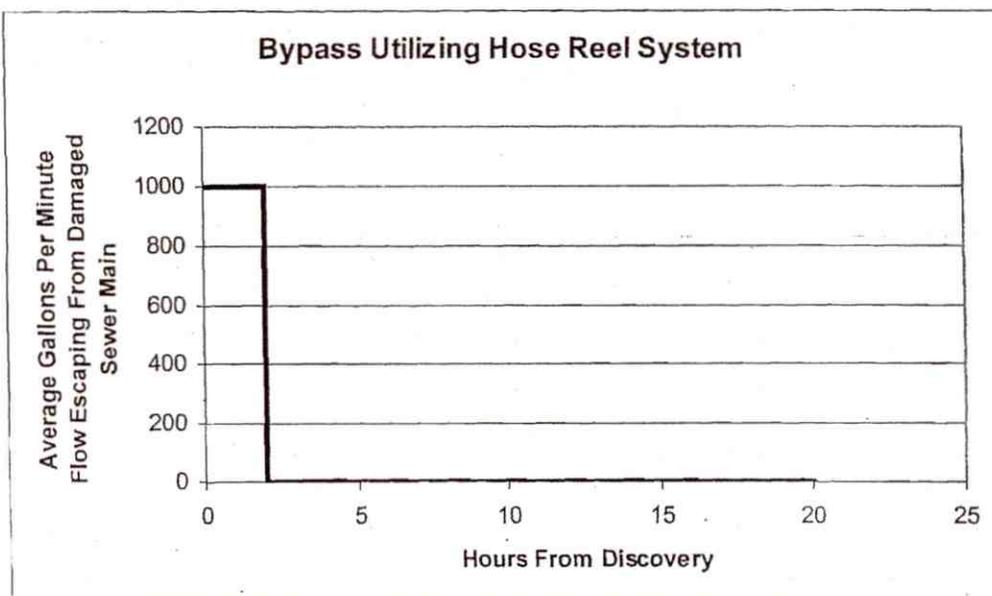


Table 1  
**DISCHARGE REDUCTIONS POSSIBLE BY USE OF SEWER BYPASS HOSE REEL SYSTEM AS COMPARED TO EXISTING BYPASS SYSTEMS**

	Average Gallons Per Minute Flow Escaping From Damaged Sewer Main	Method of Bypass	Gallons of Sewage Discharged Prior to Completion of Bypass	Gallons Reduction in Discharge by Utilizing Hose Reel System	Percentage Reduction in Discharge by Utilizing Hose Reel System
1	245	Tanker Trucks	56,000	-	-
2	245	Hose Reel System	29,400	26,600	47%
3	1,000	Tanker Trucks and Aluminum Pipe	408,000	-	-
4	1,000	Hose Reel System	120,000	288,000	70%

**C. Conformance of Sewer Bypass Hose Reel System to Recommendations of the *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation*, US Army Corps of Engineers, April 2003.**

The *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation*, US Army Corps of Engineers, April 2003, cataloged sewage collection providers within the Lake Tahoe Basin. Extracting collection line information from the report by collection entity indicates (see Table 2 below) that 908.9 miles of collection lines exist within the Lake Tahoe Basin. Of these, 75.5% are in California, and in excess of 69.4 miles are force mains (pressure lines).

In addition, the *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation* Study concluded with a number of recommendations intended to implement "A dynamic approach to the management, operation, maintenance, rehabilitation, and replacement of the sewer systems is recommended to maintain their performance and to reduce the risk of overflows/releases." These recommendations are found

on Page 16-7 of the Report (the text of that page is attached in Appendix D). Unfortunately, funding has not become available to fully implement these recommendations.

The Sewer Bypass Hose Reel System SEP would allow the Collection Entities (all signatories to the Tahoe Emergency Contingency Plan) the opportunity and flexibility to expand their implementation of three of the operationally significant recommendations by creating the ability of taking long reaches of collection lines out of service for inspection and preventive maintenance. These three recommendations are as follows:

- Develop and maintain a routine preventive maintenance program designed to prevent overflows/releases and to protect the investment costs of the sewer system.
- Develop a regular inspection and cleaning schedule and take action to the results of these inspections.
- Implement annual inspections of system components that are operated and maintained within the environmentally sensitive study areas including creek crossings, export gravity sewers and force mains, and pump stations. In these areas, provisions to facilitate inspection of these sewer lines may be required including turnouts, access ports, or parallel/redundant pipelines.

Implementation of a Sewer Bypass Hose Reel System SEP would be highly beneficial to the water quality of Lake Tahoe and be a first step towards meeting the Recommendations of the *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation*, US Army Corps of Engineers, April 2003.

**Table 2**  
**SEWER LINES DIVIDED BY COLLECTION ENTITY AND TYPE OF LINE<sup>3</sup>**

Collection Entity	Gravity Mains (miles)	Force Mains (miles)	Total (miles)
IVGID	132	Included in gravity	132
Tahoe Douglas District	24	7.4	31.4
Round Hill General Improvement District	7	2	9
Douglas County Sewer Improvement District No.1	9.5	6	15.5
Kingsbury General Improvement District	33	2	35
STPUD	420	40	460
TCPUD	130	5	135
NTPUD	84	7	91
<b>Total</b>	<b>839.5</b>	<b>69.4</b>	<b>908.9<sup>4</sup></b>

<sup>3</sup> Computed from data in the *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation*, US Army Corps of Engineers, April 2003.

**3. Analysis of Sewer Bypass Hose Reel System SEP's Conformance to State Water Resources Control Board General SEP Qualification Criteria**

The Sewer Bypass Hose Reel System SEP conforms to the State Water Resources Control Board General SEP Qualification Criteria in the following ways:

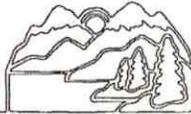
- (a) The SEP only consists of measures that go above and beyond the obligation of any one utility entity by providing, on a basis available to all, state-of-the-art equipment which the entities could not afford on an individual basis and are not required.
- (b) The SEP directly benefits groundwater and surface water quality through pollution prevention and reduction by substantially increasing the ability to reduce the severity of sewer line breaches and to increase the ability to maintain existing sewer lines.
- (c) The SEP does not directly benefit the SWRCB or RWQCB functions or staff.
- (d) The SEP is not an action, process or product that is otherwise required of any sewer collection, transporting or treatment entity by any rule or regulation of any entity, nor is the SEP proposed as mitigation to offset the impacts of any such entities' projects.

---

<sup>4</sup> Of the total of 908.9 miles of sewer lines, 686 miles, or 75.5% are located in California.

#### 4. Regional Support for Sewer Bypass Hose Reel System SEP

BOARD OF DIRECTORS  
KELLY ATCHLEY  
ERIK HENRIKSON  
LOU REINKENS  
RON TREABESS  
RIC WINTER



ROBERT LOUREY  
GENERAL MANAGER

### Tahoe City Public Utility District

August 3, 2006

Leon C. Schegg, P.E.  
North Tahoe Public Utility District  
P.O. Box 139  
Tahoe Vista, California 96148

RE: Support for Purchase and Regional Availability of Sewer Bypass Hose Reel System

Dear Lee,

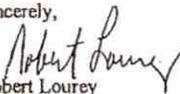
This letter is written in support of the purchase and availability of a portable sewer bypass hose reel system. The purchase and availability of this piece of equipment would provide the Tahoe City Public Utility District (TCPUD) with a much more timely and efficient means of performing sewer bypass operations.

The TCPUD currently operates and maintains over 180 miles of gravity sewer pipe as well as 22 sewer lift/pump stations. As you are aware, bypassing a sewer pump station occurs for both routine maintenance as well as in emergency situations. The current practice of utilizing vacuum trucks and tanker trucks to bypass and transport sewage to a suitable location is cumbersome, time consuming and limited on the volume of sewage that can be bypassed over a given period of time. The bypass hose reel system would provide a much greater capability of transporting sewage timely, safely and at a much higher flow rate. The system could be utilized on all of the TCPUD above described facilities.

This bypass hose reel system could have been implemented in the Flood of 1997 at the TCPUD Sunnyside Pump Station. Had the system been available, the supplemental pumping capability afforded by it could have avoided the sewer system loss that occurred. There are dozens of examples of the usefulness of this system and the positive impact its presence could have in the area.

On behalf of the TCPUD, we appreciate the efforts the North Tahoe Public Utility District has put into researching and specifying such a useful and key piece of equipment for the areas benefit. Should you have any questions, do not hesitate to contact me at 530/583-3796, extension 33.

Sincerely,

  
Robert Lourey  
General Manager

Cc: Bill Back - Director of Public Works

P.O. Box 5249, 221 Fairway Drive, Tahoe City, California 96145 (530)583-3796 • FAX (530)583-1475



August 3, 2006

Leon C. Schegg P.E.  
Public Works Director  
North Tahoe PUD  
P. O. Box 139  
Tahoe Vista, California 96148

**RE: Mounted Sewer Bypass Hose Reel System**

Dear Mr. Schegg:

The Incline Village General Improvement District (IVGID) understands that the North Tahoe Public Utility District (NTPUD) may acquire a trailer-mounted sewer bypass hose reel system for use during sewer emergencies and for the prevention of sewer overflows during routine maintenance operations. We also understand that this bypass system would be made available to regional sewer entities under our existing Mutual Emergency Aid Agreement.

IVGID would make use of the system for:

- Planned sewer line replacement or rehab projects, when a secure temporary pump-around bypass is needed to maintain flows.
- Proactive risk management to bypass critical lines when third-party construction has the potential of rupturing an existing forcemain. This includes use on the Effluent Export Pipeline within the narrow State Route 28 corridor.
- Emergency response to pump out containment basins in the event of a sewer spill.

IVGID supports the acquisition of this invaluable emergency response asset within the Basin, and appreciate that, if the need arises within our service area, we would be allowed to borrow the hose reel system.

Very truly yours,

Daniel M. St. John, P. E.  
Director of Public Works

C: Wm. B. Hom, General Manager  
H. Johnson, Utilities Superintendent  
J. Pomroy, P. E., Engineering Manager  
Agency File  
Reading



ADMINISTRATIVE OFFICES · 893 SOUTHWOOD BOULEVARD · INCLINE VILLAGE, NV 89451  
PH: (775) 832-1100 FX: (775) 832-1122 · WWW.IVGID.ORG

0803064

Appendix A. Detailed Product Description and Literature

No:	Spec No:	Description
		<b>HRA4X10 Hose Reel Auxiliary System for</b> <i>Transport / Deployment / Retrieval / Storage of 3825' 10" Wasteline 600 Green</i>
01		<b>Base Trailer System</b> consisting of the following minimum specifications: Tandem Axle Spindles, Hubs, Wheels shall have 8000 lb. min load rating per axle Tubular Steel Frame 5" X 3" X 3/16" Structural Steel A-500 Steel Deck Plating 3/16" w/ Hold-Down Alignment Post and Safety Pins Hi-Miler Floatation Tires GR-235 X 16" load range E Fenders shall be 10 gauge steel w/gravel protective flaps Electric Surge brakes w/4 wire common connector pigtail for light pkg. North Tahoe Public Utility District Specifications Pintle Hitch w/ 10,000 lb hand crank frame Support Jack
02		<b>Power System</b> – shall consist of the following: 4024T-John Deere 49 HP Diesel Engine w/ Tier II 2006 Emission Hydraulic pump package w/ Universal "Driplex" Quick Disconnect Fittings Safety Control Valve System for reel operation "Forward / Neutral / Reverse" Standard Size Fuel Tank Resid. muffler / Eng. hood System w/ Std gauge pkg / Electric Start
03		<b>Base Trailer System w/ Power System</b>
04		<b>Tool Box</b> - Aluminum Diamond Plate w/Locking Water-tite seal
05		<b>A-Frame Reel System</b> – shall consist of the following minimum specifications: Tubular Steel A-Frame 5" X 3" 3/8" Structural Steel A-500 Center Drum Core 20" XZ 3/8" steel to store first coupling/end fitting Hydraulic Motor & Chain Reduction system Retrieval speed shall not exceed 3 RPM Free wheeling deployment w/ T-Handle brake system Dividers shall be 1.30 X .179 steel gauge wall and tube stock w/ end divider to have holes for receiving "Lifting Bar" clevis 4 dividers per reel for 10" <i>Wasteline 600 Green</i>
06		<b>A-Frame Reel System 2 eu.</b>

- 07 **Lifting Bar** for Auxiliary A-Frame Reel System to be 5" X 3" X 3/8" Structural Steel A-500  
 08 **Paint** – Hi-Gloss White Epoxy paint to North Tahoe Public Utility District specs.

////////////////////////////////////  
**Wasteline 600 Green**

No:	Spec.	Qty	Size	Description
09	WL100	3300'	10"	<b>Wasteline 600 Green (5/660')</b> Cpld w/ Field Attach Victaulic ends
10	WL100	525'	10"	<b>Wasteline 600 Green (1/525')</b> Cpld w/ Field Attach Victaulic ends
11	WL080	600'	8"	<b>Wasteline 600 Green (1/600')</b> Cpld w/ Field Attach Victaulic ends

////////////////////////////////////  
**Accessories / Options**

No:	Spec	Qty	Size	Description
12	FA10M	1	10"	Field Attachable Mender
13	741-10	2	10"	Adapter 10" Victaulic X Flange
14	HRC-G	2		Auxiliary Hose Reel Cover – Green



# WasteLine 600

***Are you prepared for the next  
Sewer or Wastewater Spill?***



**PORTABLE PIPELINE SYSTEMS, Division of NORTH AMERICAN FIRE HOSE CORPORATION**

# Are You Prepared?



• Available in Green, Purple and Black.

• Heavy duty, high gloss polyurethane cover and lining.

• Special polyurethane material covers broad range of temperatures.

• Heavy denier woven polyester yarn reinforced jacket.

• Lay-flat configuration when depressurized.

• Extruded through the weave construction.

• Sizes, 2" to 12" diameters.

• Lengths up to 660 feet.

• Flexible construction method.

• Produced by the world leader in through-the-weave technology.

• Designed with safety in mind.



• Meets APWA National Color code standards.

• Ozone, chemical, hydrocarbon, mildew and abrasion resistant.

• Temperature range from -58° F to + 158° F

• High tensile strength of reinforcing yarns provide high strength and high pressure capability.

• More compact than cast iron or aluminum pipe.

• Encapsulates and protects woven reinforcement.

• Wide range of products for different flow requirements.

• Longer lays possible with minimum connections between lengths.

• Tight bend radii possible without kinking.

• Over 200 years of manufacturing experience.

• 2 to 1 safety factor.



• Identifiable color prevents accidental misuse.

• Tough polyurethane extends hose life under adverse conditions.

• Works well at low and high temps. Will not harden or crack at low temps. like other materials.

• Working pressures to 325 psi meet many high pressure demands.

• Lay-flat design reduces space to store & move.

• Resists abrasion, abuse and delamination.

• Can combine large feeder line and small branch line.

• Fewer couplings, faster set-ups, less leaks.

• Deploys easily over difficult terrain.

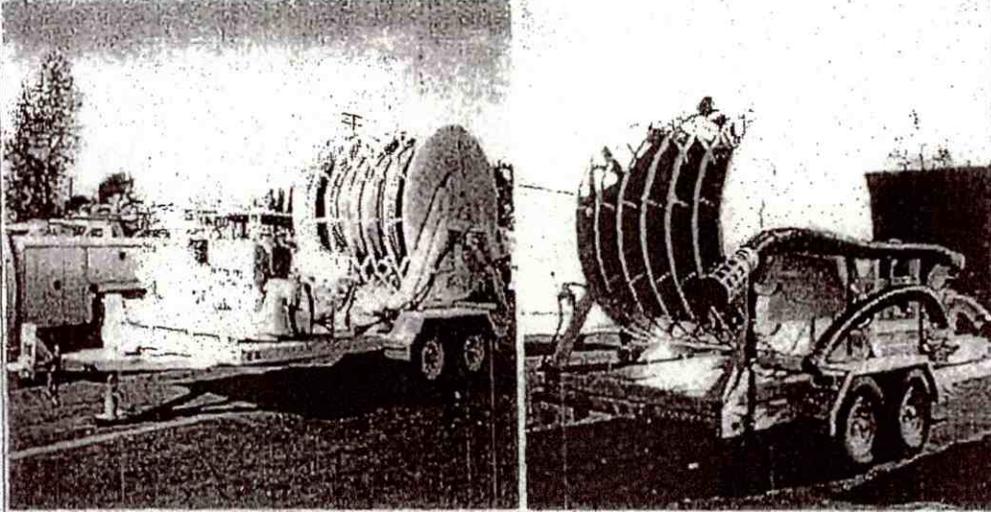
• Highest quality product available on the planet.

• Extra margin of safety for tough applications.

SIZE	LENGTH	FLAT WIDTH	WEIGHT PER FOOT	COIL DIAMETER		BURST PRESSURE	WORKING PRESSURE	SIZE
				50 ft.	100 ft.			
2"	660'	3.125"	.21	13-1/2"	17-1/2"	650	325	2"
2-1/2"	660'	4.50"	.30	14"	18"	650	325	2-1/2"
3"	660'	5.00"	.37	15"	19"	600	300	3"
4"	660'	6.25"	.56	19-1/2"	30"	550	275	4"
6"	660'	9.25"	1.09	30"	48"	450	225	6"
8"	660'	12.50"	1.90	NA <sup>a</sup>	NA <sup>a</sup>	450	225	8"
10"	660'	15.75"	2.20	NA <sup>a</sup>	NA <sup>a</sup>	300	150	10"
12"	660'	18.50"	3.10	NA <sup>a</sup>	NA <sup>a</sup>	250	125	12"

## Are You Prepared?

- Does your city have an Emergency Preparedness Plan or Program to respond to Sewer or Wastewater spills?
- Are you prepared to respond quickly to contain the spill?
- Or - Does the Sewer Dept. have a Portable Pump that uses 6" heavy black rubber hose in 10 ft. lengths that require "too much time" and "too many workers"?



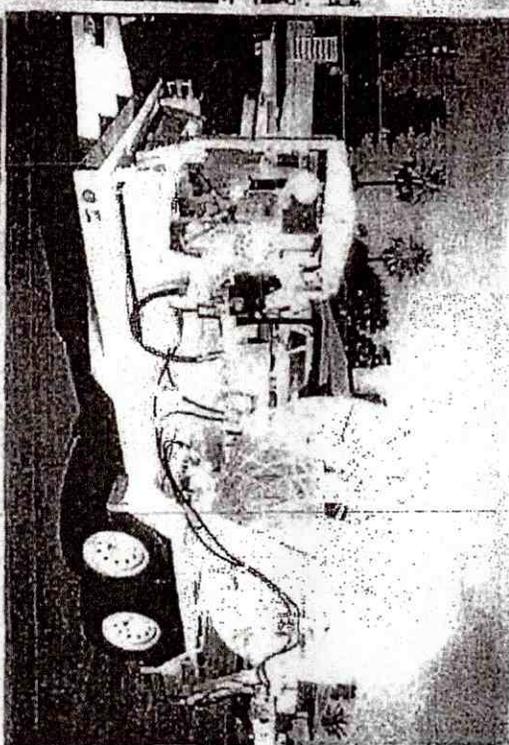
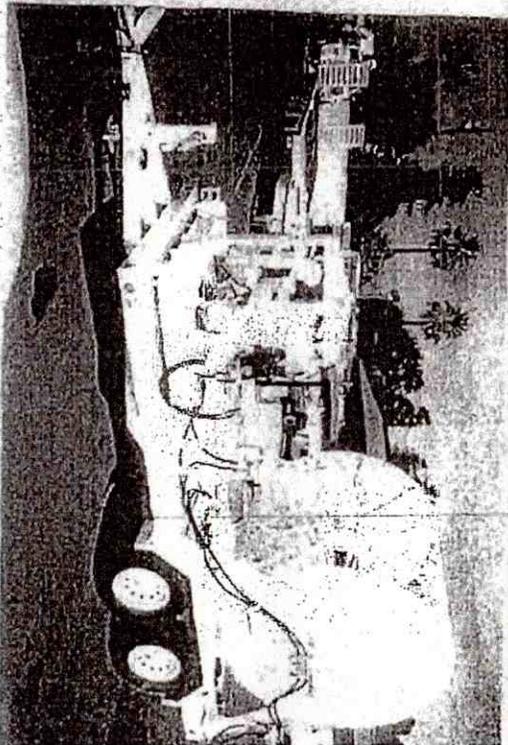
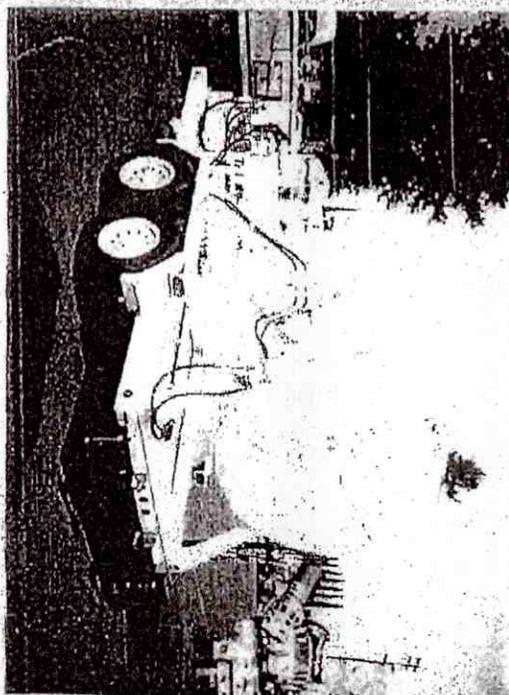
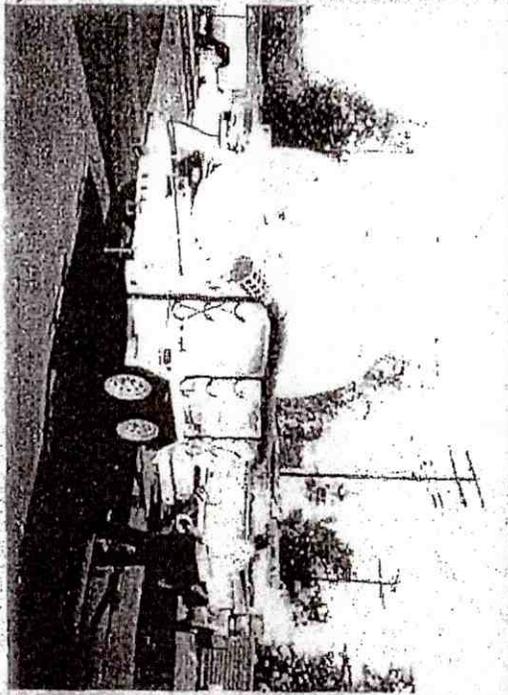
### - Solution -

#### *"Emergency Spill Response System"* (ESR-6)

- A Portable Lift Station / Bypass System with up to 3960' of 6" Portable Pipeline "Wasteline 600"
- Quick response, easily transported to the spill
- Rapid deployment, ease of retrieval and compact storage
- Reduces back injuries, eliminates man-handling heavy hoses
- Minimal maintenance required
- Simplicity of overall operation
- Stable and maneuverable in off-road terrain

Portable Pipeline Systems

Field Office: 3844 Mistral Dr. Huntington Beach, CA. 92649 Tel: 714-840-3740 Fax: 714-840-1434 Pg: 800-504-2514  
Factory Location: 910 E. Noble Way Santa Maria, Ca. 93454 Tel: 800-747-7075 Fax: 805-922-0086



**Appendix B. Tahoe Truckee Area Emergency Contingency Plan Agreement for Mutual  
Emergency Aid**

**TAHOE TRUCKEE AREA EMERGENCY CONTINGENCY PLAN**

**AGREEMENT FOR MUTUAL EMERGENCY AID**

This Agreement is made and entered into on the dates set forth below, by and between the public agencies set forth below.

**WHEREAS**, the agencies party to this Agreement maintain and operate sewage and/or water collection, transportation and treatment facilities in the Lake Tahoe-Truckee areas; and

**WHEREAS**, the parties hereto have heretofore engaged in an informal policy of mutual cooperation wherein the resources of each were available to the other on an as-available basis for the purposes of minimizing environmental damage due to leakage from or destruction of such facilities and of promoting public health; and

**WHEREAS**, it is the desire of the parties hereto to execute a mutual aid agreement wherein the policy of mutual cooperation is formalized and expanded to meet projected needs of the parties.

**NOW, THEREFORE**, the parties hereto mutually agree as follows:

1. To furnish to each other personnel trained in the emergency and operation and/or repair of sewage and/or water collection, transportation and treatment facilities, together with equipment, materials and supplies required for such operation and/or repair as may be necessary during emergency conditions.
2. To provide such emergency aid within the ability of the agencies party to this Agreement, provided, however, that no party shall be required to deplete its own resources, personnel, services or facilities to the detriment of its normal responsibilities or the detriment of anticipated needs. No agency shall incur any liability or be found at fault for failure to furnish personnel, equipment, materials or supplies when such are available. In addition, each agency shall have the right, at the sole discretion of said agency, to order any personnel, equipment, materials or supplies furnished to another agency be returned to the furnishing agency, without any liability for said order.
3. That no response to an emergency aid request provided for in this Agreement will be made by any party hereto unless such request is received through established communication channels and made by a previously designated responsible official of the agency requesting such aid. The Manager of each agency shall be deemed a responsible official and shall have the authority to designate alternate responsible officials to other agencies. No such designation shall be effective until received, in writing, by other agencies.
4. That any emergency aid extended under this Agreement is extended with the express understanding that the responsible local official (in whose jurisdiction and incident

requiring emergency aid has occurred) shall remain in charge at such incident including the direction of personnel and equipment provided through the operation of this Emergency Aid Agreement. Any agency providing personnel or equipment may require that equipment be furnished with operators or that supervisory or safety personnel be furnished with the personnel and/or equipment.

5. That at the sole discretion of the agency supplying aid, the benefiting agency shall pay each agency supplying aid monthly, on receipt of invoice, costs for the equipment, personnel, materials and supplies furnished. These costs shall be computed in accordance with the schedule of rates shown in Exhibit "A" attached hereto and incorporated herein by this reference. Some agencies may require operators to accompany their equipment and rate may include operator. All labor will be billed at actual rate paid plus benefits. All expendable materials will be billed at cost.

That the benefited agency will indemnify and hold harmless each supplying agency against all liability and claims for damages, personal injury and death arising out of the use of vehicles, equipment or other property, or personnel of the supplying agency by the benefited agency, except where vehicles, equipment or other property, or personnel remain within the control of the supplying agency, in which case the supplying agency will indemnify and hold harmless the benefited agency against all such liability and claims.

6. That each agency shall maintain coverage for liability, property damage, and worker's compensation for industrial injury or illness through insurance or self-insurance, including coverage for its equipment and employees when used by other agencies under this Agreement. Any agency party to this Agreement shall have the right to evidence of such coverage upon request.
7. That this Agreement shall not operate to merge any of the parties hereto, to subject any of the parties hereto to the jurisdiction of any regulatory agency not having jurisdiction in the absence of this Agreement, or to require that any party hereto cooperate with or report to any agency not a party to this Agreement.
8. That this Agreement shall become effective as to each party upon execution by said party and shall remain in full force and effect as to each party until terminated by said party. Any party hereto any terminate its rights and obligations under this Agreement by giving all other parties thirty (30) days prior written notice, however such termination shall not affect the rights and obligations of the remaining parties hereto or any rights and obligations of the withdrawing party occurring prior to the effective date of termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the days and years set forth below.

ALPINE SPRINGS COUNTY WATER DISTRICT

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

DOUGLAS COUNTY SEWER IMPROVEMENT DISTRICT, NO. 1

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

KINGSBURY GENERAL IMPROVEMENT DISTRICT

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

NORTH TAHOE PUBLIC UTILITY DISTRICT

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

NORTHSTAR COMMUNITY SERVICE DISTRICT  
Placer County Service Area No. 21; Northstar

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

ROUND HILL GENERAL IMPROVEMENT DISTRICT

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

SOUTH TAHOE PUBLIC UTILITY DISTRICT

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

**SQUAW VALLEY PUBLIC SERVICE DISTRICT**  
Squaw Valley County Water District

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

**TAHOE CITY PUBLIC UTILITY DISTRICT**

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

**TAHOE DOUGLAS SEWER DISTRICT**

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

**TAHOE - TRUCKEE SANITATION AGENCY**

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

**TRUCKEE SANITARY DISTRICT**

Date: \_\_\_\_\_ By: \_\_\_\_\_

Attest: \_\_\_\_\_

## Appendix C. State Water Resources Control Board General SEP Qualification Criteria

### From Section IX.C of the State Water Resources Control Board Water Quality Enforcement Policy:

#### “C. General SEP Qualification Criteria

All SEPs approved by the SWRCB or RWQCB must satisfy the following general criteria:

- (d) An SEP shall only consist of measures that go above and beyond the obligation of the discharger. For example, sewage pump stations should have appropriate reliability features to minimize the occurrence of sewage spills in that particular collection system. The installation of these reliability features following a pump station spill would not qualify as an SEP.
- (e) The SEP should directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State. Examples include but are not limited to:
  - (i) monitoring programs;
  - (ii) studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
  - (iii) water or soil treatment;
  - (iv) habitat restoration or enhancement;
  - (v) pollution prevention or reduction;
  - (vi) wetland, stream, or other waterbody protection, restoration or creation;
  - (vii) conservation easements;
  - (viii) stream augmentation;
  - (ix) reclamation;
  - (x) public awareness projects (e.g., industry specific, public-awareness activity, or community environmental education projects such as watershed curriculum, brochures, television public service announcements, etc.);
  - (xi) watershed assessment (e.g., citizen monitoring, coordination and facilitation);
  - (xii) watershed management facilitation services; and
  - (xiii) non-point source program implementation.
- (f) The SEP shall not directly benefit the SWRCB or RWQCB functions or staff. For example, SEPs shall not be gifts of computers, equipment, etc. to the SWRCB or RWQCB.
- (g) The SEP shall not be an action, process or product that is otherwise required of the discharger by any rule or regulation of any entity (e.g., local government, California Coastal Commission, United States Environmental Protection Agency, United States Army Corps of Engineers, etc.) or proposed as mitigation to offset the impacts of a discharger’s project(s).”

Appendix D. Page 16-7, *Lake Tahoe Basin Framework Study, Wastewater Collection System Overflow/Release Reduction Evaluation*, US Army Corps of Engineers, April 2003

Final Report, Overflow/Release Reduction Evaluation,  
Lake Tahoe, CA and NV

16-7

### 16.3 Recommendations

A dynamic approach to the management, operation, maintenance, rehabilitation, and replacement of the sewer systems is recommended to maintain their performance and to reduce the risk of overflows/releases. The districts are currently taking this approach in varying degrees. As stated early, the findings of this study are statements of fact or of the best available information at the time of the study. This study also provides conclusions that are the professional judgments of experts knowledgeable in sanitary sewer. The recommendations that have been listed in this study are industrial standards applied to Lake Tahoe and accepted by professionals in the sanitary sewer industry.

The recommendations include completing the following key activities:

- A regional consensus on funding, environmental regulations, and standards for the design and construction should be reached by the Lake Tahoe sanitary sewer stakeholders. A basin wide approach to a comprehensive capital improvement program (CIP) should be considered for the replacement or rehabilitation of the sewer facilities located in the environmentally sensitive areas in the Lake Tahoe basin.
- Focus initial inspection and rehabilitation/replacement activities on implementing the potential action plans identified in this study.
- Develop appropriate budgets and staffing needs for the operation and maintenance and rehabilitation and replacement of the deficient sanitary sewer facilities.
- Develop and maintain a routine preventive maintenance program designed to prevent overflows/releases and to protect the investment costs of the sewer system.
- Develop a regular inspection and cleaning schedule and take action to the results of these inspections.
- Implement annual inspections of system components that are operated and maintained within the environmentally sensitive study areas including creek crossings, export gravity sewers and force mains, and pump stations. In these areas, provisions to facilitate inspection of these sewer lines may be required including turnouts, access ports, or parallel/redundant pipelines.
- Develop and maintain an information management system that provides timely responses to and tracking of the following:
  - Emergencies
  - Problems and complaints that may lead to or have caused overflows or releases
  - The identification of deficiencies within the sewer system and prioritizing these deficiencies
  - The planning of maintenance activities and scheduling
  - The planning of capital budgets
  - Investigate of complaints, identify associated problems, and take corrective measures
  - Regular repair of deteriorating sewer facilities
  - Develop and implement a program to make certain that new sewers and connections are properly designed and constructed.
- Inspect problems that cause sewage overflows or releases and take corrective actions.

April 2003

**ATTACHMENT II.c**

**Lewis Brisbois Bisgaard & Smith LLP  
August 31, 2006 Letter**

LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

2500 VENTURE OAKS WAY, SUITE 200, SACRAMENTO, CA 95833  
PHONE: 916.564.5400 | FAX: 916.564.5444 | WEBSITE: www.lbbslaw.com

BRUCE L. SHAFFER  
DIRECT DIAL: 916.646.8203  
E-MAIL: sbaffer@lbbslaw.com

August 31, 2006

FILE NO.  
25116-23

CONFIDENTIAL SETTLEMENT PROPOSAL

Steven H. Blum, Senior Staff Counsel  
STATE WATER RESOURCES CONTROL BOARD  
Office of Chief Counsel  
1001 "T" Street  
Sacramento, California 95814-2828

VIA E-MAIL & U.S. MAIL  
sblum@waterboards.ca.gov

Re: LRWQCB Administrative Civil Liability Complaint #R6T-2005-029  
*North Tahoe Public Utility District v. Pacific Built, Inc., et al*  
Placer County Superior Court Case No.: TCV 1122 [Tahoe Division]

Dear Mr. Blum:

We are writing to confirm our August 30, 2006 telephone conversation with regard to the Pacific Built, Inc. and Davis and Coffeng family settlement proposal set forth in our August 7, 2006 letter.

It is our understanding that the prosecution team, after review of our settlement proposal as well as the supplementary information provided by the NTPUD and adopted by our group, has determined that it will support the proposed SEP and payment of \$26,840 to the Waste Discharge Permit Fund.

It is also our understanding that Mr. Dodds has requested, no later than today that both our group and the NTPUD commit to the following:

1. No later than November 12, 2006 payment will be made to the Waste Discharge Permit Fund in the amount of \$26,840 and payment made to the NTPUD in the amount of \$298,160.
2. No later than December 12, 2006 the sewer bypass hose reel system will have been purchased by the NTPUD.

LOS ANGELES	SAN FRANCISCO	SAN DIEGO	COSTA MESA	INLAND EMPIRE	NEW YORK	LAS VEGAS	PHOENIX	TUCSON	CHICAGO
213.250.1800	415.362.2580	619.233.1006	714.545.9200	909.387.1130	212.232.1300	702.893.3383	602.385.1040	520.202.2565	312.345.1718

4833-3403-7761.1

Steven H. Blum

August 31, 2006

Re: *North Tahoe Public Utility District v. Pacific Built, Inc., et al.*

Page 2

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3. Within ninety days of receipt of the equipment, the NTPUD will complete training in accordance with the SEP proposal and applicable mutual aid agreements. The Lahontan Board staff may be in attendance at any training sessions.

As you are aware, the hearing on the LRWQCB's Administrative Civil Liability Complaint will recommence on October 11, 2006. At the hearing, we will be requesting, with your support and, hopefully, the advisory team's support, acceptance of the settlement proposal.

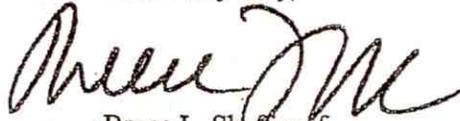
Assuming the Board approves the proposal at the hearing or within a week thereafter, Pacific Built and the Davis and Coffeng families will agree to comply with the November 12, 2006 payment deadline described above.

Additionally, we have been informed by Neil Eskind, counsel for the NTPUD, that the NTPUD will commit to having the hose reel system purchased by December 12, 2006 as long as the purchase price has been timely funded. Additionally, the NTPUD will commit to have training completed within ninety days of receipt of the equipment under the terms described above.

We expect to receive authority on or before September 1, 2006 to authorize the prosecution team to release the specifics of the settlement proposal to the advisory team. We understand that the earliest possible disclosure will be beneficial as at least thirty days of public notice is required prior to the October 11, 2006 hearing.

If you have any questions with regard to any aspect of this letter or our settlement proposal, please do not hesitate to contact us.

Yours very truly,



Bruce L. Shaffer of  
LEWIS BRISBOIS BISGAARD & SMITH LLP

BLS/pea

cc: Neil Eskind  
Drew Briner  
Tom Ragan, Pacific Built, Inc.  
Mark Hudak, Carr McClelland, et al.  
James R. Donahue, Caulfield, Davis & Donahue

**ATTACHMENT II.d**

**North Tahoe Public Utility District  
August 21, 2006 Document**



# NORTH TAHOE PUBLIC UTILITY DISTRICT

August 21, 2006

## Additional Information and Material to Report and Description of Supplemental Environmental Project Relative to R6T-2005-0029

The North Tahoe Public Utility District is pleased to submit additional information and material relative to a Supplemental Environmental Project (SEP) proposed to be incorporated in and become part of the resolution of Regional Board ACL Complaint No. R6T-2005-0029 (C. Geoffrey and Christine Davis, Hans and Margaret Coffeng, and Pacific Built, Inc.).

The purpose of this Supplemental Report is to respond to the requests for additional information contained in the letter from Robert S. Dodds, Assistant Executive Officer, California Regional Water Quality Control Board, Lahontan Region, to Bruce L. Shaffer dated August 15, 2006, and to submit additional letters of support for the SEP from the South Tahoe Public Utility District, the Tahoe-Truckee Sanitation Agency and the Truckee Sanitary District.

### A. Responses to Request for Additional Information

**1. The proposal needs to describe how the hose reel will be used at road intersections, across driveways, and through other transportation corridors in a manner that allows traffic to continue and in a manner that is protective of the hose. This will be especially important in emergency or spill situations where advance traffic planning is not possible. Since the hose is flexible, it will require protection.**

The NTPUD has experience in the deployment of its current bypass process using 40-foot sections of aluminum pipe and has had to address the issues of security and public convenience. Safety is provided by delineators along the alignment supplemented by warning tape and barricades as appropriate.

The NTPUD has a prefabricated steel crossing ramp to allow vehicles to cross its existing aluminum pipe that will be used with the by Sewer Bypass Hose Reel System. This ramp is moved and deployed by an NTPUD crane truck to points along the pipe deployment as needed.

Existing NTPUD force main bypass valves are all located on the lakeside of State Hwy 28. A conductor casing is installed under the common drive to Flick Point residences and another casing is installed beneath State Highway 28 at Onyx Street for the aluminum pipe to connect the sewer pump station to the by pass facilities on the opposite south side of the highway. All of these facilities are compatible with the 10-inch flexible hose.

PO Box 139, Tahoe Vista, CA 96148 • (530) 546-4212 • FAX (530) 546-2652 • 875 National Ave.

e-mail: [ntpud@ntpud.org](mailto:ntpud@ntpud.org) • website: [www.ntpud.org](http://www.ntpud.org)

For road crossings alternatives could include road closures, use of the steel ramp with single lane detour to maintain traffic or to dig a shallow trench across the roadway, place the hose in the trench, and put plates over the trench to allow traffic. It is impossible to address all the potential issues that will arise, but just as roads are routinely closed in the event of an unknown or hazardous material spill the same process can be implemented. In such an event the Placer County Office of Emergency Services could be contacted to provide coordination with law enforcement and fire departments to provide traffic and people control and work with the District(s) in the event of emergency access across the bypass is needed. NTPUD management has received National Incident Management System training and experience with emergency incident command structures through Placer County.

The NTPUD will suggest to all mutual aid districts that they do at least a tabletop deployment exercise to address intersections and coordinate with state and local highway departments and law enforcement for emergency response.

**2. Please include information regarding who will be responsible for ensuring that staff of NTPUD and other mutual aid entities are properly trained in the operation, maintenance, and transport of the equipment. Training needs to be on-going and include all other signatory entities.**

Initial training will be provided by the manufacturer. Formal training will include the deployment, retrieval, care and repair of the hose and hardware. Representatives of all the mutual aid districts will be invited to attend.

Additional training will take place at several levels; field deployment, public education/information, incident command/response. The NTPUD can and will provide training in field operations and will inform other organizations with jurisdiction over wastewater collection and transport in the region of the training and invite participation. The goal is to establish a pool of trained personnel to offset any one agency's personnel shortage due to illness, vacation, etc.

NTPUD office staff will be trained in contacting affected property owners and responding to inquiries. Management will have sample press releases and public announcements that will expedite the public notification process for both information and public cooperation. Again, other agencies will be invited to participate. The Placer County OES Teleminder Program can also be used for public contact and instruction.

**3. Describe, at a minimum, how all entities can access the hose reel and appurtenant equipment, transport the equipment (ensuring that all entities have appropriate vehicles and trailer hitches for transport or that NTPUD staff will always be available to transport same), and communicate their needs for the equipment, and access to it.**

When equipment or assistance is needed the existing Mutual Aid Agreement provides for the contacts with the authority at each agency to commit resources. This system has functioned well over a number of years.

The equipment is being specified with pintle hook hitch for load capacity and universal application. The trailer will require a vehicle rated to haul 10,000 lbs. Should an agency require the bypass system and not have a transportation vehicle, the NTPUD could provide transport if needed.

The equipment will be located at the NTPUD yard in Tahoe Vista, California. This location is centrally located within the South Lake Tahoe-Truckee region and provides for acceptable transport times.

The hose reel trailer is specified to have a waterproof utility box. Accessories and typical fittings, adapters, and specialized tools will be inventoried and kept in that box or on racks mounted on the trailer so that there is no lost time or missing components to affect the expeditious deployment of the bypass system.

**4. What other equipment (i.e., couplings) will be needed to make the system fully functional and compatible with existing pumps owned by all who would request it?**

As specified, the Sewer Bypass Hose Reel System is fully functional and compatible with the NTPUD's sewer force main bypass components and portable pump. Each of the other mutual aid agencies' specific needs (distance, pressures, flow meters, existing pipe sizes) will vary, however it is anticipated that the length and size of pipeline will be suitable for the majority of conditions.

Initially the hose is being specified with Victaulic couplings, couplings to connect the two sizes of pipe and couplings to connect the bypass hose to flanged fittings. Victaulic couplings are common fittings in the wastewater industry as are flanged (bolted) connections.

Couplings to adapt the hose to various sized pumps or piping systems can be obtained or fabricated for a few hundred dollars each, which should not provide a financial burden on any mutual aid agency. The NTPUD may fabricate additional fittings to adapt the hose to other agencies' components to allow for additional flexibility.

**5. Page 3 of the NTPUD SEP Report states, "The system was designed to meet the needs of all but the most extreme situations which could occur within the regional area." Please provide information defining the upper boundary conditions that can be addressed with the hose reel. Also, please provide information detailing where along the north shore of Lake Tahoe such "extreme situations" might exist.**

Extreme condition limitations was intended to refer to two scenarios; weather and flow extreme conditions. As an example, it is conceivable that under extreme conditions there would be no means of transport between two locations separated by a flooded, washed-out road, or avalanche. While rare, these conditions have occurred at Lake Tahoe during the past 30 years. As long as shoulders to the road system are open then the bypass system can be deployed.

Flow conditions could also be of such a nature as to prevent the bypass system from fully bypassing all flow. Conceivably, a combination of high user flows and high inflow due to damaged or failed facilities could exceed the capacity of either available pumps or the bypass hose. The capacity of a bypass system (pumps, hose, and pumping distance) is very site specific. The NTPUD system is designed to bypass the largest pump station (Carnelian) which does not have a redundant force main system.

**6. Page 6 of the NTPUD SEP Report provides an example scenario where sewage flows in a pipe at a rate of 1,000 gallons per minute. Please indicate all existing locations where this rate is typical. Please also indicate the length of emergency bypass that would be needed for these locations.**

All of the NTPUD force mains exceed 1,000 gallons per minute flow regularly. These normally occur during peak (seasonal and holiday) periods. In the Carnelian system, the highest flow system, the proposed hose with either a station pump or the NTPUD portable bypass pump will be able to bypass the peak-day average dry weather flow of 919 gpm and the peak-day average wet weather flow of 1063 gpm. Peak-day peak flows are estimated to be approximately 1,400 gpm in either wet or dry weather.

The length of pipeline specified is sufficient to bypass the longest run of pipe between force main bypass valves. As an example, the Carnelian system has a total length of 11,244 feet, with two internal bypass valves. The longest run between bypass valves on that system is 3,825 feet. The Carnelian system also has the highest flows (aside from Dollar, where duplicate force mains exist), requiring the 10-inch pipeline. The longest distance between bypass valves is 4,220 feet, however this stretch is on a lower volume portion of the system, where a combination of 10-inch and 8-inch pipeline is appropriate.

**7. Page 10 of the NTPUD SEP Report states that the hose reel will allow other sewage collection entities to inspect and maintain their sewer lines. Explain how this system will be an improvement over the existing methods and procedures used by entities that now routinely inspect and repair lines. Additional information is needed to make this argument. Also please provide the method by which other entities can reserve the use of the hose reel, and what showing other entities will need to make in order to use it.**

Review of the Mutual Air Agreement catalog of assets shows that only the Truckee Sanitary District has easily deployable portable bypass capabilities compatible with larger capacity sewer lines, and TSD's equipment has limited length and is further limited by a 6-inch pipeline size.

As a result, current conditions do not allow larger force mains and major truck lines to be taken out of service. The Sewer Bypass Hose Reel System SEP allows larger, longer force mains and major trunk lines to be taken out of service for maintenance and inspection. Using NTPUD as an example, the SEP will allow the NTPUD force main segments (except the force main going up Dollar Hill, where there is already a duplicate force main) to be temporarily taken out of service for draining and inspection. Similarly, the force main segments can be taken out of service in order to affect repairs by use of the bypass hose. Major trunk lines such as the 36-inch gravity sewer line from the end of the National Avenue force main to the Carnelian Bay pump station may be bypassed to allow complete television inspection and maintenance to be performed where presently only limited inspection is possible. The present aluminum pipe bypass system has both minimum and maximum pressure limitations that may lead to wastewater discharges. As such the process is not practical or safe from a public health standpoint to use in anything but an emergency situation. Sewer bypass operations by tanker brigades carry some of the same risks for wastewater discharges but are clearly at a disadvantage when the operations require continuous operations through multiple work shifts. The proposed bypass hose system does not have these limitations and therefore is more conducive to preventive maintenance operations.

The Mutual Aid Agreement provides the framework for one signatory requesting aid from another. No specific showing of need is required and formality is kept at a minimum. The Agreement has proven to function extremely well

**8. Page 11 of the NTPUD SEP Report indicates that sewage collection entities could not afford, on an individual basis, to purchase the hose reel. Please submit factual information to support this statement. It should be noted that the hose reel is to be made available to other entities as part of a mutual aid agreement, and it would be reasonable to argue that the cost for such a piece of equipment could be shared by the member entities if they were to collectively purchase it.**

For the 13 entities signatory to the Mutual Aid Agreement to each purchase a \$300,000 bypass system a total expenditure of \$3,900,000 would be required. Many of the entities might find that a smaller system, with shorter lengths of smaller diameter pipeline, would be all that they initially required and could justify which would result in lower overall cost impacts, but the fact remains that the cumulative expense would be great. This could result in multiple systems which would all have small capacities and, not, even collectively, be able to help all members of the Agreement during emergencies.

In the current state of aging wastewater systems there is always a balancing of the immediate need to use available funding to repair lines in the ground versus purchasing new state-of-the art equipment.

The concept of shared equipment through collective purchases is certainly inviting. However, shared ownership and co-equal rights and responsibilities present a different set of legal and practical issues, such as maintenance responsibilities, insurance and liability responsibilities and differing structures of agencies in different states or with different governing acts. These issues are not present under the structure of the existing Mutual Aid Agreement, which is modeled after similar arrangements long-existing in the fire-protection area where individually-owned equipment and not shared ownership is the standard.

**9. Page 14 of the NTPUD SEP Report provides a detailed product description. The description includes a base trailer for 3,825 feet of 10-inch hose reel. However, there is no description for a trailer to transport the 600 feet of 8-inch hose reel. Please provide this additional product information.**

The Sewer Bypass Hose Reel System specified includes two reels and one trailer. The A-Frame mounting on the trailer allows reels to be interchanged. Each reel has 4 dividers, allowing up to five 660-foot lengths of 10-inch or smaller pipeline to be stored on the reel. Interchange of reels on the trailer is a routine and quick process. Depending upon the deployment location, the second reel can be either transported to the site of use by a flatbed truck or remain at a base location and the trailer returned to base to change reels. A second trailer was determined to be not as desirable as extra lengths of pipeline. The manufacturer confirmed that this was an appropriate decision. As experience with the use of the system is gained it will always be possible to acquire a second trailer if that is determined necessary.

**10. Page 17 of the NTPUD SEP Report provides manufacturer's product specification data. The specifications are for 660-foot lengths of hose. Please provide product specifications for the 535-foot section of 10-inch pipe and for the 600-foot section of 8-inch pipe that are described in the proposal. Also, please provide information about the availability and locations of portable pumps used by the signatories to the mutual aid agreement that are compatible with the pressure specifications (both minimum needed and maximum permissible) of the hoses that are a part of this system**

The bypass hose in all diameters is manufactured of the same material in a process which limits lengths to 660-feet, however these lengths can be cut to make shorter lengths without otherwise degrading specifications. The specifications for the 525-foot length of 10-inch pipeline are therefore identical to those for the 660-foot length except for the length. The product specifications for the 600-foot length of 8-inch pipeline are identical to those for a 660-foot length of 8-inch pipeline. These specifications are described in Appendix A of the August 7, 2006 Report.

Appendix 1 to this Supplemental Report lists portable pumps owned by signatories to the Mutual Aid Agreement. This list has been annotated to show 9 portable pumps which are compatible with use of the Sewer Bypass Hose Reel System. Pump locations are fairly evenly distributed from South Lake Tahoe to Truckee.

B. Additional Letters of Support



TAHOE-TRUCKEE SANITATION AGENCY

A Public Agency  
13720 Joerger Drive  
TRUCKEE, CALIFORNIA 96161  
(530) 587-2525 • FAX (530) 587-5840

Directors

O.R. Butterfield  
Dale Cox  
Erik Henrikson  
S. Lane Lewis  
Jon Northrop

General Manager

Craig F. Woods

14 August 2006

RECEIVED

AUG 16 2006

NORTH TAHOE P.U.D.

Leon C. Schegg, P.E.  
North Tahoe Public Utility District  
P. O. Box 139  
Tahoe Vista, CA 96148

RE: Support for Purchase and Regional Availability of Sewer Bypass Hose Reel System

Dear Lee:

This letter is written in support of North Tahoe PUD's purchase of a trailer mounted sewer bypass hose system that could be used in times of emergency by Tahoe-Truckee Sanitation Agency (T-TSA), along with other parties to the Tahoe Truckee Area Emergency Contingency Plan Agreement for Mutual Emergency Aid.

The purchase of such equipment, and its being made available to our local agencies at critical times during unforeseen events, could be extremely beneficial to the sewer collection districts in the Lake Tahoe and Truckee areas. All of the local districts have experienced flood events over the past several years which have taxed the capacity and integrity of their respective facilities. This equipment could conceivably be used by T-TSA, in addition to its own equipment and equipment made available by other agencies, if T-TSA were to experience a break in its Truckee River Interceptor pipeline that required a temporary bypass to the line until repairs could be completed.

T-TSA supports NTPUD's proposal to purchase and make available this equipment along with the cooperative mutual aid efforts of all of the districts in the area.

Sincerely,

Marcia A. Beals  
Assistant General Manager

mbst



# South Tahoe Public Utility District

1275 Meadow Crest Drive • South Lake Tahoe • CA 96150-7401  
Phone 530 544-6474 • Fax 530 541-0614 • www.stpu.d.us

August 15, 2006

Leon C. Schegg, P.E.  
Public Works Director  
North Tahoe Public Utility District  
P.O. Box 139  
Tahoe Vista, CA 96148

Subject: Support for the Acquisition of Regional Emergency Response Asset

Dear Lee:

It is the South Tahoe Public Utility District's (District) understanding that NTPUD Intends to purchase 8-inch and 10-inch lay flat hose on a hydraulic reel system and make it available to regional sewer entities for mitigation of sewer emergencies and use during planned maintenance efforts. This letter is to express support from the District for the acquisition and subsequent availability of a trailer mounted sewer bypass hose system.

The District currently operates and maintains over 420 miles of gravity sewer pipelines, 40 sanitary sewer pump stations, and 26 miles of treated effluent export pipeline. Many of these facilities are in environmentally sensitive areas where response time to emergencies and availability of equipment is critical.

The local availability of over 4,800 feet of hose would provide another tool to respond appropriately to potential emergencies in our sanitary sewer collection and effluent disposal systems. On behalf of the District, we extend our appreciation to NTPUD for their forethought in purchasing and providing an asset that will benefit every sanitary agency in the Lake Tahoe basin.

If you have any questions or need additional information please contact me at (530) 543-6202.

Sincerely,

Paul A. Sciuto, P.E.  
Assistant General Manager/Engineer

BOARD OF DIRECTORS  
Robert W. Affeldt, DDS  
Jerry Gilmore  
Brian Kent Smart  
Michael F. Sullivan  
Ron Sweet



THOMAS S. SELFRIDGE, P.E.  
General Manager  
Chief Engineer

12304 Joerger Dr. • Truckee, California 96161-3312  
Telephone (530) 587-3804 • Fax (530) 587-1340

August 16, 2006

Mr. Leon C. Schegg, P.E.  
Public Works Director  
North Lake Tahoe Public Utility District  
P.O. Box 139  
Tahoe Vista, CA 96148

**SUBJECT: ACQUISITION OF A TRAILER MOUNTED SANITARY SEWER HOSE  
REEL TRAILER**

Dear Mr. Schegg,

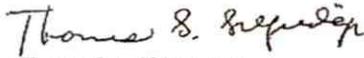
The purpose of this letter is to express the Truckee Sanitary District's (TSD) support of the North Tahoe Public Utility District's proposal to acquire a sewer hose reel trailer loaded with 8 and 10 inch lay-flat hose. This emergency response equipment would be a significant asset to all the sewer collection agencies in the greater Tahoe area.

The TSD, which owns and operates approximately 200 miles of sewer mains and 38 lift stations in and around Truckee, recently purchased a similar piece of equipment, loaded with 6-inch hose, and has already received tangible benefits both in its routine preventative maintenance operations and in one emergency bypass event. At the beginning of this construction season, TSD was able to reduce a potentially significant sewer spill into an inconsequential one because of the rapid response time allowed by the trailer-mounted bypass hose reel system. A second, trailer-mounted system in the Tahoe-Truckee area, fitted with larger diameter hose for higher flow bypass events, would be extremely valuable as it is not uncommon for the weather-related events to result in sewer issues at multiple districts.

TSD commends your forward-looking approach in seeking the acquisition of this equipment and hopes that you are successful in soliciting the funds necessary to purchase it.

If we can be of any further assistance, please don't hesitate to contact us.

Sincerely,

  
Thomas S. Selfridge, P.E.  
General Manager/Chief Engineer

Appendix 1. Portable Pump Inventory from Contingency Plan Annotated  
To Indicate Bypass Hose Compatible Pumps

<b>TABLE I-8</b>	
<b>PORTABLE PUMPS</b>	
<u>AGENCY/QUANTITY</u>	<u>EQUIPMENT</u>
Alpine Springs County Water District	
2	2" Gas powered Pumps
Douglas County Sewer Improvement District No. 1	
2	3" Gasoline Driven Pumps
1	2" Submersible Electric Pump
1	3" Submersible Electric Pump
Incline Village General Improvement District	
1	4" Trash Pump, Godwin 300GPM @ 75' head
1	2" Centrifugal Pump (water only) trailer-mount, 500 GPM
2	1-1/2" Centrifugal Pumps (water only), 50 GPM
<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 1	6" Gorman trailer-mounted diesel, 1100 GPM
3	1-1/2" Centrifugal Pump (sewer or water), 50 GPM
2	500 GPM hydraulic operated trash pumps with power units
North Star CSD	
1	2" 3.5 HP Honda pump 150 GPM. 250 feet of 2" discharge hose
1	2" 5 HP Honda trash pump 180 GPM 100. 100 feet of 2" discharge hose
North Tahoe Public Utility District	
<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 1	8" Godwin Sewer Pump
1	1-1/2" 2 cycle Homelite 200 GPM
1	1-1/2" 2 cycle Homelite 192 GPM
2	3" 5 HP Diaphragm Pump, 50 GPM
1	2" Gorman Rupp Trash Pump, 100 GPM
1	4" trailer-mount G-R Pump (potable water only) 800 GPM
Squaw Valley Public Services District	
1	2" Honda, gasoline-powered Water Pump, 180 GPM
<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 1	6" Trash Pump, Trailer Mounted, Diesel, 1100 GPM

	1	2" Rupp gas-powered Trash Pump, 10 hp, 200 GPM
<b>South Tahoe Public Utility District</b>		
<b>Sewer Pumps:</b>		
	<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 2	8" Godwin Trash Pump - 2000 GPM
	<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 2	6" Barnes Trash pumps, 1200 GPM
	2	45 HP Submersible Pumps, 2000 GPM @ 35' to be used with 100 KW Generator
	1	20 HP Submersible Pump, 1600 GPM @ 12' to be used with 100 KW Generator
<b>Tahoe City Public Utility District</b>		
<b>Fresh Water Pumps:</b>		
	1	15 HP Submersible Deep Well 120 GPM
	2	30 HP Submersible Deep Well 400 GPM
	1	50 HP Berkeley Horizontal 400 GPM
<b>Trash Pumps:</b>		
	2	3" Hydraulic operated Submersible Pumps 300 GPM @ 30'
	1	2" Hydraulic operated Submersible Pump 300 GPM @ 30'
	1	3" Honda Centrifugal Pump 250 GPM @ 15'
<b>Tahoe-Truckee Sanitation Agency</b>		
	<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 1	10" Peabody Barnes Trash Pump, 4 MGD, 1500 ft Discharge, 40' Head Maximum
	1	12" x 12" Gorman-Rupp, 5 MGD, 3140' irrigation type Discharge Pipe, 70' Head max.
	2	3" Homelite Gas-powered, 326 GPM
	2	3" Honda 326 GPM
	1	1" pneumatic positive disposable pump
	1	2" pneumatic positive disposable pump
	1	2 1/2" pneumatic positive disposable pump
	1	3" electric diaphragm 110v
<b>Truckee Sanitary District</b>		
	2	3" Hydraulic Trash Pump for use with Vactor
	1	1-1/2" Homelite 50 feet of discharge hose
	1	3" Homelite Gas 360 GPM, 50' of 4" Discharge hose
	1	30 HP, 240 VAC, 3-phase Pump, 1000 GPM at 55' discharge head, trailer-mounted. Will handle 3" solids. Suction hose plus 60' of discharge hose.
	<i>*BYPASS HOSE COMPATIBLE PUMP*</i> 1	6" Godwin Pump, trailer mount 1500 GPM

	1	4" Godwin Pump, trailer mount 475 GPM
	2	8' x 6" bypass traffic ramps
	1800'	pf 6", 200 psi, Lay flat bypass hose
<b>U.S. Forest Service - South Lake Tahoe</b>		
	1	Mark III 60 GPM Pacific Pumper
	2	small 4-cycle Pumps, 40 GPM est.
	1	4-cylinder Pump, 500 GPM est.
	1	500 gallon Water Trailer
	1	Homelite 385 GPM Trash Pump

## **ATTACHMENT III**

### **North Tahoe Public Utility District Assurances**

- a. North Tahoe Public Utility District September 22, 2006 Letter (SEP implementation schedule)
- b. North Tahoe Public Utility District October 10, 2006 Resolution (Use, maintenance, storage, training, and capital replacement for portable sewer bypass hose reel system)
- c. Settlement Agreement Between North Tahoe Public Utility District and the Dischargers

**ATTACHMENT III.a**

**North Tahoe Public Utility District  
September 22, 2006 Letter  
(SEP implementation schedule)**



# NORTH TAHOE PUBLIC UTILITY DISTRICT

September 22, 2006

Mr. Robert S. Dodds  
Assistant Executive Officer  
Regional Water Quality Control Board  
Lahontan Region  
2501 Lake Tahoe Boulevard  
South Lake Tahoe, California 96150

Re: Regional Board ACL Complaint No. R6T-2005-0029 (C. Geoffrey and Christine Davis, Hans and Margaret Coffeng, and Pacific Built, Inc.)

Dear Bob,

This is to confirm our conversation earlier today concerning the ordering, delivery and training relative to the Sewer Bypass Hose Reel System.

The NTPUD will order the system no later than 30 days after receipt of payment of the SEP sum. The manufacturer informs me that the equipment should arrive no later than 120 days after receipt of the order<sup>1</sup>. The manufacturer also informs me that they will conduct training within 45 days after the equipment is delivered.

If you have any questions or require anything additional, please let me know.

Sincerely yours,

A handwritten signature in black ink that reads "Neil A. Eskind". The signature is written in a cursive, flowing style.

Neil A. Eskind

NAE:c

cc: Steven R. Rogers, General Manager/CEO

---

<sup>1</sup> The hose is made in Norway and the trailer and reel custom made in Minnesota.

**RESOLUTION 2006-16  
OF THE BOARD OF DIRECTORS  
OF THE NORTH TAHOE PUBLIC UTILITY DISTRICT  
SUPPORTING SETTLEMENT OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
R6T-2005-0029 AND CONFIRMING TIME FRAME FOR SUPPLEMENTAL  
ENVIRONMENTAL PROJECT EQUIPMENT ORDERING DELIVERY AND TRAINING**

**WHEREAS**, the California Regional Water Quality Control Board Region, will be considering the settlement of ACL Complaint R6T-2005-0029 on October 11, 2006; and

**WHEREAS**, the proposed settlement includes a Supplemental Environmental Project (SEP) which would provide funds to the North Tahoe Public Utility District for the purpose of acquisition of certain equipment beneficial to the environment; and

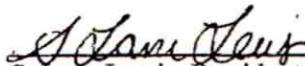
**WHEREAS**, it is appropriate for the District to express its support for the settlement and to confirm the time frame for the ordering, delivery and training relative to the SEP equipment.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTH TAHOE PUBLIC UTILITY DISTRICT, as follows:**

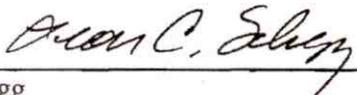
1. The District hereby supports the proposed settlement as being in the best interests of the environment and the protection of the waters of Lake Tahoe and respectfully requests that the Regional Board also support the proposed settlement.
2. The District hereby confirms that, should the proposed settlement be accepted by the Regional Board, the District will order the SEP equipment within 30 days after receipt of the payment of the SEP sum, that delivery of the SEP equipment is expected no later than 120 days after the manufacturer's receipt of this order, and that manufacturer supplied training on the use of the SEP equipment will take place within 45 days after the SEP equipment is delivered.

**PASSED AND ADOPTED THIS 10<sup>th</sup> DAY OF OCTOBER, 2006, BY THE FOLLOWING ROLL CALL VOTE:**

**AYES: DIRECTORS BERGMANN, MOONEY, LEWIS  
NOES: DIRECTORS  
ABSENT: DIRECTORS LANINI, SCHWARTZ**

  
S. Lane Lewis, President  
Board of Directors

**ATTEST:**

  
\_\_\_\_\_  
Leon C. Schegg  
Acting Clerk of the Board

## **ATTACHMENT III.b**

**North Tahoe Public Utility District  
October 10, 2006 Resolution  
(Use, maintenance, storage, training,  
and capital replacement for portable  
sewer bypass hose reel system)**

**RESOLUTION 2006-14  
OF THE BOARD OF DIRECTORS  
OF THE NORTH TAHOE PUBLIC UTILITY DISTRICT  
ESTABLISHING A POLICY FOR USE, STORAGE, MAINTENANCE, TRAINING AND  
CAPITAL REPLACEMENT RELATIVE TO THE PROPOSED SEWER BYPASS HOSE REEL  
SYSTEM SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**WHEREAS**, the parties to the District force main breach which took place on July 19, 2005 have proposed a Supplemental Environmental Project (SEP) whereby the District would be provided funding for a Sewer Bypass Hose Reel System as part of the resolution of a proceeding before the California Regional Water Quality Control Board, Lahontan Region; and

**WHEREAS**, while the District is not a party to said proceeding, the California Regional Water Quality Control Board, Lahontan Region has requested that the District adopt a policy relative to the use, maintenance and training of the proposed Sewer Bypass Hose Reel System; and

**WHEREAS**, the Board believes that adopting such a policy is appropriate.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTH TAHOE PUBLIC UTILITY DISTRICT, as follows:**

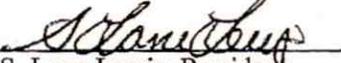
1. The District hereby adopts that POLICY FOR USE, STORAGE, MAINTENANCE, TRAINING AND CAPITAL REPLACEMENT RELATIVE TO THE PROPOSED SEWER BYPASS HOSE REEL SYSTEM SUPPLEMENTAL ENVIRONMENTAL PROJECT attached hereto.
2. Said policy shall become effective upon the District's acquisition of said Sewer Bypass Hose Reel System pursuant to the terms of the proposed SEP.
3. Said policy shall be subject to revision as determined by the District for the protection of the water quality of Lake Tahoe.

**PASSED AND ADOPTED THIS 10<sup>th</sup> DAY OF OCTOBER, 2006, BY THE FOLLOWING ROLL CALL VOTE:**

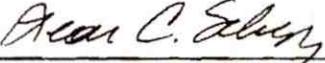
**AYES: DIRECTORS BERGMANN, MOONEY, LEWIS**

**NOES: DIRECTORS**

**ABSENT: DIRECTORS LANINI, SCHWARTZ**

  
S. Lane Lewis, President  
Board of Directors

**ATTEST:**

  
\_\_\_\_\_  
Leon C. Schegg, Acting Clerk of the Board

**POLICY FOR USE, STORAGE, MAINTENANCE, TRAINING AND CAPITAL REPLACEMENT  
RELATIVE TO THE PROPOSED SEWER BYPASS HOSE REEL SYSTEM SUPPLEMENTAL  
ENVIRONMENTAL PROJECT**

**Purpose:** This Policy is intended to establish guidelines for the use, storage, maintenance, training and capital replacement of that certain Sewer Bypass Hose Reel System ("subject equipment") proposed as a Supplemental Environmental Project (SEP) pursuant to CRWQCB, Lahontan Region Administrative Civil Liability Complaint No. R6T-2005-0029.

**Equipment Summary:** The subject equipment consists of five 660-foot sections of 10-inch lay flat hose, one 535-foot section of 10-inch lay flat hose, one 600-foot section of lay flat 8-inch hose, one trailer with hydraulic power unit, two A-frame hose reels which carry the hose, and appurtenant pieces of equipment.

**Ownership:** The subject equipment shall be the property of the NTPUD. Any special fittings or ancillary equipment purchased by a Mutual Aid entity for adaptation of the hose reel system to specific pumps, fittings, or other equipment owned by that entity shall be and remain the property of that entity, whether stored with the subject equipment or not, however the NTPUD shall not have any special responsibility for the protection of the property of others.

**Use:**

**Agency Availability:** The subject equipment shall be primarily available to the NTPUD and other sewer entities signatory to the Tahoe Truckee Area Emergency Contingency Plan – Agreement for Mutual Emergency Aid, pursuant to the terms and conditions of said Agreement for Mutual Emergency Aid.

**Purposes of Use:** The subject equipment is for emergency use. Emergency use shall include but not be limited to the immediate deployment to mitigate an active sewage discharge or for back-up purposes in a standby location where the failure of existing facilities or equipment could result in an imminent sewage discharge. In the latter event, the subject equipment shall be maintained in an immediately transportable configuration and shall not be deployed without a sewage discharge starting or becoming immediately imminent.

A sewage discharge will be considered imminent if a sewer line has suffered exterior damage due to natural forces (e.g. earthquake, flood, landslide, etc.), the sewer has been damaged by exterior forces (e.g. auger impact, backhoe/excavator bucket impact, etc.) or other conditions which lead to a conclusion that the integrity of the pipeline is compromised, regardless of whether sewage is being discharged or not, and the failure of the pipeline would cause a sewage discharge requiring immediate bypass to prevent a discharge to receiving waters or the environment.

**Storage:** The NTPUD shall store the subject equipment at its facilities. The hose shall be kept covered as protection from the elements.

**Maintenance:** The subject equipment shall be maintained by the NTPUD under a maintenance schedule appropriate to manufacturer's recommendations. This shall include visual inspection, cleaning and pressure testing after each use.

**Training:** Upon receipt of the subject equipment, at a time frame convenient to the NTPUD, the manufacturer and as many of the entities signatory to the Tahoe Truckee Area Emergency Contingency Plan as can attend, an initial manufacturer training session shall be arranged, including the following topics: operations including but not limited to transport, deployment, coupling, operation, repair, maintenance, retrieval, storage of the lay flat hose, and operational safety measures, and the maintenance and operation of the engine, hydraulic units, trailer, reels, couplings, and all appurtenant equipment. Training will also include the shortening of hose lengths to suit deployment requirements.

The supplier will provide the NTPUD manufacturer's instructions to document the training procedures and act as an on-going training guide for subsequent refresher and new employee training.

The NTPUD will provide a hands-on bypass hose reel use training at least annually. Such training may include the deployment of the sewer bypass hose reel system in an actual field operation such as a sewer line maintenance activity to replicate actual field deployment, operation, dewatering, cleanup, hose observation and testing during retrieval operations. Such training will be scheduled and sufficient advance notice given to all Mutual Aid entities that the training is being provided. Such training may be in conjunction with local or regional training sessions by professional organizations such as the California Water Environment Association.

**Capital Replacement:** Once placed into service the NTPUD shall develop and maintain an unrestricted capital reserve sufficient in amount to maintain and replace the subject equipment. The reserve shall be funded by the NTPUD and by equipment use, maintenance and replacement charges to Agreement for Mutual Aid users.

**Service Life:** The subject equipment is expected to have a long service life. However, nothing shall prohibit the NTPUD from replacing all or part of the equipment with equipment from a different manufacturer or of a different configuration as technology evolves such that the resulting equipment shall perform sewer bypass operations to the same or greater quantity, distance, and operating pressure, and within the same or lesser deployment time.

## **ATTACHMENT III.c**

### **Settlement Agreement Between North Tahoe Public Utility District and the Dischargers**

## COMPROMISE AGREEMENT AND MUTUAL RELEASE

North Tahoe Public Utility District (hereinafter referred to as "PLAINTIFF") and Pacific Built, Inc., a California corporation, C. Geoffrey Davis and Christine Davis, Hans Coffeng and Margaret Coffeng, and Larry Allen Henry (hereinafter collectively referred to as "DEFENDANTS"), in consideration of the promises made herein on the stated terms and conditions, agree as follows:

1. This Agreement consists of a compromise and settlement by the parties of PLAINTIFF's claims against DEFENDANTS arising from events described in Paragraph 2 below, and a release given by each party hereto to each other party hereto, so as to relinquish those claims, and only those claims, described in Paragraph 3 below (hereinafter referred to as "RELEASED CLAIMS"). This shall be a mutual release of the RELEASED CLAIMS, and by executing this Agreement, each party hereto intends to and does hereby extinguish the RELEASED CLAIMS but no other claims. This Agreement is not an admission of liability by any party hereto, and it shall not be treated for any purpose as an admission of liability, which liability is expressly denied.

2. (a) On July 19, 2005, while installing a pier piling for C. Geoffrey Davis and Christine Davis, and Hans Coffeng and Margaret Coffeng pursuant to plans allegedly prepared by Larry Allen Henry, a certain sewer force main owned by PLAINTIFF was struck by Pacific Built, Inc.

(b) Subsequently, the Assistant Executive Officer of the California Regional Water Quality Control Board, Lahontan Region (hereinafter "LAHONTAN"), issued a Complaint for Administrative Civil Liability, No. R6T-2005-0029, against Pacific Built, Inc., a California corporation, C. Geoffrey Davis and Christine Davis, Hans Coffeng and Margaret Coffeng (hereinafter "ACL COMPLAINT"). PLAINTIFF and Larry Allen Henry are not parties to the ACL COMPLAINT.

(c) On May 11, 2006, PLAINTIFF filed a complaint against DEFENDANTS in the Superior Court in and for the County of Placer, California (hereinafter "COURT"), designated with the Case Number T CV 1122 (hereinafter "COURT COMPLAINT"), alleging certain negligent acts by or on the part of DEFENDANTS.

(d) Subsequently, Pacific Built, Inc., a California corporation, C. Geoffrey Davis and Christine Davis and Hans Coffeng and Margaret Coffeng proposed to LAHONTAN a settlement intended to resolve both the ACL COMPLAINT and the COURT COMPLAINT. This proposal entails resolution of the ACL COMPLAINT upon a payment in the sum of \$26,840 to the Waste Discharge Permit Fund and a separate payment in the sum of \$298,160 directly to PLAINTIFF to fund a certain Supplemental Environmental Project (hereinafter "SEP"). As specified herein, PLAINTIFF and DEFENDANTS agree that the payment of this \$298,160 to PLAINTIFF to fund the SEP shall operate to fully resolve the COURT COMPLAINT. This proposed resolution of both the ACL COMPLAINT and the COURT COMPLAINT is supported by PLAINTIFF.

(e) On October 11, 2006, LAHONTAN is scheduled to consider whether or not to approve the proposed settlement of the ACL COMPLAINT through the payment in the sum of \$26,840 to the Waste Discharge Permit Fund and the separate payment in the sum of \$298,160 directly to PLAINTIFF to fund the SEP, which latter payment of \$298,160 would as specified herein operate to fully resolve the COURT COMPLAINT.

(f) This Compromise Agreement and Mutual Release, and its enforceability for any and all purposes, is expressly contingent upon LAHONTAN approving the proposed settlement of the ACL COMPLAINT through the payment in the sum of \$26,840 to the Waste Discharge Permit Fund and the separate payment in the sum of \$298,160 directly to PLAINTIFF to fund the SEP, and also issuing or otherwise adopting an order to that effect. Should LAHONTAN not approve the proposed settlement of the ACL COMPLAINT, and thereby preclude PLAINTIFF and DEFENDANTS from being able to resolve the COURT COMPLAINT as specified herein, this Compromise Agreement and Mutual Release shall be null and void for any and all purposes.

### 3. RELEASED CLAIMS

(a) In consideration of DEFENDANTS' payment of \$298,160 to PLAINTIFF, PLAINTIFF hereby compromises, settles and releases all RELEASED CLAIMS. These RELEASED CLAIMS consist of any and all past, present and future claims, demands, obligations, or causes of action related to compensatory, punitive or other damages, including but not limited to costs, losses, expenses, and compensation, whether based on tort, contract, or other theories of recovery, which PLAINTIFF has or which may later accrue to or be acquired by PLAINTIFF against DEFENDANTS, DEFENDANTS' predecessors and successors in interest, heirs, assigns, past, present, and future officers, directors, shareholders, agents, employees, parent and subsidiary organizations, affiliates, and/or partners and which were, or could have been, alleged against DEFENDANTS in the COURT COMPLAINT, and PLAINTIFF further agrees that this compromise, settlement and release shall constitute a bar to any further legal proceedings in connection with such RELEASED CLAIMS. However, PLAINTIFF's RELEASED CLAIMS do not, and are not intended to, include PLAINTIFF's prospective claims for indemnity, contribution and/or comparative fault as against DEFENDANTS in connection with any legal action or proceeding which has or may be commenced by the County of Placer or other third party arising out of or in connection with the events described in Paragraph 2(a) above.

(b) In consideration of the promises made herein by PLAINTIFF, DEFENDANTS hereby compromise, settle and forever release all RELEASED CLAIMS. These RELEASED CLAIMS consist of any and all past, present and future claims, demands, obligations or causes of action related to compensatory, punitive or other damages, including but not limited to costs, losses, expenses and compensation, whether based on tort, contract or other theories of recovery, which DEFENDANTS have or which may later accrue to or be acquired by DEFENDANTS as against PLAINTIFF, PLAINTIFF's predecessors and successors in interest, heirs, assigns, past, present, and future officers, directors, shareholders, agents, employees, parent and subsidiary organizations, affiliates and/or partners and which were, or could have been alleged against PLAINTIFF in response to, or in connection with, the COURT

COMPLAINT or the ACL COMPLAINT, or both, and DEFENDANTS further agree that this compromise, settlement and release shall constitute a bar to any further legal proceedings in connection with such RELEASED CLAIMS. DEFENDANTS further agree that these RELEASED CLAIMS specifically include any claims for indemnity, contribution and/or comparative fault which DEFENDANTS could have asserted against PLAINTIFF pursuant to California Water Code section 13350, subdivision (i) or other provisions of California law, in connection with or as a result of the ACL COMPLAINT or its related proceedings. However, DEFENDANTS' RELEASED CLAIMS do not, and are not intended to, include DEFENDANTS' prospective claims for indemnity, contribution and/or comparative fault as against PLAINTIFF in connection with any legal action or proceeding which has or may be commenced by the County of Placer or other third party arising out of or in connection with the events described in Paragraph 2(a) above.

4. DEFENDANTS agree to pay said \$298,160 to PLAINTIFF within 30 days of receipt of a signed order which provides that LAHONTAN has approved the aforementioned proposed settlement of the ACL COMPLAINT. It should be noted that Larry Allen Henry is not contributing any funds nor is he required to do so.

5. (a) PLAINTIFF agrees to dismiss with prejudice the COURT COMPLAINT against DEFENDANTS within seven days after receipt of said payment of \$298,160.

(b) PLAINTIFF agrees to order the equipment comprising the aforementioned Supplemental Environmental Project within 30 days after receipt of DEFENDANTS' payment of \$298,160. PLAINTIFF estimates that said equipment will be delivered to PLAINTIFF within 120 days of placing the order for same and PLAINTIFF agrees to conduct training on the use of said equipment within 45 days after said equipment is received.

6. (a) Each party hereto acknowledges and agrees that the release it gives to each other party upon executing this Agreement applies to all RELEASED CLAIMS, as described in Paragraph 3 above, including those injuries, damages, or losses to that party's person and property, real or personal, whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, or patent or latent, which that party may have against each other party with respect to the RELEASED CLAIMS, and each party hereby waives application of California Civil Code Section 1542 with respect to the RELEASED CLAIMS.

(b) Each party hereto certifies that it has read the following provisions of California Civil Code Section 1542:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

(c) Each party hereto understands and acknowledges that the significance and consequence of this waiver of California Civil Code Section 1542 with respect to the RELEASED CLAIMS is that even if a party should eventually suffer additional damages arising out of or connected with the RELEASED CLAIMS described in Paragraph 3, that party will not be able to make any claim for such additional damages against any other party hereto. Furthermore, each party hereto acknowledges that it intends these consequences as to the RELEASED CLAIMS even as to claims for damages which may exist as of the date of this release but which are not presently known to exist, and which, if known, would materially affect that party's decision to execute this release of the RELEASED CLAIMS described in Paragraph 3 above, regardless of whether that party's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7. Each party represents and warrants that in executing this Agreement, they have relied upon legal advice from the attorney of their choice; that the terms of this Agreement have been read and the consequences (including risks, complications, and costs) have been completely explained to them by their own attorney; and that they fully understand the terms of this Agreement.

8. Each party acknowledges and warrants that its execution of this release is free and voluntary.

9. (a) PLAINTIFF shall direct its attorney to execute a dismissal with prejudice of the COURT COMPLAINT described in Paragraph 2, file it with the COURT and deliver an endorsed/filed copy to DEFENDANTS' respective counsel.

(b) Each party to this Agreement shall cooperate fully in the execution of any and all other documents and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

10. Each party to this Agreement shall bear all attorneys' fees and costs arising from that party's own counsel in connection with the COURT COMPLAINT, this Agreement and performance of the promises contained herein, the RELEASED CLAIMS referred to herein, the dismissal of the COURT COMPLAINT, and all matters related to this compromise and settlement. This paragraph shall not be applicable to any and all claims not released herein.

11. This Agreement contains the entire agreement between PLAINTIFF on the one hand and DEFENDANTS on the other, with respect to the RELEASED CLAIMS.

12. This Agreement may be executed in counterparts and subject to the conditions as set forth in Paragraph 2(f) above, it shall become effective upon execution by PLAINTIFF and all DEFENDANTS.

13. This Agreement is entered into, and shall be construed and interpreted in accordance with, the laws of the State of California.

14. Each person executing this Agreement represents and warrants that he or she has the actual authority to do so.

Dated: 10/10/06

Pacific Built, Inc., a California corporation

By [Signature] President

Dated: \_\_\_\_\_

\_\_\_\_\_  
C. Geoffrey Davis

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christine Davis

Dated: \_\_\_\_\_

\_\_\_\_\_  
Margaret Coffeng

Dated: \_\_\_\_\_

\_\_\_\_\_  
Larry Allen Henry

Dated: \_\_\_\_\_

North Tahoe Public Utility District

By: \_\_\_\_\_

14. Each person executing this Agreement represents and warrants that he or she has the actual authority to do so.

Dated: \_\_\_\_\_

Pacific Built, Inc., a California corporation

By \_\_\_\_\_

Dated: \_\_\_\_\_

C. Geoffrey Davis

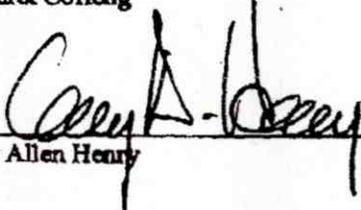
Dated: \_\_\_\_\_

Christine Davis

Dated: \_\_\_\_\_

Margaret Coffeng

Dated: 10/10/06

  
Larry Allen Henry

Dated: \_\_\_\_\_

North Tahoe Public Utility District

By: \_\_\_\_\_

14. Each person executing this Agreement represents and warrants that he or she has the actual authority to do so.

Dated: \_\_\_\_\_

Pacific Built, Inc., a California corporation

By \_\_\_\_\_

Dated: \_\_\_\_\_

C. Geoffrey Davis

Dated: \_\_\_\_\_

Christine Davis

Dated: \_\_\_\_\_

Margaret Coffeng

Dated: \_\_\_\_\_

Larry Allen Henry

Dated: 10/10/06

North Tahoe Public Utility District

By: *S. Lane Lewis*

650 344 7775

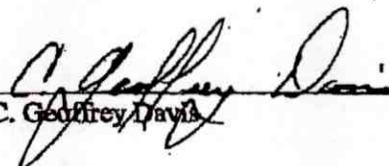
14. Each person executing this Agreement represents and warrants that he or she has the actual authority to do so.

Dated: \_\_\_\_\_

Pacific Built, Inc., a California corporation

By: \_\_\_\_\_

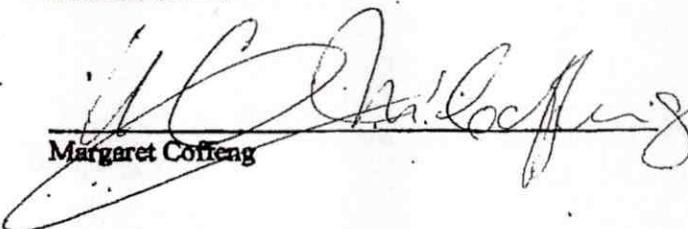
Dated: 10/10/06

  
C. Geoffrey Davis

Dated: \_\_\_\_\_

Christine Davis

Dated: \_\_\_\_\_

  
Margaret Coffeng

Dated: \_\_\_\_\_

Larry Allen Henry

Dated: \_\_\_\_\_

North Tahoe Public Utility District

By: \_\_\_\_\_



14. Each person executing this Agreement represents and warrants that he or she has the actual authority to do so.

Dated: \_\_\_\_\_

Pacific Built, Inc., a California corporation

By \_\_\_\_\_

Dated: \_\_\_\_\_

C. Geoffrey Davis

Dated: 10-10-2006

Christine Davis  
Christine Davis

Dated: \_\_\_\_\_

Margaret Coffeng

Dated: \_\_\_\_\_

Larry Allen Henry

Dated: \_\_\_\_\_

North Tahoe Public Utility District

By: \_\_\_\_\_

EXHIBIT NO. 6



**California Regional Water Quality Control Board  
North Coast Region  
Geoffrey M. Hales, Chairman**



Linda S. Adams  
Acting Secretary for  
Environmental Protection

[www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)  
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403  
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Edmund G. Brown Jr.  
Governor

April 12, 2011

Susan Kelly, Engineering Director  
Engineering Department  
714 Johnson Street  
Sebastopol, CA 95472

Dear Ms. Kelly:

Subject: Withdrawal of Administrative Civil Liability Complaint No. R1-2010-0081

File: City of Sebastopol, WDID No. 1B76176OSON

On September 9, 2010, I issued the subject complaint to the City of Sebastopol for alleged violations of the Statewide General Waste Discharge Requirements for Sanitary Sewers related to the January 20, 2010 discharge of 142,500 gallons of untreated wastewater to the Laguna de Santa Rosa. The total proposed Administrative Civil Liability was \$390,131.

Subsequent to the issuance of the Complaint additional information has become available regarding the circumstances associated with this discharge. As a consequence, I have issued an ACLC to North Bay Construction Inc., who we believe is responsible for the spill as the result of improperly constructing the pipe joint that failed, as described in your spill report. In conjunction with issuance of the ACLC to North Bay Construction, I am withdrawing Order No. R1-2010-0081.

You may contact Bill Rodriguez of my staff by telephone at (707) 576-2683 or by email at [wrodriguez@waterboards.ca.gov](mailto:wrodriguez@waterboards.ca.gov) if you have any questions.

Sincerely,

Original signed by

Luis G. Rivera  
Assistant Executive Officer

110412\_WTR\_Sebastopol\_ACLC\_Withdrawal

Cc: Jack Griffin, City Manager, PO Box 1776, Sebastopol, CA 95473  
Rich Emig, Public Works Superintendent, 714 Johnson Street,  
Sebastopol, CA 95472  
Joe Gaffney, City Engineer, 714 Johnson Street, Sebastopol, CA 95472  
Catherine Kuhlman, Executive Officer, Regional Water Board  
Samantha Olson, Senior Staff Counsel, Regional Water Board  
David Boyers, Senior Staff Counsel, State Water Resources Control Board,  
[dboyers@waterboards.ca.gov](mailto:dboyers@waterboards.ca.gov)

**California Environmental Protection Agency**

Recycled Paper

EXHIBIT NO. 7

STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION



In the matter of: )  
)  
Irvine Ranch Water District )  
15600 San Canyon Avenue )  
Irvine, CA 92618-3102 )  
Attn: Paul D. Jones )

**ORDER R8-2010-0073**  
**SETTLEMENT AGREEMENT AND**  
**STIPULATION FOR ENTRY OF**  
**ADMINISTRATIVE CIVIL LIABILITY ORDER;**  
**ORDER**

**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Division Chief of the Santa Ana Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Staff ("Prosecution Staff") and Irvine Ranch Water District (Discharger) (the Regional Water Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order is in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R8-2010-0059, dated November 9, 2010 (the "Complaint") (See Exhibit A attached hereto).

**Section II: Recitals**

1. The Discharger owns and operates a sanitary sewer system that consists of 800 miles of pipelines and several lift (pump) stations, which is regulated under the State Water Resources Control Board's General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-003-DWQ (SSO Order).
2. The Discharger's sanitary sewer system was and continues to be subject to the requirements set forth in the SSO Order, as of the date of this Stipulated Order. Provision C.1 of the SSO Order prohibits the discharge of sanitary sewer overflows to waters of the United States. Similarly, Section 13376 of the California Water Code (CWC) prohibits the discharge of pollutants to waters of the United States without a National Pollutant Discharge Elimination System (NPDES) permit. The Discharger is alleged to have violated CWC §13350 by discharging untreated wastewater to waters of the United States in violation of the prohibition against such discharges contained in the SSO Order. The Discharger also violated Section 13376 of the CWC by discharging pollutants to waters of the United States without filing a report of waste discharge. On November 9, 2010, the Division Chief issued Complaint No. R8-2010-0059 for these violations.
3. The Complaint recommends imposing an administrative civil liability totaling \$43,099, which includes \$34,099 in discretionary civil liability for violation of California Water Code Section 13376 incurred by the Discharger discharging 26,725 gallons of untreated sewage to Buck Gully Creek without an NPDES permit, and staff costs of \$9,000.

4. 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 Regional Water Board or its delegee for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the violations alleged in the Complaint is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning those except as provided in this Stipulated Order and that this Order is in the best interest of the public.
5. To resolve the violations alleged in the Complaint by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$43,099 in civil liability against the Discharger. The Discharger shall pay a total of \$26,049.50 to the State Water Pollution Cleanup and Abatement Account, \$9,000 of which is for staff costs. The remaining \$17,049.50 shall be suspended upon completion of the Supplemental Environmental Project ("SEP") as set forth in this Stipulated Order.

### **Section III: Stipulations**

The Parties stipulate to the following.

6. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$43,099, as set forth in Paragraph 5 of Section II herein. Within 30 days of the issuance this Order, the Discharger agrees to pay a total of \$26,049.50 to the State Water Pollution Cleanup and Abatement Account. Further, the Parties agree that \$17,049.50 of the imposed administrative liability shall be suspended ("Suspended Liability") pending completion of the SEP, as set forth in Paragraphs 7 through 19 of Section III herein and Exhibit B attached hereto and incorporated by this reference.
7. **SEP Description:** The Parties agree that this resolution includes the performance of a SEP as provided for as follows:  
  
The goals of the SEP are to reduce polluted runoff, conserve water, and educate the public on environmentally friendly landscapes. The Orange County Coastkeeper (the "Implementing Party") proposes to plan, construct and maintain an eco-friendly model garden on approximately 2.5 acres of land at the Santiago Canyon College in Orange, CA. The garden will be open to the public, including developers. Details of the SEP project are included in Exhibit B.
8. **SEP Completion Date:** The SEP shall be implemented in its entirety and a final report shall be submitted as per the schedules specified in Exhibit B.
9. **Agreement of Discharger to Fund the SEP:** The Discharger represents that: (1) it will fund the SEP in the amount as described in Paragraph 6 of this Stipulated Order; (2) it will remain liable for the Suspended Liability until the SEP is completed and accepted by the Regional Water Board or its delegee in accordance with the terms of this Stipulated Order; (3) the Regional Water Board has the right to require an audit of the funds expended by the Implementing Party to implement the SEP at the Implementing Party's expense; (4) it shall provide a check to the Water Board made payable to Orange County Coastkeeper for \$17,049.50 within 30 days of execution of this Order; (5) if it fails to fund the SEP or if the SEP is not completed as per the schedule specified in Exhibit B, the full Suspended Liability

amount becomes immediately due and payable to the State Water Resources Control Board for deposit into the Water Pollution Cleanup and Abatement Account.

10. **Agreement of Orange County Coastkeeper to Accept SEP Funds and Implement the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Implementing Party represents that: (1) it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule set forth in Exhibit B; (2) it understands that its promise to implement the SEP in accordance with the schedule is a material condition of this settlement of liability between the Discharger and the Water Board; (3) it agrees that the Regional Water Board has the right to require the Implementing Party to implement the SEP in accordance with the terms of this Stipulated Order if it has received funds for that purpose from the Discharger; (4) it agrees to submit to the jurisdiction of the Regional Water Board to enforce the terms of this Stipulated Order and the implementation of the SEP; (5) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulated Order that detail the implementation and completion of the SEP; (6) it will guarantee implementation of the SEP identified in Exhibit B; (7) the Regional Water Board has the right to require an audit of the funds expended by the Implementing Party to implement the SEP at the Implementing Party's expense.
11. **SEP Oversight:** The Discharger shall reimburse the Regional Water Board for its costs in overseeing the implementation of the SEPs. The Discharger shall pay the Cleanup and Abatement Account the amount for these costs within thirty (30) days of receipt of a statement from the Regional Water Board indicating the amount of oversight costs it has incurred. The oversight costs will be billed at the rate of \$150 per hour. Further, the Discharger and the Implementing Party shall allow Regional Water Board staff to enter and/or inspect the SEP during normal business hours (i.e., 8 a.m. through 5 p.m.).
12. **Final Report and Certification of Completion of SEP:** The Implementing Party shall provide a final report and a Certificate of Completion<sup>1</sup> as per the schedule provided in Exhibit B.
13. **Third Party Financial Audit of SEP:** At the written request of Regional Water Board staff, the Implementing Party, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies)' professional opinion that the Implementing Party has expended money in the amounts claimed by it. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger/Implementing Party of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
14. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent stay of the Suspended Liability.

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<sup>1</sup> Certificate of Completion shall be on Exhibit C, which is hereby incorporated into this Order.

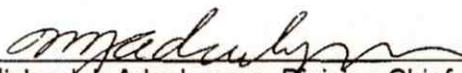
15. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire Suspended Liability has been spent to complete the components of the SEP for which the Discharger is financially responsible, the Discharger shall pay the difference between the Suspended Liability and the amount the Discharger/Implementing Party can demonstrate was actually spent on the SEP. The Discharger shall pay this amount within 30 days of its receipt of notice of the Regional Water Board's determination that the Discharger/Implementing Party has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.
16. **Failure to Complete the SEP:** If the SEP is not fully implemented by the dates specified in Exhibit B, Regional Water Board staff shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the entire Suspended Liability or, some portion thereof, or the Discharger and/or the Implementing Party may be compelled to complete the SEP.
17. **Publicity:** Should the Discharger, the Implementing Party, or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the project is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
18. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.
19. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
20. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 6 and the Discharger's and/or Implementing Party's full satisfaction of the SEP obligations described herein.
21. **Public Notice:** Federal law mandates that any settlement will not become final until after a 30-day public notice and comment period expires. (40 CFR 123.27.) The Complaint, the SEP proposal and this Stipulated Order were publicly noticed at least for 30 days. All public comments received during that public notice period have been considered and responded to.
22. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.

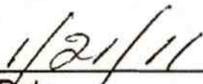
23. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
24. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.
25. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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 Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and has waived its right to a hearing before the Regional Water Board prior to the adoption of the Order.
27. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
28. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
29. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board

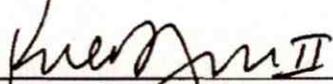
Members, employees, representatives, agents, or attorneys arising out of or relating to any matter covered by this Order.

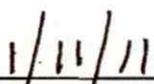
30. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
31. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
32. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.
33. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

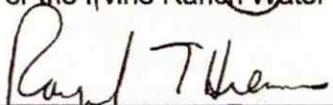
**IT IS SO STIPULATED.**<sup>2</sup>

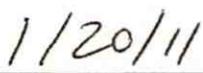
  
\_\_\_\_\_  
Michael J. Adackapara, Division Chief  
On Behalf of the Regional Water Board Prosecution Staff

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Paul D. Jones, General Manager  
For the Irvine Ranch Water District

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ray Hiemstra, Project Manager  
For the Orange County Coastkeeper

  
\_\_\_\_\_  
Date

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<sup>2</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

**HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, IT IS HEREBY ORDERED THAT:**

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Stipulated Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13385(e). The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.
3. The foregoing Stipulation is incorporated into this Order.

Pursuant to section 13323 of the California Water Code and section 11415.60 of the California Government Code, the Executive Officer hereby adopts this Order.

Kurt V. Berchtold      1/21/11  
Kurt V. Berchtold      Date  
Executive Officer  
Santa Ana Regional Water Quality Control Board

**EXHIBIT B (ORDER NO. R8-2010-0073)**  
**PROPOSAL FOR SUPPLEMENTAL ENVIRONMENTAL PROJECT**  
**ECO-FRIENDLY GARDEN**

**1. Project Title:** Eco-Friendly Coastkeeper Garden

**2. Organization Proposing the Project:** Orange County Coastkeeper  
Raymond Hiemstra, Associate Director [ray@coastkeeper.org](mailto:ray@coastkeeper.org) 714-850-1965 x 304  
Orange County Coastkeeper, 3151 Airway Ave, Suite F-110, Costa Mesa, CA 92626  
Phone 714-850-1965 Fax 714-850-1592; [www.coastkeeper.org](http://www.coastkeeper.org)

**3. Project Description:** Orange County Coastkeeper has developed an eco-friendly Coastkeeper Garden as a hands-on, stroll-through, public education facility. It is designed to inspire and motivate people of all ages to create beautiful, sustainable, drought tolerant gardens for Southern California homes and businesses.

Located at Santiago Canyon College in Orange, California, the 2.5 acre Garden provides a one-of-a-kind setting. Here, all County residents, including students attending on-campus and off-campus natural science programs, can learn firsthand about our unique Mediterranean climate and ecology, principles of environmental science and stewardship, and the latest technologies in irrigation and water conservation.

Six primary native plant habitats found within Southern California serve as the Garden's backdrop, and each habitat is highlighted by a themed private garden (Spanish, Traditional, Bungalow, Ranch, California, and Italian). These features will demonstrate the use of California Friendly® native and drought-tolerant plants, ones that homeowners can successfully grow in their own gardens. In addition, the features will demonstrate state-of-the-art drainage, irrigation, and hardscape applications that promote water conservation and reduce runoff.

Connecting the themed gardens is the common botanical area, a feature containing 70-80% native plants. Travel through the Garden will be by way of gravel paths with solar lighting. Within the botanical area there will be extensive interactive educational signage, a kiosk, a greenhouse, and an office/storage building. Displays and exhibits will help facilitate the study of the natural sciences and help integrate those studies with a deeper appreciation of the local ecology.

Orange County Coastkeeper is dedicated to the successful completion of the Coastkeeper Garden project. Many of the initial steps have already been completed, and we are continuously working on the Garden with our many volunteers and partners who donate time, labor, and materials. We also have regular "Volunteer Days" advertised on our website that have brought dozens of hard-working teens, adults, and seniors out to the Garden to plant, compost, and water.

As of November 2010 we have completed the first four stages of the garden, planning and grading, installation of the primary irrigation and electrical systems, preliminary construction of pathways, the entranceway, and all six vignette exhibits, and preliminary planting in the botanical common area. We have also completed the construction of two sheds and the installation of a wind powered lighting system. Our goal is the completion of phases five and six of the garden by the fall of 2011 so it can be opened to the public at that time.

The SEP funds will be used for the installation of irrigation in our coastal sage scrub habitat area and installation of signs, plants, and irrigation at the California, Ranch, and Bungalow vignettes. We will also complete the main walkway through the garden. Our goal will be to complete these tasks within sixty days of receiving the SEP funds. The completion of these tasks will represent a major milestone in the progress of Coastkeeper garden and will allow us to focus on completing the final three vignettes for stage five. We look forward to the completion of Coastkeeper Garden and opening it to the public in 2011.

**4. Total Project Cost:** \$700,000 of which \$17,049.50 is requested from the SEP funds (see attached task budget for the SEP portion of the project costs)

**5. Project schedule:** Start Date: February 1, 2011. End Date March 31, 2011

	Feb '11	Mar '11
<b>Task 1: Vignette Signs</b>	x	
<b>Task 2: Walkway Completion</b>	x	
<b>Task 3: Irrigation installation</b>	x	x
<b>Task 4: Plant installation</b>	x	x

**6. Expected Results:** The results of the project will be installation of irrigation in our coastal sage scrub habitat area and installation of signage, plants, and irrigation at the California, Ranch, and Bungalow vignettes. We will also complete the main walkway through the garden. Deliverables will include a final report with pictures of the garden and receipts or invoices from contractors and/or suppliers.

#### Task Budget

Task	Description	Cost
1	Sign creation and installation	\$3,600
2	Walkway completion	\$6,200
3	Irrigation installation	\$3,880
4	Plant installation	\$1852.50
5	Project Management and Administration	\$1,517
	<b>Total Project Costs</b>	<b>\$17,049.50</b>

**EXHIBIT C (ORDER NO. R8-2010-0073)**  
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SANTA ANA REGION  
(Region 8)

**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**  
**Certificate of Completion**

The following information is provided as proof of completion of the SEP project described below.

Project Proponent: Orange County Coastkeeper

Contact Person: Ray Hiemstra

Phone: (714) 850-1965

E-Mail: ray@coastkeeper.org

Name of Project: Coastkeeper Garden

Project Summary: (you may attach a final project report or additional sheets for project summary)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date Project Started: \_\_\_\_\_

Date of Completion: \_\_\_\_\_

SEP Money Allocated for the Project: \$17,049.50

Enforcement Order No. and Name of Discharger: *R8-2010-0059/R8-2010-0073, Irvine Ranch Water District*

Date the Amount Was Sent to Project Proponent: \_\_\_\_\_

Total Project Cost (including funds from other sources): \$ \_\_\_\_\_

How was the SEP Fund Used for This Project?<sup>1</sup>

Overhead/Management	\$ _____
Design/Consultation	\$ _____
Construction/Implementation	\$ _____

<sup>1</sup> This may include external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon the Implementing Party's normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. To substantiate the expenses, the Implementing Party may provide copies of invoices, receipts, etc. The certification need not address any costs incurred by the Regional Water Board for oversight.

Lab and analytical costs \$ \_\_\_\_\_  
Other expenses (explain) \$ \_\_\_\_\_  
  
Total Project Cost (SEP \$ only) \$ \_\_\_\_\_

***Under penalty of perjury under the laws of the State of California, I certify that: (1) the entire amount of the SEP funding received has been used for the project as indicated above; (2) the portion of the project for which this SEP funding was earmarked has been completed in accordance with Order No. R8-2010-0073; (3) the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including, but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.***

***SIGNATURE:*** \_\_\_\_\_ ***Date:*** \_\_\_\_\_

***Name:*** \_\_\_\_\_ ***Title:*** \_\_\_\_\_

EXHIBIT NO. 8

State of California  
California Regional Water Board Quality Control Board  
Santa Ana Region

IN THE MATTER OF:

Irvine Ranch Water District	)	Complaint No. R8-2010-0059
15600 Sand Canyon Avenue	)	for
Irvine, CA 92618-3102	)	Administrative Civil Liability
	)	
Attn: Mr. Paul D. Jones	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Irvine Ranch Water District (hereinafter IRWD or the Discharger) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), may impose administrative civil liability, pursuant to California Water Code (hereinafter "CWC") Section 13385.
2. A hearing concerning this Complaint will be held before the Regional Board within 90 days of the date of issuance of this Complaint, unless, pursuant to CWC Section 13323, IRWD waives its right to a hearing. The waiver procedures are specified in the attached Waiver Form. The hearing in this matter is scheduled for the Regional Board's regular meeting on January 21, 2011, at the City Council Chambers, City of Loma Linda, 25541 Barton Road, Loma Linda, California. IRWD, or its representative, will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

**THE COMPLAINT IS BASED ON THE FOLLOWING FACTORS:**

4. IRWD owns and operates a sanitary sewer system which consists of 800 miles of pipelines and several lift (pump) stations, and is regulated under the State Water Resources Control Board's General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-0003-DWQ (hereinafter "SSO Order"). Provision C.1 of the SSO Order prohibits the discharge of sanitary sewer overflows to waters of the United

States. Section 13376 of the California Water Code also prohibits the discharge of pollutants to waters of the United States without an NPDES permit.

5. IRWD's sewer system contains sanitary wastewater. Untreated sanitary wastewater contains high levels of bacteria, pathogens, nutrients and other pollutants. If discharged, these pollutants have the potential to impact the beneficial uses of the receiving waters. IRWD is alleged to have violated California Water Code (CWC) §13350 by discharging untreated wastewater to waters of the United States in violation of the prohibition against such discharges contained in the SSO Order. The Discharger also violated Section 13376 of the CWC by discharging pollutants to waters of the United States without filing a report of waste discharge.
6. Provision C. 1 of the SSO Order states, "Any SSO<sup>1</sup> that results in a discharge of untreated or partially treated wastewater (sewage) to waters of the United States is prohibited" And CWC Section 13376 states, "Any person discharging pollutants or proposing to discharge pollutants to within navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with the procedures set forth in Section 13260, except that no report need be filed under this section for discharges that are not subject to the permit application requirements of the Federal Water Pollution Control Act, as amended."
7. On July 2, 2010, at approximately 11:30 a.m., an overflow of sewage was reported from IRWD's Newport Coast sanitary sewer pump station due to a crack in a forcemain 12" PVC Tee fitting outside the pump station dry well. The discharge was to the planter area between the street curb (Newport Coast Road) and the pump station from where it was discharged to Buck Gully Creek and into Pacific Ocean. The discharge continued for approximately 10 hours.
8. From 11:30 a.m. to 1:05 p.m., the spill continued at a discharge rate of 200 gallons per minute (gpm). It was not contained and it went into Buck Gully Creek approximately 3 miles inland from Little Corona Del Mar Beach. Then gravel bags were deployed around the spill area and the spill was 93% contained by 1:05 p.m. Approximately 15 gpm continued to leak through the gravel bags into Buck Gully Creek. At 9:30 p.m., the Discharger managed to completely stop the spill with the installation of an emergency bypass line.
9. Finally at 6:00 p.m. a gravel bag containment berm was built along Buck Gully Creek at the entrance to Little Corona Del Mar Beach. The gravel bag containment berm did not provide a complete containment for the spilled sewage. A combined total of 26,725 gallons of untreated sewage were

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<sup>1</sup> SSO=Sanitary sewer overflow

discharged into Buck Gully Creek (from 11:30 a.m. to 9:30 p.m. on July 2, 2010) and eventually to Little Corona Del Mar Beach. According to IRWD reports, an estimated 5,850 gallons of the sewage discharged into Buck Gully Creek were recovered and returned to the collection system, thereby reducing the discharged volume to the Pacific Ocean to 20,875 gallons ( $26,725 - 5,850 = 20,875$ ). IRWD continued to pump from the Buck Gully Creek containment area until 9:30 a.m. on July 4, 2010.

10. At 12:35 p.m. on July 2, 2010, the Orange County Health Care Agency closed Little Corona Del Mar Beach as a precautionary measure. It was reopened in the morning on July 5, 2010. Due to logistic reasons, the Health Care Agency was not able to collect beach water samples the day the spill occurred. The water quality samples collected on July 3 and 4, 2010 did not exceed the state standards.
11. The area where the spilled sewage was discharged into the ocean is located within Robert E. Badham (Newport Coast) Area of Special Biological Significance (ASBS). The Ocean Plan provides special protections for areas designated as ASBSs that include a prohibition on discharge of wastes to ASBSs. The discharge was also in violation of this Ocean Plan prohibition.
12. The Water Quality Control Plan for the Santa Ana River Basin (hereinafter "Basin Plan") designates beneficial uses of waterbodies within the Region. The nearshore zone of the Pacific Ocean along Orange County coastline has designated beneficial uses that include, among others, water contact recreation and non-contact water recreation. Buck Gully Creek is a natural drainage course that conveys urban runoff to the ASBS. The discharge of sewage from IRWD's sanitary sewer system had the potential to impact the designated beneficial uses of the ASBS (Pacific Ocean) and caused the Orange County Environmental Health Care Agency to close Little Corona Del Mar Beach.
13. For the violations cited above, civil liability may be assessed administratively either under CWC Section 13350 or 13385, but not both (see Section 13350(j)). Since the discharge was to waters of the United States, it is appropriate to use CWC Section 13385.
14. Pursuant to CWC §13385, the Regional Board may impose civil liability administratively both on a daily basis [per CWC §13385(c)(1)] and on a per gallon basis [per CWC §13385(c)(2)].
14. CWC §13385(c)(2) states that civil liability on a per gallon basis may not exceed ten dollars (\$10) for each gallon of waste discharged but has not been cleaned up, excluding the first 1,000 gallons. The maximum liability on a per gallon basis for the violation cited above is \$198,750  $\{(20,875 - 1,000) \times \$10 = \$198,750\}$ . Based on one day of violation, the penalty

on a per day basis is \$10,000. The total initial assessment before any adjustments is: \$208,750.

15. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (hereinafter "the Policy") adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil liability pursuant to this statute. Use of this methodology addresses the factors in CWC section 13385(e). The policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)
16. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary, this amount is based on the following:
  - A. The Policy requires a consideration of the potential for harm from the discharge of untreated sewage. The beach was closed for three days as a precautionary measure; so the impact on beneficial use is considered as moderate (see Page 12 of the Policy). The discharged material posed an above moderate risk, and more than 50% of the discharge was susceptible to cleanup (see Page 13 of the Policy); that gives a total score of 6. Using Table 1 on Page 14 of the Policy, we get a per gallon factor of 0.22, considering this as a major deviation from requirement. With a per gallon factor of 0.22, the per gallon penalty is:  $\$198,750 \times 0.22 = \$43,725$ .
  - B. Similarly using a per day factor of 0.22 from Table 2 on Page 15 of the Policy, the per day penalty is  $\$10,000 \times 0.22 = \$2,200$ . The total assessed penalty based on per gallon and per day is:  $\$43,725 + \$2,200 = \$45,925$ .
  - C. This amount is then adjusted based on the discharger's culpability, cleanup effort and cooperation, and history of violations (see Table 4 on Page 17 of the Policy). According to IRWD's spill incident report, the spill was caused by a failure of a Schedule 80 PVC fitting that was not in conformance with IRWD's Construction Manual (the Construction Manual requires C-900). The report indicates that IRWD staff directed such a change that was not consistent with its own policies.
  - D. IRWD's response to the spill incident was prompt, and they mobilized staff, equipment and mutual aid support from surrounding municipal agencies to control most of the overflowing sewage. They also mobilized contractor resources to make emergency repairs to the forcemain once the bypass system was put into operation.
  - E. However, they failed to implement an effective containment system at the spill site and at the mouth of Buck Gully Creek where it discharged to the ASBS. The containment system at the mouth of Buck Gully Creek was built after 6.5 hours had lapsed from discovery of the spill. With proper planning and implementation, the spill could have been fully contained within the spill site if effective containment berms were built. By using

November 9, 2010

gravel bags, the sewage continued to leak through the containment berms at both locations. As a precautionary measure, IRWD continued to pump from the containment structure at the mouth of Buck Gully Creek for another two days after the spill was fully contained. The Discharger had a number of sewage system overflows in the past few years for which the Regional Board has assessed penalties. After consideration of these factors a value of 0.9 is assigned for culpability, 0.75 for cleanup and cooperation and 1.1 for history of violations (see Page 17, Table 4 of the Policy). Using these values, the adjusted civil liability is \$34,099 ( $\$45,925 \times 0.9 \times 0.75 \times 1.1$ ).

F. CWC Section 13385(e) and the Policy also require consideration of economic benefit or savings, if any, resulting from the violations and other matters as justice may require. Regional Board staff has determined that IRWD did not realize any significant savings because the spill was accidental which could not be predicted (i.e. due to a broken forcemain), nor did they realize any substantial savings in their response to the spill incident.

G. The costs of investigation and enforcement incurred by the Regional Board Prosecution staff are considered as one of the "other factors as justice may require," and should be included in the liability assessed. Investigation costs have been estimated to be \$9,000 (60 hours at \$150 per hour=\$9,000). Staff costs are then added to the proposed liability amount for a total of \$43,099 ( $\$34,099 + \$9,000 = \$43,099$ ).

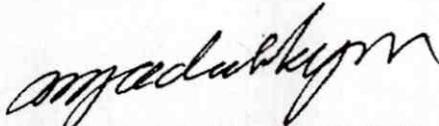
17. After consideration of the above factors, the Division Chief proposes that civil liability be imposed on the Discharger in the amount of forty three thousand ninety-nine dollars (\$43,099) for the discharge of sewage to waters of the United States.

#### WAIVER OF HEARING

The Discharger may waive its right to a hearing. If the Discharger chooses to do so, please sign the attached Waiver Form and return it in the enclosed preprinted envelope. If the Discharger waives its right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992.

11/09/10  
Date

  
\_\_\_\_\_  
Michael J. Adackapara  
Division Chief  
Regional Board Prosecution Team

Discharger Name/ID:

ACLC R8-2010-0059 Attachment 'A'

		Total Collection System Overflow	
Discharge Violations	Step 1 Potential Harm Factor (Generated from Button)		
	Step 2 Per Gallon Factor (Generated from Button)	19,875	
	Gallons	10	
Discharge Violations	Statutory / Adjusted Max per Gallon (\$)		
	Total		\$ 43,725
	Per Day Factor (Generated from Button)		
Non-Discharge Violations	Days	1	
	Statutory Max per Day	10,000	
	Total		\$ 2,200
Additional Factors	Initial Amount of the ACL		\$ 45,925.00
	Step 4 Culpability	0.9	\$ 41,332.50
	Cleanup and Cooperation	0.75	\$ 30,999.38
Additional Factors	History of Violations	1.1	\$ 34,099.31
	Step 5 Total Base Liability Amount		\$ 34,099.31
	Step 6 Ability to Pay & to Continue in Business		\$ -
Additional Factors	Step 7 Other Factors as Justice May Require		\$ -
	Staff Costs	9,000	\$ 9,000.00
Additional Factors	Step 8 Economic Benefit		\$ -
	Step 9 Minimum Liability Amount		\$ 9,000.00
Additional Factors	Maximum Liability Amount		\$ 9,000.00
	Step 10 Final Liability Amount		\$ 43,099.31



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger  
Governor

HEARING PROCEDURE  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
NO. R8-2010-0059  
ISSUED TO  
Irvine Ranch Water District  
15600 Sand Canyon Avenue  
Irvine, CA 92618-3102  
Orange County

SCHEDULED FOR JANUARY 21, 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

### **Background**

The Division Chief has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 against the Irvine Ranch Water District ("Discharger") alleging that it has violated Water Code Section 13385 by discharging untreated wastewater (sewage) to waters of the United States in violation of California Water Code Section 13376 without first filing a report of waste discharge and obtaining an NPDES permit for such discharges. The Complaint proposes that administrative civil liability in the amount of forty-three thousand ninety-nine dollars (\$43,099) be imposed as authorized by Water Code Section 13385(c). A hearing is currently scheduled to be held before the Regional Board during its January 21, 2011 meeting.

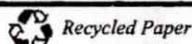
### **Opportunity for Settlement without a Hearing**

This matter may be settled without a hearing if no significant comments are received during the comment period and if the Discharger waives the right to a hearing and agrees to pay the proposed civil liability. The Division Chief will consider comments received to determine the need for any further changes to the Complaint.

### **Purpose of Hearing**

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Regional Board will consider whether to issue an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on January 21, 2011 will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in the Regional Board meeting agenda. The meeting will be held at the City Council

*California Environmental Protection Agency*



Chambers of Loma Linda located at 25541 Barton Road, City of Loma Linda, California. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Regional Board's web page at:

[http://www.waterboards.ca.gov/santaana/board\\_info/agendas/index.shtml](http://www.waterboards.ca.gov/santaana/board_info/agendas/index.shtml).

The agenda will include the final hearing date and location, and the estimated start time for the meeting. Since the start time for this item is uncertain, all interested parties are urged to be present from the start of the Board meeting.

### **Hearing Procedures**

The hearing will be conducted in accordance with this hearing procedure. This hearing procedure has been pre-approved by the Regional Board's Advisory Team in model format. A copy of the general procedures governing adjudicatory hearings before the Regional Board may be found at Title 23 of the California Code of Regulations, Section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with Section 11500 of the Government Code) does not apply to this hearing.

**THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE REGIONAL BOARD'S ADVISORY TEAM BY NOVEMBER 19, 2010 OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.**

### **Hearing Participants**

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 generally may not submit evidence, cross-examine witnesses, or be subject to cross examination, but may present policy statements. Policy statements may include comments on any aspect of the proceeding, but may not include evidence (e.g., photographs, eye-witness testimony, monitoring data). Interested persons who would like to submit evidence may do so if the evidence is submitted in accordance with the procedures and deadlines for submitting evidence described below. Interested persons who present evidence may be 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 Regional Board.

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

- (1) Regional Board Prosecution Team

- (2) Irvine Ranch Water District, also referred to as the Discharger

**Requesting Designated Party Status**

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received by 5 p.m. on November 22, 2010 by Advisory Team Attorney David Rice, [Davidrice@waterboards.ca.gov](mailto:Davidrice@waterboards.ca.gov). 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), the information required of designated parties as provided below, 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 received by the Advisory Team, the person requesting party status, and all parties by 5 p.m. on November 30, 2010. The parties will be notified by 5 p.m. on December 7, 2010 in writing whether the request has been granted or denied.

**Primary Contacts**

**Advisory Team:**            **David Rice (email: [Davidrice@waterboards.ca.gov](mailto:Davidrice@waterboards.ca.gov))**  
**Phone: 916-341-5182**  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Prosecution Team:**    **Ann Carroll (email: [acarroll@waterboards.ca.gov](mailto:acarroll@waterboards.ca.gov))**  
**Phone: 916-322-3227**  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, CA 95812-0100

**Discharger:**            **Paul D. Jones, General Manager**  
**Email: (currently not available)**  
**Phone: 949-453-5300**  
Irvine Ranch Water District  
15600 Sand Canyon Avenue  
Irvine, CA 92618-3102

### **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 Team) have been separated from those who will provide advice to the Regional Board (Advisory Team). Members of the Advisory Team are: David Rice, Staff Counsel, Office of Chief Counsel, State Water Resources Control Board and Kurt Berchtold, Executive Officer, Santa Ana Regional Water Quality Control Board. Members of the Prosecution Team are: Ann Carroll, Staff Counsel, Office of Enforcement, State Water Resources Control Board; Michael Adackapara, Division Chief, Santa Ana Regional Water Quality Control Board; Stephen D. Mayville, Enforcement Unit Chief, Santa Ana Regional Water Quality Control Board. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Regional Board in other, unrelated matters, but they are not advising the Regional Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Regional Board or the Advisory Team regarding this proceeding.

### **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 Team or members of the Regional Board. An ex parte contact is any written or oral communication pertaining to the investigation, preparation, or prosecution of the Complaint between a member of a designated party or interested person on the one hand, and a Regional Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if oral). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

### **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 a combined 20 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; 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. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than 5 p.m. on January 5, 2011. Additional time may be provided at the discretion of the Advisory Team (prior to

the hearing) or the Regional Board Chair (at the hearing) upon a showing that additional time is necessary.

### **Submission of Evidence and Policy Statements**

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Regional Board to consider. Evidence and exhibits already in the public files of the Regional Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, Section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Discharger only) If the Discharger intends to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the Regional Board), the Discharger should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."

The Prosecution Team shall submit 15 hard copies of its information and one electronic copy of the information to Advisory Team Attorney David Rice so that it is received by 5 p.m. on December 28, 2010.

The remaining designated parties shall submit 15 hard copies of their information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on December 28, 2010.

Any designated party that would like to submit information that rebuts the information previously submitted by other designated parties shall submit 15 hard copies of their rebuttal information and one electronic copy of the information to Advisory Team Attorney David Rice so that they are received by 5 p.m. on January 5, 2011. Rebuttal information shall be limited to the scope of the information previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

If the total amount of information submitted by any party is less than 15 pages, that party may submit the information by email, rather than in writing. In addition to the foregoing, each designated party shall submit (1) one copy of the above information to each of the other designated parties so that it is received by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but no later than 5 p.m. on December 28, 2010. Interested persons do not need to submit written non-evidentiary policy statements in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, Section 648.4, the Regional Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Regional Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the Regional Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team by 5 p.m. on January 12, 2011 for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

### **Request for Pre-hearing Conference**

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code Section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code Section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to Stephen D. Mayville ([smayville@waterboards.ca.gov](mailto:smayville@waterboards.ca.gov)), with a copy to all other designated parties, by November 29, 2010.

### **Evidentiary Objections**

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection to the Advisory Team and all other designated parties so that it is received by 5 p.m. on January 18, 2011. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

### **Evidentiary Documents and File**

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Regional Board office at 3737 Main Street, Suite 500, Riverside, CA 92501 by contacting August Lucas (email: [alucas@waterboards.ca.gov](mailto:alucas@waterboards.ca.gov); phone: 951-782-7961). This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Regional

Board Chair. Many of these documents are also posted on-line at:  
[http://www.waterboards.ca.gov/santaana/public\\_notices/enforcement\\_actions.shtml](http://www.waterboards.ca.gov/santaana/public_notices/enforcement_actions.shtml).  
Although the web page is updated regularly, to assure access to the latest information,  
you may contact Kirk Larkin ([klarkin@waterboards.ca.gov](mailto:klarkin@waterboards.ca.gov)).

### Questions

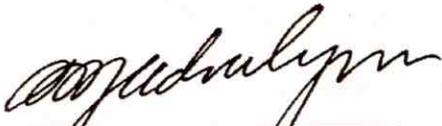
Questions concerning this proceeding may be addressed to the Advisory Team Attorney  
David Rice ([Davidrice@waterboards.ca.gov](mailto:Davidrice@waterboards.ca.gov)).

### **IMPORTANT DEADLINES**

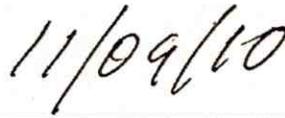
(Note: the Regional Board is required to provide a hearing within 90 days of issuance of  
the Complaint (Water Code Section 13323). The Advisory Team will generally adhere  
to this schedule unless the discharger waives that requirement.)

- |                    |  |
|--------------------|--|
| November 9, 2010:  | Prosecution Team issues ACL Complaint to Discharger and<br>Advisory Team, sends Hearing Procedure to Discharger and<br>Advisory Team, and publishes Public Notice. |
| November 19, 2010: | Deadline for objections, if any, to proposed Hearing<br>Procedure.   |
| November 22, 2010: | Deadline for requests for designated party status  |
| November 30, 2010: | Discharger's deadline for waiving right to hearing.  |
| November 30, 2010: | Deadline for oppositions to requests for designated party<br>status.   |
| December 7, 2010:  | Advisory Team issues decision on requests for designated<br>party status, if any.  |
| December 28, 2010: | Prosecution Team's deadline for all information required<br>under "Submission of Evidence and Policy Statements."  |

- December 28, 2010: Remaining Designated Parties' Deadline for all information required under "Submission of Evidence and Policy Statements."
- December 28, 2010: Interested Persons' deadline for written non-evidentiary policy statements
- January 5, 2011: All Designated Parties' deadline for rebuttal information, and requests for additional time at the hearing, if any.
- January 12, 2011: All presentation materials, such as PowerPoint, and evidentiary objections.
- January 18, 2011: All parties deadline for objections to presentation materials.
- January 21, 2011: Public Hearing.



Michael J. Adackapara  
Division Chief  
Regional Board Prosecution Team



Date



# California Regional Water Quality Control Board

## Santa Ana Region



Linda S. Adams  
Secretary for  
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348  
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221  
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger  
Governor

### WAIVER FORM FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0059

(If the Irvine Ranch Water District wishes to choose any of the following waiver options, this form should be appropriately filled, signed and returned to the Regional Board office in the enclosed pre-printed envelope by **November 30, 2010**.)

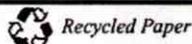
By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the Irvine Ranch Water District (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R8-2010-0059 (hereinafter "Complaint"). 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]. The person who has been issued a complaint may waive the right to a hearing."

(**OPTION 1: Check here if the Discharger waives the hearing requirement and will pay the liability in full.**)

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **forty-three thousand ninety-nine dollars (\$43,099)** by check that references "ACL Complaint No. R8-2010-0059." made payable to the "State Water Pollution Cleanup and Abatement Account". Payment must be received by the Regional Board by December 30, **2010** or the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any source (excluding the Regional Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the Complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer for the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. 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.

*California Environmental Protection Agency*



**WAIVER FORM**  
**FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0059**

- Page 2 of 3 -

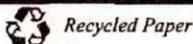
**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Regional Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Regional Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Regional Board within 90 days after service of the Complaint. By checking this box, the Discharger requests that the Regional Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Regional Board to approve the extension.

**(OPTION 4: Check here if the Discharger waives the hearing requirement and will submit a proposed supplemental environmental project. If the proposal is rejected, the Discharger will pay the liability in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Regional Water Board.
- b. I certify that the Prosecution Team has authorized the Discharger to submit a proposed Supplemental Environmental Project in lieu of payment of \$17,049.50 (50% of [assessed amount minus staff costs]). I agree to submit the proposal and the remainder of the proposed civil liability (\$26,049.50) within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy and the Statewide Policy on Supplemental Environmental Projects. If I receive written notice from the Prosecution Team that the Discharger has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Discharger will remit the balance of the proposed civil liability in the amount of \$17,049.50 by check that references "ACL Complaint No. R8-2010-0050" made payable to the State Water Pollution Cleanup and Abatement Account within fifteen days of the notice. If payment is not timely received, the Regional Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the acceptance or rejection of the proposed supplemental environmental project and payment of the remainder of the proposed civil liability constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Board receive significant new information or comments from any

*California Environmental Protection Agency*



**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2010-0059**

- Page 3 of 3 -

source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Board's Division Chief may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Board, and that the Regional Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.

- d. 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.

---

(Print Name and Title)

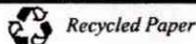
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(Signature)

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(Date)

***California Environmental Protection Agency***



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**MR. PAUL D. JONES, GEN.MGR.**  
**IRVINE RANCH WATER DISTRICT**  
**15600 SAND CANYON AVE.**  
**IRVINE, CA 92618-3102**


EXHIBIT NO. 9

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

In the matter of: )  
 )  
City of Oakland ) **Order No. R2-2011-0014**  
 ) **Settlement Agreement and Stipulation**  
Complaint No. R2-2009-0078 for ) **for Entry of Order; Order**  
Administrative Civil Liability )  
 )

**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") are entered into by and between the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") Prosecution Team ("Prosecution Team") and the City of Oakland (the "City") (collectively "Parties") in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2009-0078, dated January 26, 2010, (the "Complaint"), and additional violations of Order No. R2-2004-0012 (National Pollutant Discharge Elimination System [NPDES] Permit No. CA0038512) for sanitary sewer overflows that occurred between May 2009 through July 16, 2010, described in detail below in Paragraph 4 and summarized in Table 1, Attachment A. This Stipulation is presented to the Regional Water Board, or its delegated representative, for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

**Section II: Recitals**

1. The City owns, operates, and maintains the City of Oakland Sanitary Sewer Collection System located in Oakland, Alameda County, California (the "Collection System"). The Collection System consists of approximately 1,000 miles of sewer pipe and seven pump stations, which are connected to the interceptor owned and operated by East Bay Municipal Utility District (EBMUD), Special District 1. The Collection System serves a population of approximately 400,000 people. Sanitary sewer overflows (SSOs) from the City's collection system are discharged to various storm drain systems, and/or creeks, which are tributary to Central San Francisco Bay, a water of the United States. The Collection System is subject to the requirements set forth in Order No. R2-2004-0012, NPDES Permit No. CA0038512; State Water Resources Control Board (State Water Board) Order No. 2006-0003 DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General WDR) and its subsequent amendments; and reporting requirements established by the Regional Water Board pursuant to California Water Code (CWC) sections 13267 and 13383.

2. The Complaint, as issued on January 26, 2010, recommended imposing an administrative civil liability, in accordance with the 2002 State Water Board Water Quality Enforcement Policy, totaling \$299,600, which includes staff costs of \$27,000, for the following alleged violations, however as noted below, certain allegations are being revised by this Stipulation and Order. The alleged violations in the initial Complaint were:

- a. The City violated Order No. R2-2004-0012, Discharge Prohibition A.1 by discharging approximately 42,175 gallons of untreated sewage to waters of the State and the United States, as a result of eleven different SSOs. (See Table 1, Attachment "A" to the Complaint.)
- b. The City, on three occasions, violated Order No. R2-2004-0012, Discharge Prohibition A.2 by discharging chlorinated water to surface waters while flushing and/or cleaning creeks into which SSOs had discharged.
- c. The City, on six occasions, violated the Monitoring and Reporting Program of the General WDR, as amended by State Water Board Order No. WQ 2008-0002-EXEC and/or reporting requirements established by the Regional Water Board pursuant to CWC section 13383 by failing to notify the State Office of Emergency Services (California Emergency Management Agency as of October 1, 2008), the local health officer, and the Regional Water Board within two hours of becoming aware of an SSO.
- d. The City, on five occasions, violated the Monitoring and Reporting Program of the General WDR, as amended by State Water Board Order No. WQ 2008-0002-EXEC and/or reporting requirements established by the Regional Water Board pursuant to CWC section 13383 by failing to submit an initial SSO report via California Integrated Water Quality System (CIWQS) within three days of being notified of a Category 1 SSO. This allegation is dismissed, as detailed in Paragraph 3 below.
- e. The City violated the Monitoring and Reporting Program of the General WDR, as amended by State Water Board Order No. WQ 2008-0002-EXEC and/or reporting requirements established by the Regional Water Board pursuant to CWC section 13383 by failing to timely submit final, certified SSO reports in CIWQS on seven occasions.
- f. The City violated CWC section 13268 by falsifying the start times and SSO volumes in six SSO reports submitted by the City via CIWQS and by falsifying the flow rate and volume in one SSO report submitted by the City via CIWQS. This allegation is revised as detailed in Paragraph 3 below.

3. **Other Factors as Justice May Require:** The Prosecution Team dismisses with prejudice the allegation summarized in Paragraph 2.d above. Subsequent to the issuance of the Complaint, the Prosecution Team learned that the City had timely

submitted initial reports via CIWQS on the five occasions alleged. The City has also reported that since the reporting violations alleged in the Complaint, the City has implemented changes to personnel and initiated improvements to SSO reporting procedures that are required by the United States Environmental Protection Agency, Region IX Administrative Order for Compliance. Further, for purposes of settlement and without adjudicated factual bases, the Prosecution Team amends the allegation summarized above in Paragraph 2.f to replace the term "falsifying" with "failing to accurately report," which should be reflected throughout the Complaint.

4. **Additional Discharge Prohibition Violations:** Subsequent to the issuance of the Complaint, the City reported and certified in CIWQS, under penalty of perjury under the laws of the State of California, that it had experienced additional SSOs, not addressed by the Complaint, from its collection system between May 1, 2009, and July 16, 2010. The Prosecution Team alleges that four of the SSOs were caused by root blockages, debris blockage, or pipe failure; occurred during dry weather months; and resulted in a total of 71,100 gallons discharged to waters of the State and the United States in violation of Order No. R2-2009-0085, Discharge Prohibition A.1. These additional alleged violations are provided in detail in Table 1, Attachment A.

- a. **Administrative Civil Liability Authority and Amount:** Pursuant to CWC section 13385(a), a discharger is subject to civil liability for violating any waste discharge requirement. The Regional Water Board may impose civil liability administratively pursuant to Article 2.5 (commencing with section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following; (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallon of discharge that is not susceptible to cleanup or is not cleaned up in excess of 1,000 gallons. The maximum administrative civil liability that the Regional Water Board may impose for these additional violations is \$640,000.
- b. **Factors Affecting the Amount of Civil Liability:** CWC section 13385(e) requires the Regional Water Board to consider several factors when determining the amount of civil liability to impose. These factors include: "... 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."

On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in CWC section 13385(e).

The policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

The proposed administrative civil liability for the additional alleged violations is based on the use of that methodology.

i. PER GALLON DETERMINATION FOR DISCHARGE VIOLATIONS

The potential for harm factor is 5. This is determined by the sum of the factors for a) the potential for harm to beneficial uses (2); b) the physical, chemical, biological or thermal characteristics of the discharge (3); and the susceptibility for cleanup or abatement (0).

Four SSOs occurred on June 6, 2010; June 17, 2010; July 5, 2010; and July 15, 2010, respectively. (See Table 1, Attachment A.) An SSO is a discharge of raw, untreated sewage that can cause a public nuisance and adversely affect public health and water quality. The City self-reported in CIWQS that root and/or debris blockages and a pipe failure caused the SSOs. As a result of these four SSOs, it is alleged that approximately 71,100 gallons of raw sewage discharged to waters of the State and/or the United States, of which the City recovered approximately 10,100 gallons. Approximately 61,000 gallons, of raw sewage reached or remained in creeks or creekbeds that are tributaries of central San Francisco Bay, a water of the State and the United States. Raw sewage, as compared to properly treated wastewater, typically has over ten times the concentrations of biochemical oxygen demand, trash, total suspended solids, oil and grease, ammonia, and over a thousand times the levels of viruses and bacteria (measured in terms of total and fecal coliform). These pollutants exert varying levels of impact on water quality, and, as such, will adversely affect beneficial uses of receiving waters to different extents.

The deviation from requirements is major because all four SSOs reached surface waters, which rendered Prohibition A.1. set forth in Order No. R2-2004-0012 of the City's NPDES Permit, ineffective.

The Prosecution Team used the statutory maximum of \$10 per gallon to calculate the proposed administrative civil liability because all four SSOs were dry weather discharges.

ii. PER DAY ASSESSMENT FOR DISCHARGE VIOLATIONS

Because the SSOs resulted in dry weather discharges, a per day assessment is also appropriate. The per day factor is 0.15. This factor

is determined by a matrix analysis using the "potential for harm" and the "deviation from requirements" discussed above.

iii. ADJUSTMENTS TO DETERMINATION OF INITIAL LIABILITY

The City's culpability factor is 1. This value is based on the following: The City is responsible for the proper operation and maintenance of its collection system. It could have prevented the SSOs caused by root blockages with a more effective Root Foaming Program. The City's actions or inactions that resulted in these alleged violations were not negligent or intentional.

The City's cleanup and cooperation factor is 1. This value is based on the following: Once an SSO reaches surface waters, flows can carry the discharge downstream making it difficult to contain and recover the waste. The City was notified of and responded to each SSO in 30 minutes or less of becoming aware of the SSO. As stated above, the City recovered a total of approximately 10,100 gallons (or 14 percent) from its responses to the four SSOs.

The City's history of violations factor is 1.2. This value is based on the following: From February 1, 2007, through July 16, 2010, the Discharger self-reported approximately 522 SSOs. In the early 1980's, the Discharger had many SSOs during wet weather, which indicated insufficient collection system capacity. As a result, the Regional Water Board issued to the Discharger Cease and Desist Order (CDO) No. 86-17 on March 19, 1986, which was subsequently superseded by CDO No. 93-134 on October 20, 1993. CDO No. 93-134 was recently superseded by CDO No. R2-2009-0087 on November 18, 2009. The City has completed 87 percent of the sewer collection system infrastructure improvements, replacements, and repair required by these orders and the EPA Administrative Order referenced above. In addition, the City is on schedule to complete all of the projects required by these orders and the EPA Administrative Order by June 30, 2014. The City has also made significant improvements in its reporting systems in accordance with the Regional Water Board's reporting policies and procedures.

iv. ABILITY TO PAY AND ABILITY TO CONTINUE IN BUSINESS

The City has the ability to pay the total base liability amount based on the following information: The Discharger has an annual operating budget of approximately \$34 million for fiscal year 2009. The Discharger also has authority to adjust its sewer-rate scale to provide for financial needs. According to a survey of monthly Bay Area sewer services charges conducted by the Collection System Committee of the Bay Area Clean Water Agencies for the period ending September 30, 2009, the Discharger's monthly collection sewer rate is \$22.24, which is above the average collection sewer rate for the seven East

Bay collection system communities (i.e., Cities of Oakland, Alameda, Albany, Berkeley, Emeryville, and Piedmont, and the Stege Sanitary District).

v. OTHER FACTORS AS JUSTICE MAY REQUIRE

*Costs of Investigation and Enforcement.* The Regional Water Board Prosecution Team's time to investigate and pursue enforcement related to the additional violations has been minimal at an estimated 20 hours. These 20 hours in staff time are in addition to the estimated 180 hours associated with the violations alleged in the Complaint. Based on an average cost to the State of \$150 per hour, the total staff cost for the additional 20 hours of staff time is approximately \$3,000.

vi. ECONOMIC BENEFIT

The economic benefit estimated for the violation(s) at issue is minimal due to the fact that the City implements a Root Foaming Program that targets root blockage hot spots.

The Regional Water Board Prosecution Team believes that the proposed civil liability significantly exceeds the economic benefit or savings the City received as a result of the violations alleged herein.

vii. FINAL LIABILITY AMOUNT

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is \$114,606, which includes \$3,000 for staff costs.

5. To resolve by consent and without further administrative proceedings certain alleged violations set forth in the Complaint and Paragraphs 2 and 4 above and summarized in Table 1, Attachment A, the Parties have agreed to the imposition of \$280,000 against the City, which includes \$30,000 for staff costs. The City shall pay a total of \$155,000 to the State Water Board Cleanup and Abatement Account, consisting of \$125,000 in stipulated civil penalties and \$30,000 in staff costs no later than 30 days following the Regional Water Board executing this Order. Payment shall be submitted to the Designated Regional Water Board Representative identified in Paragraph 8 of this Stipulation and Order. The remaining \$125,000 in penalties is suspended upon completion of a Supplemental Environmental Project ("SEP") as set forth in this Stipulation and Order. The City shall expend at a minimum \$125,000 to complete the SEP in accordance with the terms of this Stipulation and the subsequently adopted Order.

6. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section

11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint and this Stipulation except as provided in this Stipulation and that this Stipulation is in the best interest of the public.

7. **Designated San Francisco Estuary Partnership Representative:** The Designated San Francisco Estuary Partnership (SFEP) Representative is responsible for oversight of the SEP on behalf of the Regional Water Board and shall be the contact for the City regarding the implementation of the SEP. The contact information for this representative is as follows:

San Francisco Estuary Partnership  
Attention: Athena Honore  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
ahonore@waterboards.ca.gov  
(510) 622-2325

8. **Designated Regional Water Board Representative:** The Designated Regional Water Board Representative shall serve as the main contact person for this enforcement case. For this matter, the Designated Regional Water Board Representative is Ms. Gina Kathuria. The contact information for this representative is as follows:

Ms. Gina Kathuria  
San Francisco Bay Regional Water Board  
1515 Clay Street, Ste. 1400  
Oakland, CA 94612  
(510) 622-2378  
gkathuria@waterboards.ca.gov

### **Section III: Stipulations**

The Parties stipulate to the following:

9. **Administrative Civil Liability:** The City hereby agrees to pay the administrative civil liability totaling \$280,000 as set forth in Paragraph 5 of Section II herein. Further, the Parties agree that \$125,000 of this administrative civil liability shall be suspended pending completion of an SEP as set forth in Paragraphs 10 through 20 herein and Attachment B attached hereto and incorporated by reference.

10. **SEP Description—City of Oakland Firehouse Biotreatment Retrofit Project:** The goals of this SEP are to improve water quality, reduce stormwater flows and velocities, and implement new technology in Oakland to create acceptance and gain new skills in biotreatment retrofit project implementation. The City shall implement

biotreatment retrofits at one or two existing fire station facilities, or other similar City facility, that will encompass an area of at least 1,000 square feet. These retrofits shall reduce stormwater flows and velocities and improve water quality by reducing pollutants in stormwater that flows to local creeks, Lake Merritt, and San Francisco Bay. Biotreatment retrofits include, but are not limited to, the installation of flow-through planters, swales, rain gardens, storm drain retrofits, and/or replacement of existing paved surface with permeable cover such as grasscrete or permeable pavement. Detailed plans, project milestones, and a budget for achieving the above goal(s) are provided in the SEP description attached hereto as Attachment B.

11. **SEP Completion Date:** The SEP shall be completed in its entirety no later than May 31, 2014 (the "SEP Completion Date").

12. **Representations and Agreements of the City to Fund, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's, or its delegated representative's, acceptance of this Stipulation, the City represents and agrees that (1) it will implement and complete the SEP as described in this Stipulation and Order; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP, and (3) it will guarantee implementation of the SEP identified in Attachment B by remaining liable for \$125,000 of suspended administrative liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The City agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

13. **SEP Oversight:** The City agrees to pay the San Francisco Estuary Partnership (SFEP) for costs for overseeing implementing the SEP, with check(s) payable to the Association of Bay Area Governments. The City is solely responsible for paying for all oversight costs incurred by the San Francisco Estuary Partnership to oversee the SEP, up to a maximum of \$20,000. The total oversight costs for the SEP are estimated to be \$8,778. The SEP oversight costs are in addition to the total administrative civil liability imposed against the City and are not credited toward the City's obligation to implement and complete the SEP as described in this Stipulation and Order. Oversight tasks to be performed by the San Francisco Estuary Partnership include but are not limited to, updating CIWQS, reviewing and evaluating progress, reviewing the final completion report, verifying completion of the SEP with a site inspection, auditing appropriate expenditure of funds, and providing updates to Regional Water Board staff.

14. **SEP Progress Reports:** The City shall provide quarterly reports of progress to the Designated SFEP Representative, and the State Water Board's Division of Financial Assistance, commencing April 15, 2011, and continuing through submittal of the final report described in Paragraph 14. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted. Quarterly reports covering each calendar

quarter are due on the 15th day following that calendar quarter (i.e., January 15, April 15, July 15, and October 15.)

15. **Certification of Completion of SEP and Final Report:** On or before May 31, 2014, the City shall submit a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury under the laws of the State of California, to the Designated Regional Water Board Representative and the State Water Board's Division of Financial Assistance, by a responsible official representing the City. The Certification of Completion shall include the following:

- a. Certification that the SEP 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 Regional Water Board to evaluate the completion of the SEP and the costs incurred by the City.
- b. Certification documenting the expenditures by the City during the implementation of the SEP in order to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Water Board or the Designated SFEP Representative for oversight. The City shall provide any additional information requested by the Designated Regional Water Board Representative or the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
- c. Certification that the City followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the Federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the City shall provide the Regional Water Board with the following documents from the lead agency prior to commencing SEP construction:
  - i. Categorical or statutory exemptions relied upon by the City;
  - ii. Negative Declaration if there are no potentially "significant" impacts;
  - iii. Mitigated Negative Declaration if there are potential "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potential significant impacts; or
  - iv. Environmental Impact Report (EIR), if there are "significant" impacts.

16. **Third Party Financial Audit:** In addition to the Certification of Completion, upon completion of the SEP, and at the written request of the Regional Water Board staff, the City, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff, or the Designated Regional Water Board Representative, providing such party's(ies') professional opinion that the City has expended money in the amounts claimed by the City. In the event of such an audit, the City agree that it will provide the third-party auditor with access to all documents that the auditor requests. The Regional Water Board staff's written request shall specify the reasons why the audit is being requested. The audit report shall be provided to the Designated Regional Water Board Representative within three (3) months of notice from the Regional Water Board staff to the City of the need for an independent third-party financial audit. The audit need not address any costs incurred by the Regional Water Board or the Designated SFEP Representative for oversight.

17. **Regional Water Board Acceptance of Completed SEP:** Upon the City's satisfaction of its obligations under this Stipulation and the completion of the SEP and any audits requested by the Regional Water Board staff, the Regional Water Board staff shall send the City a letter recognizing satisfactory completion of its obligations under this Stipulation. This letter shall terminate any further obligations of the City under this Stipulation and result in the permanent stay of \$125,000 of the administrative civil liability imposed on the City by this Stipulation and Order.

18. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP:** In the event that the City is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire SEP Amount has been spent to complete the SEP as required by this Stipulation and Order, the City shall pay the difference between the SEP Amount and the amount City can demonstrate was actually spent on the completion of the SEP, as an administrative civil liability. The City shall pay said difference within 30 days of its receipt of notice of the Regional Water Board staff's determination that the City failed to demonstrate that the entire SEP Amount has been spent to complete the SEP as required by this Stipulation and Order. Payment shall be submitted to the Designated Regional Water Board Representative.

19. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date required by this Stipulation and Order, or there has been a material failure to timely submit a report or certification as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation. As a consequence, City shall be liable to pay the entire SEP Amount or, some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulation and Order, or the City may be compelled to complete the SEP.

20. **Publicity:** Whenever the City or its agents or subcontractors publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the SEP is undertaken as part of the settlement of an enforcement action by the Regional Water Board against the City.

21. **Compliance with Applicable Laws:** The City understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

22. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

23. **City's Denial of Liability:** In settling this matter, the City does not admit to any of the findings of the Complaint or any finding set forth in Paragraphs 2 or 4 above or summarized in Table 1, Attachment A, provided, the City agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

24. **Public Notice:** The City understands that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegated representative. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegated representative may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

25. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.

26. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The City is represented by counsel in this matter.

27. **Modification:** This Stipulation and 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 the Regional Water Board or its delegated representative.

28. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegated representative, 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 Regional 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 Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

29. **Waiver of Hearing:** The City has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

30. **Waiver of Right to Petition:** The City hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

31. **Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.

32. **City's Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint, this Stipulation and Order, or the SEP.

33. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its staff under the terms of this Order shall be communicated to the City in writing. No oral advice, guidance, suggestions, or comments by employees or

officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the City of its obligation to obtain any final written approval required by this Order.

34. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

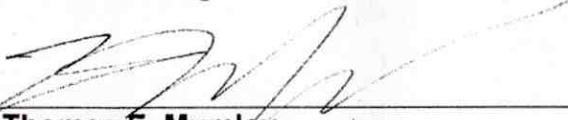
35. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

36. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegated representative, which incorporates the terms of this Stipulation.

**IT IS SO STIPULATED.**

**California Regional Water Quality Control Board,  
San Francisco Region Prosecution Team**

Date: 2/15/11

By:   
Thomas E. Mumley,  
Assistant Executive Officer

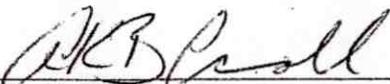
**The City of Oakland**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Lindheim  
Oakland City Administrator

**Approved as to Form:**

Date: 2/15/11

By:   
Ann K. B. Carroll,  
State Water Resources Control Board,  
Office of Enforcement  
Attorney for Prosecution Team

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Celso Ortiz  
Deputy City Attorney  
City of Oakland

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**California Regional Water Quality Control Board,  
San Francisco Region Prosecution Team**

Date: \_\_\_\_\_

By: \_\_\_\_\_

**Thomas E. Mumley,  
Assistant Executive Officer**

**The City of Oakland**

Date: February 17, 2011

By:  \_\_\_\_\_

**Daniel Lindheim  
Oakland City Administrator**

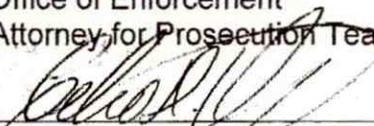
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Date: \_\_\_\_\_

By: \_\_\_\_\_

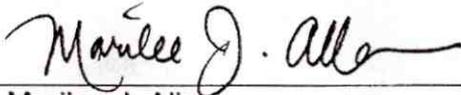
**Ann K. B. Carroll,  
State Water Resources Control Board,  
Office of Enforcement  
Attorney for Prosecution Team**

Date: February 17, 2011

By:  \_\_\_\_\_

**Celso Ortiz  
Deputy City Attorney  
City of Oakland**

Date: February 17, 2011

By:   
Marilee J. Allan  
Bingham McCutchen, LLP  
Attorney for The City of Oakland

**Section IV: Findings of the Regional Water Board or its Delegated Representative**

37. The Regional Water Board, or its delegated representative, incorporates Paragraphs 1 through 36, by this reference, as if set forth fully herein.

38. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint and the allegations set forth in Paragraphs 2 and 4 above and summarized in Table 1, Attachment A, the City hereby agrees to comply with the terms and conditions of the Stipulation and this Order.

39. The Regional Water Board, or its delegated representative, finds that the Recitals set forth herein in Section II are true.

40. This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

41. In accepting this Stipulation, the Regional Water Board, or its delegated representative, has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information obtained by the Prosecution Team in investigating the allegations in the Complaint and those set forth in Paragraphs 2 and 4 above and summarized in Table 1, Attachment A, or otherwise provided during the public comment period. In addition to these factors, this settlement recovers the costs incurred by the Prosecution Team investigate and pursue enforcement of the allegations addressed herein.

42. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board, or its delegated representative, 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.

43. The Regional Water Board or its delegated representative is authorized to refer this matter directly to the Attorney General for enforcement if the City fails to perform any of its obligations under the Order.

44. Fulfillment of the City's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint and those set forth in Paragraphs 2 and 4 above and summarized in Table 1, Attachment A.

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



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Dyan C. Whyte  
Assistant Executive Officer  
California Regional Water Quality Control Board, San Francisco Region

Date: March 28, 2011

**ATTACHMENT "A"**

**Table 1 – City of Oakland: Summary of Four SSOs that Occurred between May 1, 2009, and July 16, 2010, Investigated by Regional Water Board Staff**

SSO CIWQS Event ID #	Date SSO Occurred	End Date	Location in Oakland, CA	Reported SSO Volume (gal)	Volume Recovered (gal)	SSO Destination	Cause	Maximum Penalty (CWC \$ 13385(c))
753313	6/6/2010	6/6/2010	Sequoyah Road & Macgurrin Road	100	100	Country Club Creek	Root Intrusion	\$10,000
753630	6/17/2010	6/18/2010	4555 Sequoyah Road	27,000	9,000	Melrose Creek	Pipe/ Structural Problem/ Failure	\$190,000
754526	7/5/2010	7/6/2010	140 Montwaard Way	27,000	0	dry creek bed	Debris/Rags	\$280,000
755035	7/15/2010	7/15/2010	Highway 13 at Park Blvd.	17,000	1,000	Sausal Creek	Root Intrusion	\$160,000
			<b>TOTAL</b>	<b>71,100</b>	<b>10,100</b>		<b>TOTAL</b>	<b>\$640,000</b>

## ATTACHMENT "B"

### Supplemental Environmental Project: City of Oakland Firehouse Biotreatment Retrofit Project

**Project Name:**

City of Oakland Firehouse Biotreatment Retrofit Project

**Project Developed by:**

City of Oakland, Department of Engineering and Construction, Watershed and Stormwater Management

**Project to be Performed by:**

City of Oakland, Department of Engineering and Construction, Watershed and Stormwater Management

**Contact:**

Lesley Estes, City of Oakland Public Works Agency,  
Department of Engineering and Construction, Watershed and Stormwater Management

250 Frank H. Ogawa Plaza, Suite 4314  
Oakland, CA 94612

(510) 238-7431  
lestes@oaklandnet.com

**Compliance with SEP Criteria:**

1. The SEP provides pollution prevention and reduction, potential creek and waterbody protection and protection of beneficial uses of the San Francisco Estuary.
2. This SEP contains only measures that go above and beyond applicable current regulatory obligations.
3. This SEP does not directly benefit, in a fiscal manner, the Water Board's functions, its members, or its staff.
4. This SEP has nexus to the violation(s) in that the SEP will be located within the same area in which at least one of the violations occurred.

### **Description of Project:**

The City is proposing to retrofit one to two existing fire station facilities, or other similar City facility, with appropriate biotreatment technologies.

Under existing conditions, stormwater runoff from driveways, pathways, parking areas and other impervious surfaces collects pollutants and enters the stormdrain network, delivering the pollutants and high velocity flows to our creeks, Lake Merritt and the Bay. The installation of new biotreatment techniques such as swales, cisterns, rain gardens and stormdrain retrofits, helps to cleanse and slow stormwater. Additionally, fire personnel at fire stations interact frequently with the public. Implementing stormwater treatment at fire stations provides for stormwater treatment, high public visibility, and educational opportunities.

The City of Oakland has twenty-five Fire Stations. The City will develop an initial list of ten possible fire stations. After surveying and evaluating the initial ten fire stations, one or two of these fire stations would be selected for retrofit projects. The target retrofit project/area will be at least 1,000 square feet. The fire station(s) will be selected based on drainage, slope, accessibility, facility condition and feasibility. At its option, the City may also select one or two other similar City facilities if no appropriate fire station can be identified.

Biotreatment retrofits may include:

- Replace fire truck driveway with grasscrete
- Replace impervious parking surface at firehouse with permeable surfaces
- Construct flow-thru planter, swale, or rain garden to treat parking and/or roof runoff

Additionally, for each project a maintenance manual will be developed and permanent maintenance signage will be installed in the project area.

The goals of the project are to:

- Implement new technology in Oakland to create acceptance and gain new skills in biotreatment retrofit project implementation
- Improve water quality
- Reduce stormwater flows and velocities

Key personnel involved in the SEP are:

- Lesley Estes, Department of Engineering and Construction, Watershed and Stormwater Management

- Will Stockard, Department of Engineering and Construction, Watershed and Stormwater Management
- Kevin Kashi, Department of Engineering and Construction, Watershed and Stormwater Management

The City of Oakland plans to continue and/or maintain the SEP beyond the SEP-funded period by:

1. Incorporating the Biotreatment retrofit into the City's existing maintenance program; and
2. If it is shown that the biotreatment is successful, expanding driveway/parking spot replacement.

The Project occurs on City of Oakland property.

The project would be exempt from CEQA.

#### Project Milestones and Budget

Budget:

Total Budget: \$125,000.00

Budget will cover contractor costs for design, construction and up to 10% (or up to \$12,500) may be used for City of Oakland construction management. All other City of Oakland staff costs for this project will be covered by the City of Oakland and not by SEP funds.

Project Milestones:

- Develop project schedule
- Survey firehouse sites
- Conduct site visits
- Select at least one to two firehouse sites
- Gain agreement with Fire Department
- Conduct drainage analysis and evaluate soil
- Conduct utility research

- Determine size
- Design project concept
- Create plan sets, specifications and bid set
- Complete bid process (bid advertising, opening, canvas of bids, compliance report, City of Oakland council authorization)
- Contract Award
- Construct project
- Develop maintenance plan
- Train maintenance personnel
- Project construction will be completed no later than June 30, 2013.
- Complete post construction inspection to verify performance of constructed feature(s) no later than July 31, 2013.
- Inspect to note conditions of constructed feature(s) after one winter season.
- No later than May 31, 2014, and after at least one rainy season, submit final report and certification of completion.

All costs and invoices will be documented against real costs, invoices, and labor charges. Any funds left over after the successful completion of the SEP will be turned over to the State Cleanup and Abatement Account.

Project Performance Measures:

The project performance measures will be:

- Use approved design standards for biotreatment project
- Use load standards for fire trucks
- Build to design standards
- Conduct maintenance in accordance with maintenance plan

Reports to the Water Board:

The City of Oakland will submit quarterly reports on the progress of the SEP to the Regional Water Board, the third party oversight organization, and the State Water Board's Division of Financial Assistance. Quarterly reports covering each calendar quarter are due on the 15<sup>th</sup> day following that calendar quarter (i.e., January 15, April 15, July 15, and October 15).

The City of Oakland will also submit a final report and certification of completion in accordance with the Settlement Agreement for this matter. The final report and certification of completion shall document completion of the SEP, addressing how performance measures were met, including photos of the project, a description of the results of the post construction inspection, and a copy of accounting records of expenditures.

Third Party Oversight Organization:

The City of Oakland will hire the San Francisco Estuary Partnership to perform the required third party oversight with funding from the City of Oakland.