

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:)	
)	Order R1-2015-0069
City of Ukiah, WWTF)	
Complaint No. R1-2014-0058 for)	SETTLEMENT AGREEMENT AND
Administrative Civil Liability)	STIPULATION FOR ENTRY OF
)	ADMINISTRATIVE CIVIL LIABILITY ORDER
Attn: Mr. Tim Eriksen, Director of)	
Public Works/City Engineer)	
WDID No. 1B840290MEN)	
NPDES Permit No. CA0022888)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation, Order, or Stipulated Order) 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 City of Ukiah (the 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. R1-2014-0058 (Complaint), dated October 31, 2014, to the Discharger.

Section II: Recitals

1. The Discharger owns and operates the Ukiah WWTF located at 300 Plant Road, Ukiah, California in Mendocino County. The WWTF serves 15,000 residential, commercial, and institutional users in the City of Ukiah and 5,000 residential users served by the Ukiah Valley Sanitation District. Disinfected, tertiary treated wastewater can be discharged to the Russian River, a water of the United States, as needed during winter months (October 1 to May 14). Year-round, disinfected secondary wastewater is discharged to percolation ponds adjacent to the Russian River. The Russian River meets the definition of waters of the state.
2. On September 20, 2006, the Regional Water Board adopted Order No. R1-2006-0049 to regulate discharges from the Discharger's WWTF to the Russian River. Order No. R1-2006-0049 became effective on November 9, 2006 and remained in effect until October 1, 2012 whereupon Order No. R1-2012-0068 became effective and serves as an NPDES permit under the Federal Clean Water Act.
3. On October 31, 2014, the Prosecution Team issued Administrative Civil Liability (ACL) Complaint No. R1-2014-0058 (Complaint) to the Discharger. The Complaint alleged that the Discharger exceeded the effluent limits for dichlorobromomethane, copper and Acute Toxicity as set forth in WDRs Order No. R1-2006-0049, and dichlorobromomethane and cyanide as set forth in WDRs Order No. R1-2012-0068 on seventeen (17) occasions during the period from February 1, 2012 through May 31, 2014. During the Complaint Period, the Discharger was subject to the waste discharge requirements established in Order No. R1-2006-0049 until October 1, 2012 whereupon Order No. R1-2012-0068 became effective. The Complaint proposed to assess \$51,000 in mandatory minimum penalties (MMPs) pursuant to Water Code section 13385, subdivisions (h) and (i).

4. After further review of the effluent violations identified in the Complaint, Regional Water Board staff has determined that two of the alleged effluent violations for acute toxicity had been identified in error as being subject to MMPs. Rather, these two violations are receiving water violations subject to discretionary penalties, so will not be included or considered for penalties at this time. Accordingly, Exhibit A of this Order identifies fifteen (15) MMP violations occurring during the period from February 1, 2012 through May 31, 2014, with a corresponding penalty amount of forty-five thousand dollars (\$45,000).
5. Six (6) additional effluent violations have occurred since the end of the Complaint Period (May 31, 2014) through May 31, 2015 as shown in Exhibit B, attached and made a part of this Stipulation. The Discharger exceeded the effluent limits for dichlorobromomethane and bromochloromethane as set forth in WDRs Order No. R1-2012-0068. These effluent violations are subject to MMPs pursuant to Water Code section 13385, subdivisions (h) and (i). The total MMP amount for the six effluent violations is \$18,000.
6. This Stipulation addresses twenty-one (21) effluent violations as identified in paragraphs 4 and 5 above that are subject to MMPs, and the total civil liability amount assessed for the effluent violations is \$63,000.
7. 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. To resolve by consent and without further administrative proceedings all alleged violations of Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of sixty-six thousand dollars (\$63,000) in mandatory minimum penalties against the Discharger. The Parties have further agreed that the Discharger will apply a portion of these penalties toward the cost to complete a Supplemental Environmental Project (SEP), in accordance with the terms of this Stipulation and Order.
8. The resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and meets the requirements under Water Code section 13385, subdivisions (h) and (i), and the Enforcement Policy, so that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.
9. Pursuant to Water Code section 13385, subdivision (l), the Regional Water Board may, in lieu of assessing a portion of mandatory minimum penalties pursuant to Water Code section 13385, subdivisions (h) and (i), allow a publicly owned treatment works to spend a portion of mandatory minimum penalties towards the completion of an SEP proposed by the publicly owned treatment works. The SEP must conform to the requirements specified in the State Water Board Water Quality Enforcement Policy (Enforcement Policy), Section IX.
10. 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 policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

Section III: Stipulations

The Parties stipulate to the following:

- 11. Jurisdiction:** The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
- 12. Administrative Civil Liability:** The Discharger is subject to administrative civil liability in the amount of sixty-three thousand dollars (\$63,000) in mandatory minimum penalties. The Discharger shall pay within 30 days of issuance of this Order \$24,000 to the State Water Resources Control Board Cleanup and Abatement Account. The remaining \$39,000 shall be suspended (Suspended Liability) pending completion of an SEP, as set forth herein and described in Exhibit C attached hereto, and incorporated by this reference.
- 13. SEP Description:** The purpose of the SEP is to benefit surface water quality by identifying areas of high Biochemical Oxygen Demand (BOD) within the Discharger's collection system. With the technical assistance from an engineering consulting firm, the Discharger will complete a source control study including sampling and data collection, and develop a plan to reduce BOD within its collection system.

The SEP includes the following tasks and schedule:

TASK	DESCRIPTION	DEADLINE
1	Request for Proposals (RFP) & Proposals Due	3/17/2016
2	Award Contract to Engineering Consultant	4/20/2016
3	Quarterly Report 1	5/1/2016
4	Begin Sampling & Data Collection	6/17/2016
5	Receive Draft Plan	9/1/2016
6	Quarterly Report 2	9/15/2016
7	City Submits Comments to Consultant	9/17/2016
8	Receive Final Plan	9/30/2016
9	SEP Completion & Final Report	12/31/2016

- 14. The Costs:** The Discharger has estimated the cost to be approximately \$60,000 to complete Tasks 1 – 9. The amount of the liability to be suspended upon completion of the SEP is \$39,000 in mandatory minimum penalties, as authorized by Water Code section 13385, subdivision (l). No additional liability above and beyond the \$39,000 shall be suspended for costs incurred to complete the SEP.
- 15. SEP Reports & Completion Date:** The SEP shall be concluded by December 31, 2016 (SEP Completion Date). The Discharger must submit quarterly reports to the Regional Water Board as shown in paragraph 13. A final report certifying the completion of the SEP shall be provided to the Regional Water Board and the State Water Resources Control Board's Division of Financial Assistance by December 31, 2016, as described in paragraph 18.
- 16. Failure to Complete the SEP:** Except as provided for in paragraph 22, if the SEP as described in this Order is determined to be infeasible, or if the Discharger fails to complete the SEP by the SEP Completion Date, the Regional Water Board shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the State Water Pollution Cleanup and Abatement Account the Suspended Liability within 30 days of receipt of the NOV.

17. SEP Oversight: The Discharger will oversee implementation of the SEP. Additional oversight will be provided by the Regional Water Board. The Discharger is solely responsible for paying all reasonable oversight costs incurred by the Regional Water Board to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Discharger and are not credited toward the Discharger's obligation to implement and complete the SEP. Reasonable oversight tasks to be performed by the Regional Water Board include but are not limited to, reviewing and evaluating progress, reviewing the final report, and verifying completion of the SEP.

18. Representation of the Discharger: As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents that it will utilize the funds as described in Finding 12 to implement the SEP in accordance with the implementation schedule set forth above. The Discharger understands that its obligation to implement the SEP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.

19. 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 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 11 and Exhibit C 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.

20. Certification of Completion of SEP: On or before December 31, 2016, the Discharger shall provide a certified statement of completion of the SEP (Certification). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification 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 plans, 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 completion period for the SEP. Expenditures may include, but are not limited to, payments to outside consultants, 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.

- 21. Third Party Financial Audit of SEP:** 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. 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 of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
- 22. 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 \$39,000 has been spent for the completed SEP, the Discharger shall pay the difference between the suspended liability of \$39,000 and the amount the Discharger can demonstrate was actually spent on the SEP, as administrative civil liability. The Discharger shall be liable to pay the State Water Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire SEP Amount was spent to complete the SEP.
- 23. 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 SEP Completion Date).
- 24. 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 the SEP. Receipt of this letter shall terminate any further SEP obligations of the Discharger and result in the dismissal of the Suspended Liability.
- 25. Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order 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 it to further enforcement, including additional administrative civil liability.
- 26. Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
- 27. No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this

Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

28. Party Contacts for Communications related to Stipulation/Order:

For the Regional Water Board:

Cecile Morris
Water Resource Control Engineer
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Cecile.Morris@waterboards.ca.gov
(707) 576-2347

For the Discharger:

Tim Eriksen,
Director of Public Works/City
Engineer
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482
teriksen@cityofukiah.com
(707) 463-6280

29. 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.

30. Public Notice: The Discharger understands that this Stipulation and Order will be noticed for a 30-day public comment period 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 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 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 Stipulated and Order.

31. 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.

32. 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.

33. 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 by the Regional Water Board or its Executive Officer.

34. Integration: This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

35. 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 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.

36. Waiver of Hearing: The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

37. 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 Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

38. 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 and/or Order 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.

39. Covenant Not to Sue: Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

- 40. 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.
- 41. 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.
- 42. Severability:** This Stipulations and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
- 43. No Third Party Beneficiaries:** This stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.
- 44. 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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
- 45. Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

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

By: _____

**Shin-Roei Lee
Assistant Executive Officer**

City of Ukiah, WWTF

Date: _____

By: _____

**Tim Eriksen
Director of Public Works/City Engineer**

Findings of the Regional Water Board:

IT IS HEREBY ORDERED:

- 46.** The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Order.
- 47.** The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.
- 48.** 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.
- 49.** The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under the Order.
- 50.** Fulfillment of the Discharger's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

Pursuant to Water Code 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.

Matthias St. John
Executive Officer

Enc: Exhibit A (Table of violations during period February 1, 2012 through May 31, 2014)
Exhibit B (Table of violations during period June 1, 2014 through July 31, 2015)
Exhibit C (Revised SEP)

15_0069_Ukiah_WWTF_StipOrder