

California Regional Water Quality Control Board  
North Coast Region  
5550 Skylane Boulevard, Suite A  
Santa Rosa, CA 95403  
(707) 576-2220

In the Matter of: )  
 ) **Order No. R1-2012-0009**  
Fort Bragg Municipal )  
Improvement District No. 1 )  
Wastewater Treatment Facility ) **Settlement Agreement and Stipulation for**  
 ) **Entry of Administrative Civil Liability**  
Complaint No. R1-2011-0013 for ) **Order**  
Administrative Civil Liability

**Section I: Introduction**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and the Fort Bragg Municipal Improvement District No. 1 (Discharger) (collectively, Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability (ACL) Complaint No. R1-2011-0013 (Complaint), dated January 14, 2011, to the Discharger.

**Section II: Recitals**

1. The Discharger owns, operates, and maintains a municipal wastewater treatment facility (WWTF), located in the City of Fort Bragg to collect, treat, and dispose of wastewater generated within the sewerage district. The WWTF has a design capacity of 1.0 million gallons per day (mgd) average dry weather treatment capacity, and 2.2 mgd average wet weather treatment capacity. The WWTF provides secondary treatment, disinfects the wastewater using chlorine, dechlorinates with sulfur dioxide, and then discharges the treated effluent to the Pacific Ocean through an ocean outfall. The WWTF is subject to requirements set forth in WDRs Orders No. R1-2005-0096 and R1-2009-0030 and Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General Order).
2. The Complaint, as issued, recommends imposing an administrative civil liability, in accordance with the 2009 State Water Board Water Quality Enforcement Policy, totaling \$31,069 for alleged violations of Orders No. R1-2005-0096, R1-2009-0030 and General Order for Sanitary Sewer Systems incurred by exceeding effluent limitations and discharging to surface water in violation of discharge prohibitions

(i.e., Sanitary Sewer Overflows (SSOs). The proposed civil liability includes \$15,319 in discretionary administrative civil liability for prohibited discharge violations, \$6,000 in MMPs and staff costs of \$9,750.

3. The Parties have engaged in settlement negotiations and agree to settle certain alleged violations of the California Water Code (CWC) set forth in the Complaint without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board and proposed Order for adoption 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 violations except as provided in this Stipulation and that this Stipulation is in the best interest of the public.
4. To resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") set forth in the Complaint, the Parties have agreed to the imposition of \$31,069 against the Discharger, which includes \$9,750 for staff costs.
5. **Designated Representatives for Communications related to this Stipulation and Order:**

**For the Regional Water Board:**

Manuel Baldenegro, Sanitary  
Engineering Associate  
Regional Water Quality Control Board,  
North Coast Region  
5550 Skylane Blvd., Suite A  
Santa Rosa, CA 95403  
[mbaldenegro@waterboards.ca.gov](mailto:mbaldenegro@waterboards.ca.gov)  
707-576-6727

**For the Discharger:**

David W. Goble  
Director of Public Works  
City of Fort Bragg  
[dgoble@fortbragg.com](mailto:dgoble@fortbragg.com)  
707-961-2823; Ext 117

**Section III: Stipulations**

The Parties stipulate to the following:

6. **Administrative Civil Liability:** A total of \$31,069 in stipulated administrative civil liability shall be imposed against the Discharger. Of that amount, the Discharger shall pay \$17,409 in administrative civil liability, which includes \$9,750 in staff costs. This Order acknowledges that on May 23, 2011, the Discharger paid \$9,750 in staff cost by check made payable to the State Water Resources Control Board Cleanup and Abatement Account. The Discharger shall pay the remaining balance

of \$7,659, no later than 30 days following the Regional Water Board's adoption of this Order. The check shall reference Complaint No. R1-2011-0013 and shall be sent to the Regional Water Board at 5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403. The Discharger shall send a copy of payment to Staff Counsel Laura Drabandt, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812. The remaining \$13,660 shall be suspended (Suspended Liability) pending completion of a Supplemental Environmental Project (SEP), as set forth in Paragraphs 7 through 15 of Section III herein and Attachment "A" attached hereto and incorporated by this reference.

7. **SEP Description:** The goal of this SEP is to develop and secure a bluff top coastal trail which is described in greater detail in Attachment "A"; the WWTF is located adjacent to and approximately mid-way along the trail length. The newly proposed trail covers an extensive area of the bluff top running from Elm Street on the north to North Noyo Point Road on the south, and will eventually allow public access along sensitive habitat and watershed areas that require additional protection. The SEP will include establishing two gates and installing 964 linear feet of (five wire T-stake) fencing along the trail to protect sensitive habitat areas and further secure the watershed areas from public access. Within the limits of the proposed coastal trail are areas identified for "resource protection" and this SEP will include installing fencing around the perimeter of these areas to be protected. The SEP benefits the environment and sensitive resource habitat in watershed areas adjacent to the Pacific Ocean and the Fort Bragg Service Area. Detailed plans, maps and a budget for achieving the completion of the SEP are provided in the SEP description attached hereto as Attachment "A".

The implementation schedule for completion of the SEP is as follows:

<b>MILESTONE</b>	<b>DEADLINE</b>
Award construction contract	March 1, 2012
Issue Notice to Proceed to construction contractor	April 1, 2012
Complete SEP	July 1, 2012

The SEP shall be completed in its entirety no later than July 1, 2012 (SEP Completion Date) as indicated in the schedule above.

8. **Extension of the Implementation Schedule Deadlines:** If, given written justification from the Discharger and the Regional Water Board, staff determines that a delay in the SEP implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Designated Regional

Water Board Representative before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide the Discharger a new implementation schedule in writing, which shall include the date the SEP will be completed (Revised Completion Date).

9. **Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger 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 Paragraph 7 and Attachment "A" by remaining liable for the Suspended Liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.
10. **SEP Monthly Progress Reports:** The Discharger shall provide monthly reports of progress to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board commencing 30 days after this Stipulation becomes final and continuing through submittal of the certified statement of completion of the SEP described in Paragraph 10. If no activity occurred during a particular month, a monthly report so stating shall be submitted. Monthly reports are due on the 15th day of the following month.
11. **Certification of Completion of SEP:** On or before July 1, 2012, (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted pursuant to Paragraph 8) the Discharger shall provide a certified statement of completion of the SEP (Certification of Completion). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board. 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 Discharger.

- b. Certification documenting the expenditures by the Discharger during the implementation of the SEP in order to complete the SEP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
  - c. Certification that the Discharger 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.
12. **Third Party Financial Audit:** At the written request of Regional Water Board staff, the Discharger, 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 Discharger has expended money in the amounts claimed by the Discharger. In the event of such an audit, the Discharger agrees 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 Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
13. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$13,660 has been spent to complete the SEP as required by this Stipulation and Order, the Discharger shall pay the difference between the Suspended Liability of \$13,660 and the amount the Discharger can demonstrate was actually spent on the completion of the SEP, as administrative civil liability. The Discharger shall be liable to pay the State Water Resources Control Board Cleanup and Abatement Account said difference within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire Suspended Liability was spent to complete the SEP as required by this Stipulation and Order. Payment shall be submitted to the Designated Regional Water Board Representative.
14. **Failure to Complete SEP:** If the Discharger fails to complete the SEP by July 1, 2012, as required by this Stipulation and Order, (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted pursuant to

Paragraph 8), or there has been a material failure to timely submit a progress report or the Certification of Completion as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the entire suspended liability of \$13,660, or some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulation and Order, to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of receipt of the NOV.

15. **Completion of the SEP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulation 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 this Stipulation and Order. Receipt of this letter shall terminate any further obligations of the Discharger under this Stipulation and Order and result in the permanent stay of the Suspended Liability.
16. **Compliance with Applicable Laws:** The Discharger 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 the Discharger to further enforcement, including additional administrative civil liability.
17. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, the Discharger 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 Discharger.
18. **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.
19. **Public Notice:** The Discharger understands that this Stipulation and proposed Order was noticed for public comment for at least 30 days prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and proposed Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Stipulation and proposed Order as necessary or advisable under the circumstances. If the Regional Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of

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

20. **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.
21. **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 Discharger is represented by counsel in this matter.
22. **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 the Executive Officer.
23. **If the 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 it 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.
24. **Waiver of Hearing:** The Discharger 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.
25. **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.
26. **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.
27. **Discharger's 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 Covered Matter.
28. **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.
29. **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.
30. **Effective Date:** The obligations under this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Stipulation.

31. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
32. **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.

**IT IS SO STIPULATED.**

California Regional Water Quality Control Board,  
North Coast Region Prosecution Team

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

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

Luis Rivera, Assistant Executive Officer

Fort Bragg Municipal Improvement District No. 1

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

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

Linda Ruffing, District Manager

**Section IV: Findings of the Regional Water Board**

33. This Order incorporates the terms of the foregoing Stipulation.
34. The Regional Water Board finds that the Recitals set forth herein in Section II are true.
35. In accepting this settlement, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board Prosecution Team in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.
36. The Discharger qualifies as a small community with a financial hardship. The basis of that determination is set forth in the analysis and recommendation prepared by the State Water Board, Office of Research, Planning, and Performance, approved by the State Water Board's Executive Director. (See

Attachment "B" attached hereto, incorporated herein, and made a part of this administrative civil liability order by this reference).

37. Section IX of the Enforcement Policy provides that the Regional Water Board may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary administrative civil liability for completion of a SEP.
38. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
39. The Regional Water Board or its Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

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

#### Certification

I, Catherine Kuhlman, 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, North Coast Region on January 19, 2012.

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Catherine Kuhlman  
Executive Officer

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Attachments A and B