

SENT VIA ELECTRONIC MAIL AND U.S. MAIL

January 7, 2013

State Water Resources Control Board  
Office of Chief Counsel  
Attention: Jeannette L. Bashaw, Legal Secretary  
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**RE: Petition for Review of Order No. R5-2012-0112**

Dear State Water Resources Control Board:

California Sportfishing Protection Alliance (“CSPA”) hereby petitions the State Water Resources Control Board (“State Water Board”) for review of *Administrative Civil Liability Complaints Nos. R5-2011-587 and R5-2011-570 and Notices of Violation as Described Herein; Settlement Agreement and Stipulation for Entry of Order; Order* (“Settlement”) adopted on December 6, 2012 by the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”), as Order No. R5-2012-0112. A copy of Order No. R5-2012-0112 is attached to this petition as Exhibit A. The Settlement was issued pursuant to California Water Code (the “Porter-Cologne Act”) section 13323 and Government Code section 11415.60.

The Settlement includes a Supplemental Environmental Project (“SEP”), and therefore the Regional Board must comply with the State Water Board’s February 3, 2009 Policy on Supplemental Environmental Projects (“SEP Policy”) when adopting the Settlement.<sup>1</sup> The SEP Policy requires that SEPs not offset more than 50% of a discharger’s total assessed liability. If the Regional Board seeks to include a SEP that exceeds this 50% threshold the Regional Board must identify the “exceptional circumstances” that provide the “compelling justification” for doing so. SEP Policy at 1-2. As explained below, the Settlement includes a SEP that exceeds the 50% threshold, but the Regional Board adopted it without following the required process or providing the compelling justification for its decision.

CSPA therefore requests the State Water Board remand the Settlement for reconsideration consistent with the requirements of the SEP Policy.

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<sup>1</sup> The SEP Policy was adopted by State Water Resources Control Board Resolution No. 2009-0013. The SEP Policy and Resolution No. 2009-0013 are attached to this petition as Exhibit B.

**I. Contact Information of Petitioner**

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**II. Action of Regional Board Which State Water Board is Requested to Review**

Petitioner requests that the State Water Board review *Administrative Civil Liability Complaints Nos. R5-2011-587 and R5-2011-570 and Notices of Violation as Described Herein; Settlement Agreement and Stipulation for Entry of Order; Order* adopted on December 6, 2012 by the Regional Board, as Order No. R5-2012-0112 (Exhibit A).

**III. Date on Which the Regional Board Acted**

The Regional Board adopted the Settlement on December 6, 2012.

**IV. Statement of Reasons the Action Is Inappropriate**

The Regional Board approved a SEP that deprives the State clean up and abatement account of over 85% of the total assessed liability. In the process, the Regional Board failed to follow the process and provide the compelling justification required by the SEP Policy when approving a SEP that exceeds 50% of the total assessed liability. By failing to comply with the SEP Policy, Regional Board's adoption of the Settlement is inappropriate and illegal. Not only is failing to follow the SEP Policy illegal, it undermines the Regional Board's credibility as the agency responsible for enforcing water pollution laws, and circumvents the State Water Board's responsibility of overseeing Regional Board enforcement.

**A. The SEP Policy Requires the Regional Board Provide a Compelling Justification when Approving a SEP that Exceeds 50% of the Total Assessed Liability**

The SEP Policy provides that "no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than the 50 percent of the total adjusted monetary assessment against the discharger, absent compelling justification." Under the SEP Policy, when a SEP will exceed 50% of the total liability, the Regional Board is required to

affirmatively notify the Director of Office of Enforcement of the State Water Board [and] affirmatively describe in detail the proposed SEP, the settlement value of the SEP, the reasons why the Regional Water Board proposes to accept the SEP in lieu of monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit.

SEP Policy at 2.<sup>2</sup>

SEPs play an important role in improving the environment by funding “projects that enhance the beneficial uses of the waters of the State [and] that provide a benefit to the public at large.” SEP Policy at 1. The purpose of the SEP Policy is to establish a consistent and unified enforcement regime to achieve environmental compliance and improve environmental quality. *See* Resolution No. 2009-0013 (included with Exhibit B. To this end, the Resolution states that, “The State and Regional Water Boards shall coordinate their respective agencies so as to achieve a unified and effective water quality control program in the state.” *See* Resolution No. 2009-0013 at 1.

## **B. Background Facts Leading to Administrative Civil Liability, Notices of Violation, and Settlement**

### **1. Background on the City’s Wastewater Infrastructure**

The City owns and operates two wastewater treatment plants (“WWTP”), Clear Creek WWTP and Stillwater WWTP, located on either side of the Sacramento River in the City of Redding. Effluent from the Clear Creek WWTP is discharged to the Sacramento River. Effluent from the Stillwater WWTP is either discharged to the Sacramento River, or applied to land owned by the discharger. The City’s wastewater infrastructure includes the WWTPs and its Collection System, which consists of 17 lift stations and approximately 423 miles of collection mains.

### **2. Regulation of the City’s Wastewater Infrastructure**

There are three National Pollution Discharge Elimination System (“NPDES”) permits relevant to the Settlement: (1) *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2003-0130, NPDES Permit No. CA0079731 (“2003 Clear Creek NPDES Permit”), (2) *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2010-0096, NPDES Permit No. CA0079731 (“2010 Clear Creek NPDES Permit”), and (3) *Waste Discharge Requirements for the City of Redding, Stillwater Wastewater Treatment Facility*, Order No. R5-2007-0058, NPDES Permit No. CA0082589 (“2007 Stillwater NPDES Permit”). Each of these permits imposes terms and conditions on the City’s discharges from both its Collection System and its WWTPs. The City is also subject to and required to comply with the State Water Board General Order WQ-2006-0003 for Sanitary Sewer Systems (“SSO WDR”). The SSO WDR imposes terms and conditions upon discharges from, and the operation of, the City’s Collection

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<sup>2</sup> The 50% figure is two times the capped amount set out by the Cal/EPA Recommended Guidance on Supplemental Environmental Projects (October 2003), which states that “supplemental projects should be no more than 25 percent of the total settlement, exclusive of projected administrative costs.” Cal/EPA Recommended Guidance on Supplemental Environmental Projects at 7 (Exhibit C).

System. The Settlement references alleged violations of each of the City’s NPDES Permits and the SSO WDR.

### 3. The Administrative Civil Liability Complaints and Notices of Violations

As explained in greater detail in the Recitals in the Settlement, the Regional Board sent the City numerous Notices of Violations (“NOVs”), two Administrative Civil Liability Complaints (“ACLs”), and other notices to the City identifying violations of its NPDES Permits and/or SSO WDR between September 3, 2007 and May 31, 2012. The ACLs and NOVs, allegedly resolved by the Settlement are summarized in the table below.

ACLs, NOVs, and other Notices	Substance of Violation
May 2011 ACL	Effluent Limitations Violations resulting from chlorine excursion
July 2011 ACL	Effluent Limitations Violations
May 31, 2011 NOV	Effluent Limitations Violations for dichlorobromomethane
May 18, 2011 NOVs	Bypassing treatment at both Stillwater and Clear Creek WWTPs
June 20, 2011 NOV	Effluent Limitations Violations for pH
Sewage System Overflow (“SSO”) Violations Identified in Settlement	SSOs in violation of NPDES Permits and SSO WDR

CSPA calculated that the violations in the table above equaled 206 days of violation.<sup>3</sup> Of these seventy-six (76) were caused by discharges of effluent from the City’s WWTPs with pollutant levels that exceeded the effluent limitations set forth in the 2003 Clear Creek NPDES Permit, the 2010 Clear Creek NPDES Permit, or the 2007 Stillwater NPDES Permit. Fifty-four (54) were caused by bypass events at the City’s WWTPs. Seventy-six (76) of the alleged violations were caused by SSOs from the City’s Collection System.

The bulk of the potential liability faced by the City resulted from two bypass violations in 2011, one at the Stillwater WWTP and one at the Clear Creek WWTP. These bypasses resulted in the discharge of 218,900,000 gallons of partially treated sewage to the Sacramento River, and exposed the City to potential liability of over \$2 billion. *See* Prosecution Team PowerPoint Presentation at December 6, 2012 hearing (attached hereto as Exhibit D).

### 4. The Settlement

To settle the alleged violations, the City of Redding and the Regional Board agreed to the imposition of \$1,450,000 in liability, including \$800,000 toward a SEP, \$225,000 to the State

<sup>3</sup> CSPA calculated 206 days of violation by adding the violations alleged in the various Administrative Civil Liability Complaints and Notices of Violation allegedly resolved by the [Proposed] Settlement. A summary table of the violations as calculated by CSPA is provided as Table 1 in Attachment A to CSPA’s September 10 comment letter, which is attached as Exhibit F.

Water Pollution Cleanup and Abatement Account, \$21,000 in mandatory minimum penalties, and the balance in stipulated penalties. *See* Settlement, ¶ 10 (Exhibit A). The Settlement provides that up to \$425,000 of the total liability will be progressively suspended if the City of Redding meets progressive annual milestones related to completion of the SEP. *See id.* at ¶ 11.

The SEP requires the City to dedicate \$800,000 to subsidize the repair and replacement of private laterals in the City of Redding. *See id.* at ¶ 11. Private laterals are the sewer pipes that carry wastewater from residences, commercial establishments, and other private property to the publicly owned and operated Collection System. The “goal of [the SEP] is to reduce inflow and infiltration (I/I) into the [City’s] collection system from defective private sewer laterals.” Settlement, ¶ 12(a) (emphasis added). According to the Settlement, implementing the SEP will result in fewer SSOs and help avoid bypassing wastewater treatment at the WWTPs during wet-weather events. *See id.*

While the Settlement resolves \$1.45 million in assessed civil liability, it only requires the City actually pay \$225,000 (approximately 15% of the overall liability). *See* Settlement, ¶ 10. Over 55% (\$800,000) goes to fund the SEP, a City-run program to provide assistance to owners to repair or replace private laterals that, due to their age and poor condition, may be contributing excessive flows to the City’s sewer system. *See id.* at ¶¶ 11-13. In addition to allowing the City to fund a program it should have implemented long-ago to prevent the alleged violations in the first place, the Settlement provides for suspension and eventual waiver of an additional 31% (\$425,000) provided the City funds the private lateral program as promised. *See id.* at ¶11. Through implementation of the SEP, the City can avoid over 85% of its total assessed liability.

## **5. The Process Leading to Adoption of the Settlement**

The Regional Board first notified the public regarding its intent to settle the claims related to the ACLs, NOVs, and certain SSOs in August 2012. The [Proposed] Settlement and attachments are attached hereto as Exhibit E. Neither the [Proposed] Settlement nor the attachments included a statement of the compelling justification for a SEP that exceeds 50% of the total assessed liability. The [Proposed] Settlement and accompanying notice stated that the order approving the settlement would be entered after the 30-day comment period unless submitted comments identified significant new information that reasonably affects the propriety of the [Proposed] Settlement. *See* [Proposed] Settlement, ¶ 27.

CSPA submitted comments on September 10, 2012, emphasizing that the size of the SEP was not justified. A copy of CSPA’s September 10, 2012 comment letter is attached to this petition as Exhibit F. A SEP that resulted in the City avoiding over 85% of the assessed liability is not justified, especially considering the action funded is one the City is already obligated to indertake (i.e., the City is already required to ensure it has adequate capacity to convey and treat the flows in its wastewater system). CSPA further noted that the absence of effective injunctive relief for addressing all of the violations the Settlement allegedly resolves, and requested that it be revised to be comprehensive.

The Regional Board issued a subsequent notice on November 14, 2012, informing CSPA

that the [Proposed] Settlement would be heard by the Regional Board at its December meeting. CSPA received this notice via email. A copy of the Regional Board's November 14, 2012 email with attachment ("November 14, 2012 Email") is included with this petition as Exhibit G. The November 14, 2012 Email included an earlier email from Mr. Ken Landau, in which he stated:

The Advisory Team, in consultation with the Board Chair, has determined that there are significant policy issues associated with the proposed settlement agreement and that this matter should be brought to the Board for a hearing. The major issues of concern involve (1) the appropriateness of the amount of the cash payment to the Cleanup and Abatement Fund, and (2) whether the inflow/infiltration problem in the private laterals is a contributing problem to the violations that should have been previously addressed by the City, and is therefore not an appropriate activity for a SEP.

The Regional Board's website was updated to reflect that the [Proposed] Settlement would be heard at the December 6/7, 2012, and allowed interested persons to submit comments until December 1, 2012.

CSPA submitted additional comments on the [Proposed] Settlement on November 20, 2012. A copy of CSPA's November 20, 2012 comment letter is attached to this petition as Exhibit H. CSPA's November 20, 2012 comments re-emphasized the impropriety of the magnitude of the SEP. CSPA also commented that the Regional Board had still failed to provide the compelling justification necessary to warrant exceeding the 50% of total assessed liability threshold. CSPA further stated:

CSPA is unaware of a notification to the Director of Enforcement providing the required details. If one exists CSPA requests that it be circulated to the public, including by placing it on the Regional Board's website in the area that provides information relevant the hearing on this matter. Until this justification is provided, [...] the Regional Board's adoption of the Proposed Settlement will violate the SEP Policy.

At 9:00 a.m. on the morning of the December 6, 2012 hearing, the Director of the Office of Enforcement ("Director") sent an email to representatives of the City, the Regional Board, and CSPA. *See* email from Mr. Carrigan dated December 6, 2012 ("Carrigan Email"), which is attached as Exhibit I. This email stated, "if the Central Valley Water Board requests me to do so today, I will enter the enclosed determination authorizing the proposed SEP in excess of the 50% of the total proposed civil liability." *Id.* Attached to the Director's email was a list of factors that allegedly provide the compelling justification for the magnitude of the SEP. *Id.*

CSPA's testimony at the hearing emphasized that the Regional Board had never provided its compelling justification to the Director. In fact the compelling justification was articulated for the first time – on the morning of the hearing – **by the Director to the Regional Board, not the other way around as required.** In addition, CSPA explained that no member of the public or any other interested person had had an opportunity to review and assess the purported

justification for the SEP. Despite the obvious flaws in the process of justifying and explaining the SEP to the public and the Director, the Regional Board adopted the Settlement at its December 6, 2012 meeting.

**C. The Regional Board Failed to Follow the Required Process and Provide a Compelling Justification for Agreeing to a SEP that Exceeds More than 50% of the Total Assessed Liability**

The Regional Board adopted the Settlement without following the procedures required by the State Water Board's SEP Policy and in violation of the Porter-Cologne Act. As noted above, the SEP Policy provides that "no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than the 50% of the total adjusted monetary assessment against the discharger, absent compelling justification." Here, the Settlement provides for a SEP that through its implementation results in the suspension and waiver of \$1.25 million of the \$1.45 million in assessed civil liability (over 85%). Under the SEP Policy, when a SEP will exceed 50% of the total liability, the Regional Board is required to

affirmatively notify the Director of Office of Enforcement of the State Water Board [and] affirmatively describe in detail the proposed SEP, the settlement value of the SEP, the reasons why the Regional Water Board proposes to accept the SEP in lieu of monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit.

SEP Policy at 2. Despite these clear instructions, the Regional Board did not affirmatively notify the Director or provide the required information. Nowhere in the record did the Regional Board provide the Director with a detailed description of the "exceptional circumstances" that justify allowing a SEP that results in suspension and waiver of over 85% of the assessed liability. Without providing these details, there was no showing by the Regional Board of the "compelling justification" required by the SEP Policy. In fact, the only effort at providing the compelling justification came from the Director to the Regional Board. But the Regional Board must present the "compelling justification."

Further, the purported justifications for the SEP simply repackage the numerous reasons the City of Redding believes the SEP is justified. Specifically, the justifications provided in the Director's statement to the Regional Board can be found (many of them stated almost verbatim) in a letter the City of Redding sent to the Regional Board on October 3, 2012. *Compare* Letter from City of Redding to the Regional Board, dated October 3, 2012 (Exhibit J) *with* Carrigan Email and Attachment (Exhibit I). The justifications are therefore not even the Director's, and certainly are not the Regional Board's. The entire process leading to development of the reasons for exceeding SEP Policy's 50% threshold was flawed. This flawed process casts considerable doubt on whether the conclusion reached by the Regional Board to exceed the 50% threshold is actually based on exceptional circumstances, and whether these circumstances present a compelling justification for deviating from the SEP Policy. By subverting the required process, the Regional Board undermined the SEP Policy and its goals of protecting the State Water

Board's and the public's interest in effective, meaningful, and impartial enforcement of the Porter-Cologne Act and the Clean Water Act.

In addition to the procedural flaws in adopting the Settlement, CSPA does not believe compelling justifications exist to allow the City to spend over 50% of the total assessed liability funding a program it should have already undertaken to comply with the law. CSPA explained some of the bases for its positions in its letters dated September 10 and November 20. *See* Exhibits F and H. However, as the Regional Board had not circulated any of the required information prior to the hearing on the Settlement, CSPA was not able to respond to any of the specific details and alleged justifications the Regional Board may believe exist. CSPA and the general public were deprived of the opportunity to present specific comments on whether the justification the Regional Board believes exist are in fact compelling. The only way to remedy this problem is to remand the Settlement so it may be adopted following the process and procedures required by the law.

CSPA therefore respectfully requests the State Water Board remand the Settlement to the Regional Board to reconsider it and subsequently issue an order consistent with the procedural and substantive requirements of the SEP Policy.

#### **V. How the Petitioner Is Aggrieved**

The Petitioner is a non-profit, environmental organization with a direct interest in reducing pollutant discharges to waters within the Sacramento River watersheds, including the tributaries to Sacramento River. Petitioner also has a direct interest in the Regional Board and State Water Board properly and effectively implementing the Clean Water Act and the Porter-Cologne Act in California, including specifically by ensuring enforcement efforts achieve the goals of these statutes.

Petitioner's members reside in communities whose prosperity depends, in part, upon the quality of water available for agricultural supply, recreational uses, and fish habitat. To protect these interests, the Petitioner's members depend on the consistent and dutiful implementation of the law by the Regional Board. Petitioner routinely reviews and comments on proposed Regional Board actions, and is engaged in educational activities and the monitoring of water quality in the Sacramento River watershed. Petitioner and the general public are aggrieved by the Regional Board's Settlement, because it does not provide all of the procedural and substantive protections required by the law.

#### **VI. Specific Action By the State Water Board or Regional Board that Petitioner Requests**

Petitioner seeks an order from the State Water Board remanding the Settlement to the Regional Board with instructions to (a) follow the procedures required by the law when adopting a settlement that includes a SEP that exceeds more than 50% of the total assessed liability, and (b) issue an order consistent with the procedural and substantive requirements of the SEP Policy.

**VII. Statement of Points and Authorities for Legal Issues Raised in Petition**

Petitioner sets forth its legal bases and support for the State Water Board to remand the Settlement in Section IV above, as well as in letters submitted to the Regional Board on September 10, 2012 and November 20, 2012, and in oral testimony at the hearing on December 6, 2012.

**VIII. Copies of the Petition Have Been Sent to Regional Board**

The Petitioner sent copies of this petition to the Regional Board on the same date that the petition was filed with the State Water Board. The Petitioner also sent a copy of this petition to the City of Redding.

**IX. Issues Presented in Petition Were Presented to the Regional Board Before the Regional Board Acted**

The Petitioner raised all of the issues presented in this petition during the administrative process that culminated in the adoption of the Settlement. The Petitioner provided written comments on September 10, 2012 and November 20, 2012, which are attached as Exhibits F and H. Petitioner also provided oral testimony at the hearing on December 6, 2012 when the Regional Board adopted the Settlement. All oral and written testimony is incorporated herein by reference.

**X. Conclusion**

For the reasons explained above and set forth in written comments and oral testimony, the Regional Board's Settlement is contrary to the SEP Policy and thus inconsistent with the Porter-Cologne Act and the Clean Water Act. The State Water Board must therefore remand the Settlement to the Regional Board with directions to reconsider it following the procedures required by the SEP Policy.

Respectfully submitted,

Dated: January 7, 2013

By:



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Drevet Hunt

Lawyers for Clean Water, Inc. on behalf of California Sportfishing Protection Alliance

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CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

In the matter of:	)	
	)	
<b>City of Redding</b>	)	
<b>Redding Department of</b>	)	<b>Order No. R5-2012-0112</b>
<b>Public Works</b>	)	
	)	
<b>Administrative Civil Liability</b>	)	<b>Settlement Agreement and Stipulation</b>
<b>Complaints Nos. R5-2011-0587</b>	)	<b>for Entry of Order; Order</b>
<b>R5-2011-0570, and NOVs as</b>	)	
<b><u>Described Herein</u></b>	)	

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order ("Agreement" or "Stipulated Order" or "Order") is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff"), and the City of Redding ("Respondent") (collectively the "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. Respondent owns and operates a municipal sanitary sewer system in the City of Redding, including two domestic wastewater treatment plants and associated wastewater collection systems; the Clear Creek Wastewater Treatment Plant (Clear Creek WWTP) located at 2200 Metz Road, Redding, Shasta County, and the Stillwater Wastewater Treatment Plant (Stillwater WWTP) located at 6475 Airport Road, Anderson, Shasta County. The Clear Creek WWTP operated under WDR Order No. R5-2003-0130 (NPDES No. CA0079731) ("2003 Clear Creek NPDES Permit") from 5 September 2003 to 22 September 2010, and continues to operate under WDR Order No. R5-2010-0096 (NPDES No. CA0079731) ("2010 Clear Creek NPDES Permit") from 23 September 2010 to the present day. The Stillwater WWTP operates under WDR Order No. R5-2007-0058 (NPDES No. CA0082589) ("2007 Stillwater NPDES Permit"). The collection system is also subject to State Water Resources Control Board ("State Water Board") Order No. WQ-2006-0003 for Sanitary Sewer Systems ("SSO General Order").
2. On 11 May 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0570 ("May 2011 Complaint") to the Respondent (Attachment A). The Complaint recommends imposing an administrative civil liability totaling \$72,000 for alleged effluent limitation violations resulting from a

chlorine excursion at the Stillwater WWTP in January, 2011 ("Alleged May 2011 ACL Violations"). The proposed administrative civil liability includes staff costs of \$4,750.

3. On 19 July 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0587 ("July 2011 Complaint") to the Respondent (Attachment B). The Complaint recommends imposing an administrative civil liability totaling \$200,000 for alleged effluent limitation violations and mandatory minimum penalties for discharges from the Clear Creek WWTP during the period of 17 December 2009 to 2 April 2011 ("Alleged July 2011 ACL Violations"). The proposed administrative civil liability includes staff costs of \$4,350.

4. On 14 February 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for an alleged chlorine residual effluent limit violation (Alleged Chlorine Violation) at the Stillwater WWTP (Attachment C). The Notice of Violation was referred to the Executive Officer of the Central Valley Water Board for further enforcement action, resulting in the May 2011 Complaint.

5. On 31 May 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for an alleged dichlorobromomethane effluent limit violation ("Alleged DCBM Violation") at the Stillwater WWTP (Attachment D). The Notice of Violation was referred to the Executive Officer of the Central Valley Water Board for further enforcement action.

6. On 18 May 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for multiple alleged effluent limit violations and for allegedly bypassing filtration treatment for a portion of inflow between 23 March 2011 and 3 April 2011 at the Clear Creek WWTP, and on 18 May 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for bypassing filtration treatment for a portion of inflow between 26 March 2011 and 28 March 2011 at the Stillwater WWTP (Attachments E & F). The Notices of Violation alleged that the bypass events were in violation of Discharge Prohibitions and Standard Provision I.G.3. in both the 2010 Clear Creek NPDES Permit and the 2007 Stillwater NPDES Permit ("Alleged Bypass Violations"). The Notices of Violation were referred to the Executive Officer of the Central Valley Water Board for further enforcement action.

7. On June 20, 2012, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for alleged effluent limit violations for pH (Alleged pH Violations) at the Stillwater WWTP (Attachment G). The alleged violations occurred on 12 January 2012 and 13 January 2012. The Notice of Violation was referred to the Executive Officer of the Central Valley Water Board for further enforcement action.

8. The Prosecution Team determined that between 3 September 2007 and 31 May 2012 the Respondent reported into the California Integrated Water Quality System ("CIWQS") database 78 alleged violations related to sanitary sewer overflows from the Clear Creek and Stillwater collection systems ("Alleged SSO Violations"), two of which

had been previously resolved by settlement under the terms of Administrative Civil Liability Order R5-2009-0549. On both 15 February 2011 and 13 April 2012, the Supervising Engineer of the Central Valley Water Board issued Notices of Violation for alleged violations related to various sanitary sewer overflows included in the CIWQS database (Attachments H and I). Discharges of sewage from the collection system are prohibited under the 2003 Clear Creek NPDES Permit, the 2010 Clear Creek NPDES Permit, the 2007 Stillwater NPDES Permit, and the SSO General Order. A list of the remaining 76 alleged violations is included in Attachment J.

9. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the Complaints and the Notices of Violation except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

10. To resolve the Alleged May 2011 ACL Violations, the Alleged July 2011 ACL Violations, the Alleged Chlorine Violation, the Alleged Bypass Violations, the Alleged DCBM Violation, the Alleged pH Violations and the Alleged SSO Violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$1,450,000 in liability against the Respondent. The Respondent agrees to expend \$800,000 toward a Supplemental Environmental Project ("SEP"). The Respondent shall also pay a total of \$225,000 to the State Water Pollution Cleanup and Abatement Account, consisting of approximately \$10,000 in staff costs, \$21,000 in mandatory minimum penalties, and the balance in stipulated penalties. The remaining \$425,000 in liability will be progressively suspended if the Respondent meets progressive annual milestones associated with completion of the SEP as set forth in this stipulation.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

11. **Administrative Civil Liability:** Respondent hereby agrees to the imposition of an administrative civil liability totaling \$1,450,000 as set forth in Paragraph 10 of Section II herein. Within thirty (30) days of the effective date of this Order, Respondent agrees to remit, by check, TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. Respondent shall send the original signed check to Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and shall send a copy to Robert Crandall, Regional Water Quality Control Board, Central Valley Region 364 Knollcrest Drive, Suite 200, Redding, CA 96002. Further, the Parties agree that \$800,000 of this administrative civil liability shall be suspended pending completion of the SEP ("SEP Suspended Liability"), and that \$425,000 shall be suspended and shall be progressively

waived pending completion of SEP project milestones ("Suspended Liability"). The SEP Suspended Liability and Suspended Liability amounts will be waived upon completion of the following:

- a. Completion of Private Sewer Lateral Replacement Program SEP as set forth in Paragraphs 10 through 22 of Section III herein and Attachment K attached hereto and incorporated by reference (\$800,000);
- b. Timely progress toward completion of the Private Sewer Lateral Replacement Program by meeting a series of annual goals for specified program expenditures (Private Sewer Lateral SEP Deliverables) as set forth in Attachment L attached hereto and incorporated by reference (\$425,000).

**12. SEP Descriptions:** The Parties agree that this Stipulation includes the performance of these two SEP project milestones:

- a. **Private Sewer Lateral Replacement Program SEP:** The goal of this project is to reduce inflow and infiltration (I/I) into the Discharger's collection system from defective private sewer laterals. A reduction in I/I will benefit surface water quality and beneficial uses by decreasing the number and volume of spills of untreated or partially treated sewage from the Discharger's collection system to surface waters during wet weather. In addition, the program will reduce the amount of flow to the Clear Creek and Stillwater WWTPs during wet-weather events, avoiding the need to bypass wastewater treatment. Detailed plans concerning how the Discharger will implement the Private Sewer Lateral Replacement Program SEP are provided in the SEP proposal included herein as Attachment K.
- b. **SEP Completion Dates:** The Private Sewer Lateral Replacement Program SEP shall be concluded, and a Certificate of Completion shall be provided to the Regional Board by February 1, 2018. ("Private Sewer Lateral Replacement Program SEP Completion Date"). The SEP shall be implemented in accordance with the schedule and milestone dates provided in the Private Sewer Lateral SEP Deliverables included as Attachment L.

**13. Agreement of Discharger to Fund, Report, and Guarantee Implementation of SEP:** Respondent represents that: (1) it will fund the SEP in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Central Valley Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) Respondent will guarantee implementation of the SEP by remaining liable for the SEP Suspended Liability in accordance with paragraph 19 of Section III, until the SEP is completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulation. Respondent agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEP.

**14. Oversight of SEP:** Respondent is solely responsible for paying for all oversight costs incurred to oversee the SEP. The SEP oversight costs are in addition to the total administrative civil liability imposed against the Respondent and are not credited toward Respondents obligation to fund the SEP.

**15. SEP Progress Reports:** Respondent shall provide quarterly reports of progress to a Designated Central Valley Regional Board Representative, and the State Water Resources Control Board's Division of Financial Assistance, commencing 90 days after this Stipulation becomes final and continuing through submittal of the Certificate of Completion described below in Paragraph 16. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

**16. Certification of Completion of SEP:** On or before the applicable SEP Completion Date, Respondent shall submit a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Central Valley Water Board Representative and the State Water Resources Control Board's Division of Financial Assistance, by a responsible official representing the Respondent. The Certification of Completion shall include the following:

- a. Certification that the SEP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the Respondent.
- b. Certification documenting the expenditures by Respondent during the completion period for the SEP. Expenditures may be external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company 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 Central Valley Water Board for oversight. Respondent shall provide any additional information requested by the Central Valley Water Board staff which is reasonably necessary to verify SEP expenditures.
- c. Certification, under penalty of perjury, that Respondent 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, Respondent shall provide the Central Valley Water Board with the following documents from the lead agency prior to commencing SEP construction:
  - i. Categorical or statutory exemptions relied upon;

- ii. Negative declaration if there are no potentially "significant" impacts;
- iii. Mitigated negative declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
- iv. Environmental Impact Report (EIR)

**17. Third Party Financial Audit:** In addition to the certification, upon completion of the SEP and at the written request of the Central Valley Water board, Respondent, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Central Valley Water Board staff, or its designated representative, providing such party's(ies') professional opinion that the Respondent and/or an implementing party (where applicable) have expended money in the amounts claimed by Respondent. The audit report shall be provided to the Central Valley Water Board staff within three months of notice from Central Valley Water Board to Respondent of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

**18. Central Valley Water Board Acceptance of Completed SEP:** Upon Respondent's satisfaction of its SEP obligations under this Stipulation and completion of the SEP and any audit requested by the Central Valley Water Board, Central Valley Water Board staff shall send Respondent a letter recognizing satisfactory completion of its SEP obligations under this Stipulation. This letter shall terminate any further SEP obligations of Respondent and result in the permanent waiver of the SEP Suspended Liability and Suspended Liability.

**19. Failure to Expend all SEP Suspended Liability Funds on the approved SEP:** In the event that Respondent is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board staff that the entire SEP Suspended Liability has been spent to complete the components of the SEP for which Respondent is financially responsible, Respondent shall pay the difference between the SEP Suspended Liability and the amount Respondent can demonstrate was actually spent on the SEP as an administrative civil liability. Respondent shall pay this remainder within 30 days of its receipt of notice of the Central Valley Water Board's determination that Respondent has failed to demonstrate that the entire SEP Suspended Liability has been spent to complete the SEP components.

**20. Force Majeure:** In the event that the SEP is not performed in accordance with the specific terms and conditions, including the time schedule, detailed in Attachments K and L, due to circumstances beyond the reasonable control of the Respondent and which could not have been reasonably foreseen and prevented by the exercise of due diligence, the Respondent will provide written notice to the designated Central Valley Water Board staff within five days of the date Respondent first knew of the event or circumstance that caused the deviation from the SEP terms and conditions. The final determination as to whether the circumstances were beyond the reasonable control of Respondent will be made by the Executive Officer of the Central Valley Water Board. In

this event, the parties agree to meet and confer regarding an extension of time to complete the SEP.

For purposes of this Agreement, a "force majeure" is defined as an event which could not have been anticipated by Respondent, is beyond the control of Respondent, and is of such great import and character, including but not limited to an act of God; earthquake; flood and any other natural disaster; civil disturbance and strike; fire and explosion; declared war in the United States; or embargo. To trigger the force majeure protection under the Agreement, Respondent must demonstrate that timely compliance with the SEP and/or any affected interim deadlines will be actually and necessarily delayed, that it has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions and efforts, whether before or after the occurrence of the cause of the delay; and Respondent provides written notice as described above. Delays caused by actions under the control of the Respondent will not constitute a force majeure.

For purposes of this Agreement, a "force majeure" does not include delays caused by funding, easements, contractor performance, equipment delivery and quality, weather, permitting, and other related issues. In addition, this Agreement is not subject to modification based on force majeure due to construction delays, CEQA challenges, initiative litigation, adverse legislation, or other matters of a legal nature.

**21. Failure to Complete the SEP:** Except as provided in paragraph 20, if the SEP is not fully implemented within the SEP completion dates required by this Stipulation, the Designated Central Valley Water Board Representative shall issue a Notice of Violation. As a consequence, Respondent shall be liable to pay the entire Suspended Liability or, some portion thereof less the value of the completion of any milestone requirements. Unless otherwise ordered, Respondent shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Central Valley Water Board's determination. In addition, Respondent shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy Respondent's obligations to implement the SEP.

**22. Publicity:** Should Respondent 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 Central Valley Water Board against Respondent.

**23. Compliance with Applicable Laws:** Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or

compliance with the terms of this Stipulated 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.

**24. Party Contacts for Communications related to Stipulated Order:**

**For the Regional Water Board:**

Bryan Smith  
Regional Water Quality Control Board  
Central Valley Region  
364 Knollcrest Drive, Suite 200  
Redding, CA 96002

**For Respondent:**

Jon McClain  
City of Redding Department of Public Works  
P.O. Box 496071  
Redding, CA 96049

**25. Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

**26. Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaints, Notices of Violation, and all claims, violations or causes of action that could have been asserted against the Respondent as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaints, Notices of Violation or this Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 10.

**27. Public Notice:** Respondent understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. Respondent agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

**28. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the

Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

**29. No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

**30. 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.

**31. Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.

**32. If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- 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.

**33. No Admission of Liability:** In settling this matter, Respondent does not admit to any of the findings in the Complaints, Notices of Violation, this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Respondent recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

**34. Waiver of Hearing:** Respondent has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

**35. Waiver of Right to Petition:** Respondent hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written 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.

**36. Covenant Not to Sue:** Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

**37. Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

**38. Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

**39. No Third Party Beneficiaries.** This Stipulated Order 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 Stipulated Order for any cause whatsoever.

**40. Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.

**41. 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.**

California Regional Water Quality Control Board Prosecution Staff  
Central Valley Region

By:   
Pamela Creodon  
Executive Officer

Date: August 7, 2012

City of Redding

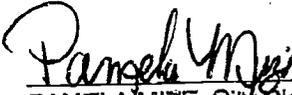
By:

  
KURT STARMAN, CITY MANAGER

Date:

8/1/12

ATTEST:

  
PAMELA MIZE, City Clerk

Form Approved

  
Barry E. DeWalt  
Assistant City Attorney

**Order of the Central Valley Water Board**

42. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.

43. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000, et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

44. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

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

  
(Signature)

KENNETH D. LANDAU, ASST. EXEC. OFFICER  
(Print Name and Title)

Date: 6 DECEMBER 2012

**Exhibit B**

**STATE WATER RESOURCES CONTROL BOARD  
RESOLUTION NO. 2009-0013**

**ADOPT THE POLICY ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

**WHEREAS:**

1. California Water Code (WC) section 13001 provides that it is the intent of the Legislature that the State Water Resources Control Board (State Water Board) and each Regional Water Quality Control Board (Regional Water Board) shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The State and Regional Water Boards shall conform to and implement the policies of the Porter-Cologne Water Quality Control Act (Division 7, commencing with WC section 13000) and shall coordinate their respective agencies so as to achieve a unified and effective water quality control program in the state;
2. WC section 13140 provides that the State Water Board shall formulate and adopt State Policy for Water Quality Control;
3. WC section 13142(c) provides that State Policy for Water Quality Control shall consist of principles and guidelines deemed essential by the State Water Board for water quality control;
4. WC section 13240 provides that Water Quality Control Plans (Basin Plans) shall conform to any State Policy for Water Quality Control;
5. The State and Regional Water Boards have broad authority to take a variety of enforcement actions under the Porter-Cologne Water Quality Control Act;
6. WC section 13385(i) allows use of Supplemental Environmental Projects (SEPs) associated with mandatory minimum penalties. California WC section 13399.35 also allows use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. Government Code section 11415.60 has been interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an administrative enforcement action;
7. The Water Quality Enforcement Policy requires that it "shall be reviewed and revised, as appropriate, not later than every five (5) years";
8. The State Water Board, upon the recommendation of the Management Coordinating Committee, developed the Policy on Supplemental Environmental Projects; to replace existing policy on SEPs set forth in the "Water Quality Enforcement Policy, Section IX, February 2002."
9. The State Water Board published a public notice of the proposed policy in October 2008. After consideration of the comments received, the proposed policy was revised;
10. Adoption of this policy is categorically exempt from the California Environmental Quality Act under California Code of Regulations, title 14, section 15321.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Rescinds "Water Quality Enforcement Policy Section IX. Supplemental Environmental Projects";
2. Adopts the [Policy on Supplemental Environmental Projects](#);
3. Authorizes the Executive Director or designee to submit the Policy on Supplemental Environmental Projects to the Office of Administrative Law (OAL) for review and approval; and
4. If, during the OAL approval process, OAL determines that minor, non-substantive modifications to the language of the Policy are needed for clarity or consistency, directs the Executive Director or designee to make such changes and inform the State Water Board of any such changes.

#### CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on February 3, 2009.

AYE: Chair Tam M. Doduc  
Arthur G. Baggett, Jr.  
Charles R. Hoppin  
Frances Spivy-Weber

NAY: None

ABSENT: None

ABSTAIN: None



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Jeanine Townsend  
Clerk to the Board

**STATE WATER RESOURCES CONTROL BOARD**

**POLICY  
ON  
SUPPLEMENTAL  
ENVIRONMENTAL PROJECTS**

February 3, 2009

**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

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## INTRODUCTION

The State Water Board or Regional Water Board may allow a discharger to satisfy part of the monetary assessment imposed in an administrative civil liability (ACL) order by completing or funding one or more Supplemental Environmental Projects (SEPs.) SEPs are projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACL action, are not otherwise required of the discharger. California Water Code section 13385(i) allows limited use of SEPs associated with mandatory minimum penalties. California Water Code section 13399.35 also allows limited use of SEPs for up to 50 percent of a penalty assessed under section 13399.33. In the absence of other statutory authority in the Water Code regarding the use of SEPs, Government Code section 11415.60 has been interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an ACL.

The State Water Board supports the inclusion of SEPs in ACL actions, even when SEPs are not expressly authorized, so long as these projects meet the criteria specified below to ensure that the selected projects have environmental value, further the enforcement goals of the State Water Board and Regional Water Boards (Water Boards), and are subject to appropriate input and oversight by the Water Boards. These criteria should also be considered when the State Water Board or a Regional Water Board considers a SEP as part of the settlement of civil litigation.

SEPs are an adjunct to the Water Boards' enforcement program and are never the basis or reason for bringing an enforcement action. While SEPs can be useful in the facilitation of settlements, the funding of SEPs is not a primary goal of the Water Boards' enforcement program nor is it necessary that a SEP always be included in the settlement of an enforcement action that assesses a monetary liability or penalty.

### ***A. Addressing the State Water Board's Interest in Supplemental Environmental Projects***

While many other jurisdictions require that penalties and administrative liabilities be paid into a general fund, administrative civil liabilities and civil penalties assessed under the Water Code are paid into special funds for specific environmental purposes. The State Water Board has a strong interest in monitoring the use of funds for SEPs that would otherwise be paid into accounts for which it has statutory management and disbursement responsibilities. As a general rule, unless otherwise permitted by statute, no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the discharger, absent compelling justification. The total adjusted monetary assessment is the total amount assessed, exclusive of a Water Board's investigative and enforcement costs.

If a Regional Water Board proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, that Regional Water Board shall affirmatively notify the Director of the Office of Enforcement of the State Water Board of that proposal. The notification shall describe in detail the proposed SEP, the settlement value of the SEP, the reasons why the Regional Water Board proposes to accept the SEP in lieu of a monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit. If the Director of the Office of Enforcement of the State Water Board determines that there is no compelling justification, he or she shall notify the Regional Water Board of that determination and the Regional Water Board will be limited to the 50 percent limit.

## ***B. General Considerations***

### **1. Types of SEPs**

There are two general categories of SEPs: (1) SEPs performed by the discharger; and (2) SEPs performed by third-parties paid by the discharger. Third-party entities that are paid to perform a SEP must be independent of both the discharger and the Water Board. Any actual or apparent conflict of interest must be avoided. A third-party is not independent if it is legally or organizationally related to the discharger or the Water Board. A contract between the discharger and the third-party for the performance of a SEP that allows the discharger to ensure that the SEP is completed pursuant to the terms of the contract, does not affect whether that third-party is otherwise independent of the discharger for the purposes of this Policy.

### **2. Accounting Treatment**

The monetary value of a SEP will be treated as a suspended liability. Unless otherwise required by law, any order imposing a SEP shall state that, if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended penalty, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone. Full payment of the penalty shall be in addition to any other applicable remedies for noncompliance with the terms of the order.

## ***C. General SEP Qualification Criteria***

Nothing in this policy restricts the Regional Water Boards from establishing additional, more stringent criteria for SEPs. All SEPs approved by a Water Board must, at a minimum, satisfy the following criteria:

1. A SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger. The SEP shall not be an action, process, or product that is otherwise required of the discharger by any rule or regulation of any federal, state, or local entity or is proposed as mitigation to offset the impacts of a discharger's project(s). (Note: "Compliance Projects" as authorized by Water Code section 13385(k)(1) are not SEPs.)
2. The SEP shall 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<sup>1</sup>:
  - a. monitoring programs;
  - b. studies or investigations (e.g., pollutant impact characterization, pollutant source identification, etc.);
  - c. water or soil treatment;
  - d. habitat restoration or enhancement;
  - e. pollution prevention or reduction;
  - f. wetland, stream, or other waterbody protection, restoration or creation;
  - g. conservation easements;
  - h. stream augmentation;
  - i. reclamation;
  - j. watershed assessment (e.g., citizen monitoring, coordination and facilitation);
  - k. watershed management facilitation services;
  - l. compliance training, compliance education, and the development of educational materials;
  - m. enforcement projects, such as training for environmental compliance and enforcement personnel; and
  - n. non-point source program implementation.

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<sup>1</sup> Nothing in this section is intended to affect the authority of the State Water Board to make disbursements from the State Water Pollution Cleanup and Abatement Account, including but not limited to, authorized disbursements for education projects.

3. A SEP shall never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff. Any indirect benefits provided to members, staff, or family shall be only those that are enjoyed by the public generally. A SEP shall not benefit or involve friends of members, staff, or family where there could be an appearance of undue influence, suggesting an actual or apparent conflict of interest for the Water Boards.
4. As contemplated by this policy, a SEP is a project or group of projects, the scope of which is defined at the time the SEP is authorized by a Water Board. The placement of settlement funds into an account or fund managed by a Regional Water Board that is not an account or fund authorized by statute or otherwise allowed by the State Water Board is not permissible. If a Regional Water Board wishes to establish any fund that is designed to receive money that is paid by a discharger to resolve a claim of liability under the Water Code, the Regional Water Board should obtain the express authorization of the State Water Board. Such authorization will be subject to conditions that the State Water Board may place on such a fund.

#### ***D. Additional SEP Qualification Criteria***

The following additional criteria shall be evaluated by the Water Boards during final approval of SEPs:

1. Does the SEP, when appropriate, include documented support by other public agencies, public groups, and affected persons?
2. Does the SEP directly benefit the area where the harm occurred or provide a region-wide or statewide use or benefit?
3. Does the SEP proposal, considering the nature or the stage of development of the project, include documentation that the project complies with the California Environmental Quality Act?
4. Does the SEP proposal address whether it can be the basis for additional funding from other sources?
5. Does the entity identified as responsible for completing the SEP have the institutional stability and capacity to complete the SEP? Such consideration should include the ability of the entity to accomplish the work and provide the products and reports expected.
6. Does the SEP proposal include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project?

## ***E. Nexus Criteria***

There must be a nexus between the violation(s) and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP. A nexus exists if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.

## ***F. Project Selection***

Each Regional Water Board will maintain a list of the SEPs that it has authorized pursuant to an order. The list of authorized SEPs shall be available on the Regional Water Board's web site. A Regional Water Board also may maintain and post on its web site a list of environmental projects that it has pre-approved for consideration as a potential SEP. Each Regional Water Board may determine when and how it wishes to consider an environmental project for placement on its list of potential SEPs.

## ***G. Orders Allowing SEPs***

When SEPs are appropriate, they are imposed as stipulated ACL orders, in settlement of an ACL complaint or some other order entered under the authority of a Water Board. There is no legal authority for an ACL complaint to contain a proposed SEP. Funding for SEPs is addressed as a suspended liability.

All orders that include a SEP must:

1. Include or reference a scope of work, including a budget.
2. Require periodic reporting (quarterly reporting at a minimum) on the performance of the SEP by the discharger to the Water Board to monitor the timely and successful completion of the SEP. Copies of the periodic reports must be provided to the Division of Financial Assistance of the State Water Board.
3. Include a time schedule for implementation with single or multiple milestones and that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone. Except for the final milestone, the amount of the liability suspended for any portion of a SEP cannot exceed the projected cost of performing that portion of the SEP.
4. Contain or reference performance standards and identified measures or indicators of performance in the scope of work.

5. Specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators.
6. Require that whenever the discharger, or any third party with whom the discharger contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Water Board enforcement action.

Any portion of the liability that is not suspended shall be paid to the CAA or other fund or account as authorized by statute. The order shall state that failure to pay any required monetary assessment on a timely basis will cancel the provisions for suspended penalties for SEPs and that the suspended amounts will become immediately due and payable.

It is the discharger's responsibility to pay the suspended amount(s) when due and payable, regardless of any agreements between the discharger and any third party contracted to implement or perform the project.

Upon completion of the SEP, the Water Board shall provide the discharger with a statement indicating that the SEP has been completed in satisfaction of the terms of the order and that any remaining suspended liability is waived.

#### ***H. Project Payment, Tracking, Reporting and Oversight Provisions***

Except under unusual circumstances, ACL orders shall include the provisions for project payment, tracking, reporting, and oversight as follows:

1. For any SEP that requires oversight by the State Water Board or Regional Water Board, the full costs of such oversight must be covered by the discharger. Based on its resource constraints, the Water Board may require the discharger to select and hire an independent management company or other appropriate third party, which reports solely to the Water Board, to oversee implementation of the SEP in lieu of oversight by Water Board staff. If no arrangement for the payment for necessary oversight can be made, the SEP shall not be approved, except under extraordinary circumstances. As a general rule, such oversight costs are not costs that should be considered part of the direct cost of the SEP to the discharger for the purposes of determining the value of the SEP for settlement purposes unless the Regional Water Board or State Water Board expressly finds that such costs should be considered part of the SEP.

2. A written acknowledgment and other appropriate verification and enforceable representation to the Water Boards by each third-party performing the SEP that any SEP funds it receives from the discharger will be spent in accordance with the terms of the order. The third-party performing the SEP must agree to an audit of its SEP expenditures, if requested by the Water Board.
3. The discharger must provide the Water Board and the Division of Financial Assistance of the State Water Board with a final completion report, submitted under penalty of perjury, declaring the completion of the SEP and addressing how the expected outcome(s) or performance standard(s) for the project were met. Where a third-party performed the SEP, that entity may provide the report and the certification.
4. The discharger must provide the Water Board a final, certified, post-project accounting of expenditures, unless the Water Board determines such an audit is unduly onerous and the Water Board has other means to verify expenditures for the work. Such accounting must be paid for by the discharger and must be performed by an independent third-party acceptable to the Water Board.
5. The Water Board will not manage or control funds that may be set aside or escrowed for performance of a SEP unless placed in an account authorized by statute or permitted by the State Water Board.
6. The Water Board does not have authority to directly manage or administer the SEP.
7. Where appropriate, it is permissible for a SEP funding agreement between a discharger and a third-party to require pre-approval of invoices or confirmation of completed work by a Water Board before escrowed or set-aside funds are disbursed to the party performing the work.

### ***I. Public Reporting of SEP Status Information***

The State Water Board shall post on the State Water Board website, by March 1 of each year, a list, by Regional Water Board, of the completed SEPs for the prior calendar year, and shall post information on the status of SEPs that are in progress during that period.

**Exhibit C**

# **CAL/EPA RECOMMENDED GUIDANCE ON SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

**October 2003**

## **A. Introduction**

In settlement of environmental enforcement cases, Cal/EPA's Boards, Departments and Offices (BDOs) and local counterparts must insist upon terms that require defendants/respondents achieve and maintain compliance with environmental laws and regulations and where appropriate, pay a penalty for violations. The recovery of economic benefit and the imposition of additional gravity based penalties should be considered in every case. Additional relief remediating the adverse public health or environmental consequences of the violations at issue should be included in the settlement to offset the effects of the particular violation. As part of the settlement, the agreement may require the defendant/respondent to undertake supplemental environmentally beneficial expenditures that exceed regulatory requirements. These additional projects are known as supplemental environmental projects, or SEPs.

Evidence of a violator's commitment and ability to perform a SEP is factor in determining whether a SEP is appropriate. Although SEPs may not be appropriate in all instances, they can play an important part of an effective enforcement program. SEPs can play a role in securing additional significant environmental or public health protection. SEPs may be particularly appropriate to further the objectives in the statutes administered by the BDOs and local agencies, and to achieve policy goals such as pollution prevention and environmental restoration.

## **B. SEP Procedure**

In evaluating a proposed project to determine if it qualifies as a SEP, the following five-step procedure may be used:

1. Ensure that the project meets the basic definition of SEP (See Section C).
2. Ensure that all legal guidelines, including nexus, are satisfied (See Section D).
3. Ensure that the project fits within one (or more) categories of SEPs (See Section E).
4. Ensure that the cost of the project is appropriate in relationship to the fines paid (See Section F).
5. Ensure that the project satisfies all of the implementation and other criteria. (See Section G, H and I).

This guidance is intended to apply to all civil judicial and administrative enforcement actions taken under the authority of the environmental statutes and regulations administered by the Cal/EPA BDOs. It may also be used by local authorities enforcing related environmental ordinances and codes. Claims for stipulated penalties for violations of orders or settlement agreements should not be mitigated by the use of a SEP. This guidance is intended to assist in the settlement of an enforcement action, and thus is not intended for use by any party at a hearing or trial. In addition, the amount of any penalty mitigation that may be given for a SEP is strictly within the discretion of the administering agency, as is the determination of whether the use of a SEP is appropriate in any particular case.

### **C. Definition and Key Characteristics of a SEP**

Supplemental environmental projects are defined as environmentally beneficial projects that a defendant/respondent agrees to undertake in settlement of an enforcement action, but which the defendant/respondent is not otherwise legally required to perform. The three key parts of this definition are elaborated as follows:

1. “Environmentally beneficial” means a SEP must improve, protect, or reduce risks to public health or the environment at large. While in some cases a SEP may provide the alleged violator with certain benefits, there must be no doubt that the project primarily benefits the public health or the environment.
2. “In settlement of an enforcement action” means (1) The enforcing agency has the opportunity to help shape the scope of the project before it is implemented; and (2) the project is not commenced until after the enforcing agency has identified a violation (e.g., issued a notice of violation, administrative order, or complaint).
3. “Not otherwise legally required to perform” means the SEP is not required by a federal, state, or local law or regulation. Further, SEPs cannot include actions that the defendant/respondent may be legally required to perform, such as:
  - a. Injunctive relief in the instant case, or in another legal action that an enforcement agency could bring;
  - b. part of an existing settlement or order in another legal action; or
  - c. federal, state or local requirements.

SEPs may include activities that the defendant/respondent will become legally obligated to undertake two or more years in the future. Such “accelerated compliance” projects are not allowable, however, if the regulation or statute provides a benefit (e.g., a higher emission limit) to the defendant/respondent for early compliance.

Performance of a SEP reduces neither the stringency nor timeliness requirements of applicable environmental statutes and regulations. Of course, performance of a SEP does not alter the defendant/respondent's obligation to remedy a violation expeditiously and return to compliance.

For many of these projects, the defendant/respondent may lack the experience, knowledge or ability to conduct and /or implement the project. In these instances the defendant/respondent should be required to contract with an appropriate expert to develop and implement the compliance promotion project

#### **D. Legal Guidelines**

Environmental regulatory agencies have broad discretion to settle cases, including the discretion to include a SEP as an appropriate part of the settlement. The legal evaluation of whether a proposed SEP is within the regulatory agencies' authority and consistent with all statutory and constitutional requirements may be a complex task and should be thoroughly evaluated by the individual agency.

As noted by the Attorney General, statutes and case law allow administrative agencies to settle cases prior to trial or hearing containing sanctions that an agency would not otherwise have the authority to impose (Attorney General Opinion No. 00-510, July 25, 2000). The Attorney General also notes the ability to enter into creative settlements is limited by the caveat that no such settlement shall violate public policy and must further the goals and purposes of the agency. The Opinion concluded that an agency may not enter into a settlement that requires payment of funds that support activities unrelated to the regulatory enforcement responsibilities of the agency.

With this in mind, the following are required when a SEP is considered:

1. A project cannot be inconsistent with any provision of the underlying statutes. In addition a project shall advance at least one of the declared objectives of the environmental statutes that are the basis of the enforcement action.
2. All projects should have adequate "nexus" to the regulatory enforcement responsibilities of the agency. Nexus is the relationship between the violation and the proposed project. This relationship exists if the project remediates or reduces the probable overall environmental or public health impacts or risks to which the violation at issue contributes, or if the project is designed to reduce the likelihood that similar violations will occur in the future.
3. The type and scope of each SEP should be clearly defined in the signed settlement document. Thus a SEP that has terms that are intended to be defined after the settlement document is entered into should be avoided.

## **E. Categories of Supplemental Environmental Projects**

There are several types of projects that may be appropriate as SEPs:

### **1. Environmental Compliance Promotion**

An environmental compliance promotion project provides training, technical support, or publication media to other members of the regulated community to: (1) identify, achieve and maintain compliance with applicable statutory and regulatory requirements; (2) avoid committing a violation with respect to such statutory and regulatory requirements; or (3) go beyond compliance by reducing the generation, release or disposal of pollutants beyond legal requirements. Acceptable projects may include, for example, producing or sponsoring a seminar directly related to correcting widespread or prevalent violations within the defendant/respondent's economic sector.

Environmental compliance promotion SEPs are acceptable where the primary impact of the project is focused on the same regulatory program requirements that were violated, and where the administering agency has reason to believe that compliance in the sector would be significantly advanced by the proposed project. The defendant/respondent should be required to note in any promotional material or credits that the production of the promotion is in response to an enforcement action against the respondent/defendant.

### **2. Enforcement Projects**

Such projects may include contributions to environmental enforcement, investigation and training programs as provided in Penal Code section 14300 and/or contributions to nonprofit organizations such as the California District Attorneys Association, the Californian Hazardous Materials Investigators Association and the Western States Project. These supplemental projects should be consistent with the settlement contribution guidelines for these respective organizations.

### **3. Emergency Planning and Preparedness**

An emergency planning and preparedness project provides assistance, such as computers and software, equipment, or training, to an emergency response or planning entity. This is to enable these organizations to fulfill their obligations under the federal Emergency Right to Know Act and state statutes to collect information to assess the dangers of hazardous chemicals present at facilities within their jurisdiction, to develop emergency response plans, to train emergency response personnel and to better respond to chemical spills.

Emergency planning and preparedness SEPs are acceptable where the primary impact of the project is within the same emergency planning district affected by the violations.

#### 4. Pollution Prevention

A pollution prevention project is one which reduces the generation of pollution through “source reduction,” i.e., any practice which reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise being released into the environment prior to recycling, treatment or disposal. (After the pollutant or waste stream has been generated, pollution prevention is no longer possible, and the waste must be handled by appropriate recycling, treatment, containment, or disposal methods.)

Source reduction may include equipment or technology modifications, process or procedure modification, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, inventory control, or other operation and maintenance procedures. Pollution prevention also includes any project that protects natural resources through conservation or increased efficiency in the use of energy, water, or other materials. “In-process recycling,” wherein waste materials produced during a manufacturing process are returned directly to production as raw materials on site, is considered a pollution prevention project.

In all cases, for a project to meet the definition of pollution prevention, there must be an overall decrease in the amount and/or toxicity of pollution released to the environment, not merely a transfer of pollution among media. This decrease may be achieved directly or through increased efficiency (conservation) in the use of energy, water, or other materials.

#### 5. Pollution Reduction

If the pollutant or waste stream already has been generated or released, a pollution reduction approach, which employs recycling, treatment, containment or disposal techniques, may be appropriate. A pollution reduction project is one which results in a decrease in the amount and/or toxicity of any hazardous substance, pollutant or contaminant entering any waste stream, or otherwise being released into the environment by an operating business or facility by a means which does not qualify as “pollution prevention.” This may include the installation of more effective end-of-process control or treatment technology. This also includes “out-of-process recycling,” wherein industrial waste collected after the manufacturing process and/or consumer waste materials are used as raw materials for production off-site, reducing the need for treatment, disposal, or consumption of energy or natural resources.

#### 6. Environmental Restoration and Protection

An environmental restoration and protection project is one that goes beyond repairing the damage caused by the violation to enhance the condition of the ecosystem or immediate geographic area adversely affected. These projects may be used to restore or protect natural environments (such as ecosystems) and man-made environments such as facilities and buildings. Also included, is any project that protects the ecosystem from actual or potential damage resulting from the violation or improves the overall condition of the ecosystem. Examples of such projects include: restoration of a wetland in the same ecosystem in which the

facility is located; projects which provide for the protection of threatened or endangered species by improving critical habitat impacted by facility operations; or purchase and management of a watershed area by the defendant/respondent to protect a drinking water supply where the violation, e.g., a reporting violation, did not directly damage the watershed, but potentially could lead to damage due to unreported discharges.

With regards to man-made environments, such projects may involve the remediation of facilities and buildings provided such activities are not otherwise legally required. This includes the removal/mitigation of contaminated materials, such as soils, asbestos and leaded paint, which are a continuing source of releases and/or threat to individuals.

#### 7. Public Health

A public health project provides diagnostic, preventative and/or remedial components of human health care that is related to the actual or potential damage to human health caused by the violation. This may include epidemiological data collection and analysis, medical examinations of potentially affected persons, collection and analysis of blood/fluid/tissue samples, medical treatment and rehabilitation therapy. Public health SEPs are acceptable only where the primary benefit of the project is to the population that was harmed or put at risk by the violations.

#### 8. Other Types of Projects

Other types of projects may be determined to have environmental merit that do not fit within the above categories but are otherwise fully consistent with all other provisions of this guidance.

#### 9. Projects that are Not Acceptable as SEPs

The following are examples of the types of projects that should not be allowable as SEPs:

- a. General education or public environmental awareness projects, e.g., sponsoring public seminars, conducting tours of environmental controls at a facility, or promoting recycling in a community.
- b. Conducting a project, which, though beneficial to a community, is unrelated to environmental protection, e.g., making a contribution to charity, or donating playground equipment.

### **F. Penalties**

Even when conditions exist which justify the approval of a SEP, the penalty policies of the BDOs should still require that an adequate monetary penalty be assessed. This penalty should be sufficient to provide a deterrent effect as well as to remove any unfair competitive advantage or economic benefit gained by the facility defendant/respondent's prior noncompliance. Penalties help create the level playing field that businesses require to adequately address their environmental compliance needs, by ensuring that violators do not obtain an unfair economic

advantage over their competitors. Allowing “one free bite of the apple” is a disincentive for voluntary compliance, hurts law abiding businesses and requires the regulator to become the compliance manager for business, a function that is neither appropriate or within our limited resources. Penalties also encourage regulated entities to adopt pollution prevention and recycling strategies in order to minimize their pollutant discharges and reduce their potential liabilities.

In general, supplemental projects should be no more than 25 percent of the total settlement, exclusive of projected administrative costs.

### **G. Oversight and Drafting Enforceable SEPs**

The settlement agreement should accurately and completely describe the SEP. It should describe the specific actions to be performed by the defendant/respondent, and provide for a reliable and objective means to verify that the defendant/respondent has timely completed the project. This may require the defendant/respondent to submit periodic reports to the appropriate government agency or court. If an outside auditor is necessary to conduct this oversight, the defendant/respondent should be made responsible for the cost of any such activities in the settlement document. The defendant/respondent remains responsible for the quality and timeliness of any actions performed or any reports prepared or submitted by the auditor. A final report certified by an appropriate corporate official, and evidencing completion of the SEP, should be required.

The defendants/respondents should be required to quantify the benefits associated with the project and provide a report setting forth how the benefits were measured or estimated. The defendant/respondent should agree that whenever it publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action.

Settlements should specify that enforcing agencies are entitled to oversee SEP implementation to ensure that a project is conducted pursuant to the provisions of the settlement. The settlement should specify the legal recourse if the SEP is not adequately performed to the agency's satisfaction whether the SEP is performed by the violator or a third party contractor. Government should not retain authority to manage or administer the SEP.

The type, scope, and timing of each project are determined in the signed settlement agreement. Settlements in which the defendant/respondent agrees to spend a certain sum of money on a project(s) to be determined later are not recommended, however on a case by case basis where it is impractical to include the specifics of a project because it is not identified or fully developed at the time of the settlement, the violator should be required to open an escrow account and place funds in the account prior to finalizing settlement. This account would then be utilized to finance the projects as they are developed.

If necessary, there should also be a commitment in the SEP for long term monitoring and upkeep of the SEP. For example, if the SEP requires the construction of a wetland, then there should be a continuing input of water to the wetland so it retains its wetland character.

Pollution prevention, reduction, or environmental restoration projects should be defined narrowly for purposes of meeting supplemental environmental project policy guidelines. They should only be eligible as supplemental projects if they are designed to reduce, prevent, or ameliorate the effects of pollution at the defendant/respondent's facility or environ, as appropriate.

A defendant/respondent's offer to conduct a study regarding they own facility and/or operations, without an accompanying commitment to implement the results should not be eligible for penalty reduction.

The enforcing agency has sole discretion to decide whether it is technically and/or economically feasible to implement the results. There should be a clause in the agreement specifying that the penalty "offset" will be rescinded and the final assessed penalty reinstated in full should the agency decide that the results can be implemented but the defendant/respondent is unwilling to do so.

The form of SEPs easiest to oversee and implement are those that require a donation to a third party made at the time settlement is entered into. More difficult are those that require defendant/respondent to carry on activity over a period of time. These SEPs can require significant staff time to oversee and may be difficult to enforce if difficulties re encountered.

## **H. Failure of a SEP and Stipulated Penalties**

If a SEP is not completed satisfactorily, the defendant/respondent should be required pursuant to the terms of the settlement document, to pay stipulated penalties for its failure. The determination of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the defendant/respondent has made a good faith, timely effort to implement the SEP is at the sole discretion of the enforcing agency.

## **I. Documentation and Confidentiality**

In each case in which a SEP is included as part of a settlement, an explanation of the SEP with supporting materials must be included as part of the settlement agreement. The explanation of the SEP should demonstrate that the criteria set forth herein are met by the project and include a description of the expected benefits associated with the SEP. Settlement agreements should not allow that documentation and explanations of a SEP are confidential.

**Exhibit D**

## City of Redding Stillwater WWTP, Clear Creek WWTP & Sanitary Sewer System

*Settlement Agreement &  
Stipulation for Entry of  
Administrative Civil Liability  
Order*

Julie Macedo, Office of Enforcement



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## Orders Regulating City

- **Stillwater WWTP** NPDES WDR Order R5-2007-0058
- **Clear Creek WWTP** NPDES WDR Order R5-2003-0130 & NPDES WDR Order R5-2010-0096
- **Municipal Sanitary Sewer (Collection) System** Sanitary Sewer System (SSO) WDR General Order 2006-0003-DWQ

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## Alleged Violations Subject to Enforcement

Facility	Alleged Violations	Enforcement Action	Settlement
Stillwater	Jan. 2011 - Cl <sub>2</sub>	ACLCL (\$72K)	All violations resolved by Proposed Settlement
	Mar. 2011 - Bypass		
	Aug. 2009 - DCBM	NOVs	
	Jan. 2012 - pH		
Clear Creek	Dec. 2009 - Cl <sub>2</sub>	ACLCL (\$294K)	All violations resolved by Proposed Settlement
	Mar. 2011 - Cl <sub>2</sub> , TSS, BOD		
	Mar. 2011 - Bypass	NOV	
Sanitary Sewer	28 overflows	Some SSOs addressed by NOVs	
	Sept. 2007 - Feb. 2012		

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## Potential Administrative Liability

	Slackwater ACLC	Clean Creek ACLC	Slackwater Eggens NOV	Clean Creek Eggens NOV	Slackwater CUDM Violations	SOQS	Total
Non-History Maximum Penalty Calculation	\$0,000	\$21,000	\$0	\$0	\$0,000	\$0	\$30,000
Maximum Calculation	\$672,300	\$1,041,840	\$230 million	\$1.96 billion		\$2.9 million	\$2.08 billion
Violations Discharged	\$7,000	184,164	23,300,000	195,000,000		200,000*	
Proposed Settlement							\$1,450,000

\*maximum calculation only includes SSDs reaching surface waters

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## Settlement Considerations

- These alleged violations could have been the basis of four separate hearings to adjudicate liability against Redding.
- Global settlement includes alleged violations that had relatively minor impact to water quality.

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## Proposed Settlement Agreement City of Redding & Prosecution Staff

\$1,450,000 total administrative civil liability

- \$225,000 remitted in thirty (30) days to Cleanup & Abatement Account
- \$800,000 Supplemental Environmental Project (55%)
- \$425,000 suspended & progressively waived pending completion of SEP project milestones

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## SEP Description

### Private Sewer Lateral Replacement Program

- Establishes a grant program (\$5,000 maximum per lateral) to provide replacement of private sewer laterals in residential neighborhoods with sewer infrastructure at least 40 years old
  - Monitoring element allows Redding to assess improvements to the system (quantification of improvement)
  - SEP requires third party review of property owner requests

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## I&I Compliance Projects or Settlements

- Compliance Projects to resolve MMPs:
  - Ferndale (R1)
  - Crescent City (R1)
  - Lake Berryessa (R5)
  - Willits (R1)
- Settlements before the current SEP Policy:
  - Pacifica (R2)
  - San Bruno (R2)

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## SEP Policy

Approval of this SEP in excess of 50% is appropriate

- “exceptional circumstances”
- “compelling justification”
- “*recommended* percentage limit”
- All these terms indicate that the SEP Policy is flexible enough to allow for approval of SEPs in excess of the 50% limit.

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## Exceptional Circumstances and Compelling Justification

- Portions of the private laterals within the City of Redding are extremely antiquated, with 40-100 year old pipe
  - Private laterals are known contributors to I/I. SEP focuses on replacing private laterals
- Redding has been diligently addressing I/I
  - \$14.4 million on public sewer collection system projects
  - \$80 million in capacity upgrades at Clear Creek WWTP
  - \$10 million additional in Stillwater WWTP capacity upgrades
- Socioeconomic conditions in Redding favor project
  - SEP is similar to Compliance Projects adopted under Water Code 13385(j); Redding is large community with financial hardship and should be eligible for this project

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## CSPA's Objections to SEP

- CSPA argues there is no showing of compelling justification for the SEP.
  - The Prosecution Team and Redding disagree.
  - Delays will result in increased litigation expenses for the City of Redding

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## CSPA's Objections to SEP

- CSPA argues that the SEP allows Redding to fund activities it is already required to perform.
  - Redding is not required to replace private laterals as a way to address I&I under any permit.
  - R5-2008-0180: Private Sewer Laterals are responsibility of private landowners

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## Staff Recommendation

Adopt the proposed Settlement Agreement and Stipulation For Entry for Administrative Civil Liability Order.

**End of Presentation**

**Exhibit E**

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

In the matter of:	)	
	)	
<b>City of Redding</b>	)	
<b>Redding Department of</b>	)	<b>Order No. R5-2012-00XX (Proposed)</b>
<b>Public Works</b>	)	
	)	
<b>Administrative Civil Liability</b>	)	<b>Settlement Agreement and Stipulation</b>
<b>Complaint Nos. R5-2011-0570</b>	)	<b>for Entry of Order; Order (Proposed)</b>
<b>and R5-2011-0587, and NOVs</b>	)	
<b>as Described Herein.</b>	)	

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for entry of Administrative Civil Liability Order (“Agreement” or “Stipulated Order” or “Order”) is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Central Valley Region (“Central Valley Water Board”), on behalf of the Central Valley Water Board Prosecution Staff (“Prosecution Staff”), and the City of Redding (“Respondent”) (collectively the “Parties”) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

1. Respondent owns and operates a municipal sanitary sewer system in the City of Redding, including two domestic wastewater treatment plants and associated wastewater collection systems; the Clear Creek Wastewater Treatment Plant (Clear Creek WWTP) located at 2200 Metz Road, Redding, Shasta County, and the Stillwater Wastewater Treatment Plant (Stillwater WWTP) located at 6475 Airport Road, Anderson, Shasta County. The Clear Creek WWTP operated under WDR Order No. R5-2003-0130 (NPDES No. CA0079731) (“2003 Clear Creek NPDES Permit”) from 5 September 2003 to 22 September 2010, and continues to operate under WDR Order No. R5-2010-0096 (NPDES No. CA0079731) (“2010 Clear Creek NPDES Permit”) from 23 September 2010 to the present day. The Stillwater WWTP operates under WDR Order No. R5-2007-0058 (NPDES No. CA0082589) (“2007 Stillwater NPDES Permit”). The collection system is also subject to State Water Resources Control Board (“State Water Board”) Order No. WQ-2006-0003 for Sanitary Sewer Systems (“SSO General Order”).

2. On 11 May 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0570 (“May 2011 Complaint”) to the Respondent (Attachment A). The Complaint recommends imposing an administrative civil liability totaling \$72,000 for alleged effluent limitation violations resulting from a

chlorine excursion at the Stillwater WWTP in January 2011 (“Alleged May 2011 ACL Violations”). The proposed administrative civil liability includes staff costs of \$4,750.

**3.** On 19 July 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0587 (“July 2011 Complaint”) to the Respondent (Attachment B). The Complaint recommends imposing an administrative civil liability totaling \$200,000 for alleged effluent limitation violations and mandatory minimum penalties for discharges from the Clear Creek WWTP during the period of 17 December 2009 to 2 April 2011 (“Alleged July 2011 ACL Violations”). The proposed administrative civil liability includes staff costs of \$4,350.

**4.** On 14 February 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for an alleged chlorine residual effluent limit violation (Alleged Chlorine Violation) at the Stillwater WWTP (Attachment C). The Notice of Violation was referred to the Executive Officer of the Central Valley Water Board for further enforcement action, resulting in the May 2011 Complaint.

**5.** On 31 May 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for an alleged dichlorobromomethane effluent limit violation (“Alleged DCBM Violation”) at the Stillwater WWTP (Attachment D). The Notice of Violation was referred to the Executive Officer of the Central Valley Water Board for further enforcement action.

**6.** On 18 May 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for multiple alleged effluent limit violations and for allegedly bypassing filtration treatment for a portion of inflow between 23 March 2011 and 3 April 2011 at the Clear Creek WWTP, and on 18 May 2011, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for bypassing filtration treatment for a portion of inflow between 26 March 2011 and 28 March 2011 at the Stillwater WWTP (Attachments E and F). The Notices of Violation alleged that the bypass events were in violation of Discharge Prohibitions and Standard Provision I.G.3. in both the 2010 Clear Creek NPDES Permit and the 2007 Stillwater NPDES Permit (“Alleged Bypass Violations”). The Notices of Violation were referred to the Executive Officer of the Central Valley Water Board for further enforcement action.

**7.** On June 20, 2012, the Supervising Engineer of the Central Valley Water Board issued a Notice of Violation to the Respondent for alleged effluent limit violations for pH (Alleged pH Violations) at the Stillwater WWTP (Attachment G). The alleged violations occurred on 12 January 2012 and 13 January 2012. The Notice of Violation was referred to the Executive Officer of the Central Valley Water Board for further enforcement action.

**8.** The Prosecution Team determined that between 3 September 2007 and 31 May 2012 the Respondent reported into the California Integrated Water Quality System (“CIWQS”) database 78 alleged violations related to sanitary sewer overflows from the Clear Creek and Stillwater collection systems (“Alleged SSO Violations”), two of which

had been previously resolved by settlement under the terms of Administrative Civil Liability Order R5-2009-0549. On both 15 February 2011 and 13 April 2012, the Supervising Engineer of the Central Valley Water Board issued Notices of Violation for alleged violations related to various sanitary sewer overflows included in the CIWQS database (Attachments H and I). Discharges of sewage from the collection system are prohibited under the 2003 Clear Creek NPDES Permit, the 2010 Clear Creek NPDES Permit, the 2007 Stillwater NPDES Permit, and the SSO General Order. A list of the remaining 76 alleged violations is included in Attachment J.

**9.** The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the Complaints and the Notices of Violation except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

**10.** To resolve the Alleged May 2011 ACL Violations, the Alleged July 2011 ACL Violations, the Alleged Chlorine Violation, the Alleged Bypass Violations, the Alleged DCBM Violation, the Alleged pH Violations, and the Alleged SSO Violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$1,450,000 in liability against the Respondent. The Respondent agrees to expend \$800,000 toward a Supplemental Environmental Project (“SEP”). The Respondent shall also pay a total of \$225,000 to the State Water Pollution Cleanup and Abatement Account, consisting of approximately \$10,000 in staff costs, \$21,000 in mandatory minimum penalties, and the balance in stipulated penalties. The remaining \$425,000 in liability will be progressively suspended if the Respondent meets progressive annual milestones associated with completion of the SEP as set forth in this stipulation.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

**11. Administrative Civil Liability:** Respondent hereby agrees to the imposition of an administrative civil liability totaling \$1,450,000 as set forth in Paragraph 10 of Section II herein. Within thirty (30) days of the effective date of this Order, Respondent agrees to remit, by check, TWO HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$225,000), payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. Respondent shall send the original signed check to Julie Macedo, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812, and shall send a copy to Robert Crandall, Regional Water Quality Control Board, Central Valley Region, 364 Knollcrest Drive, Suite 200, Redding, CA 96002. Further, the Parties agree that \$800,000 of this administrative civil liability shall be suspended pending completion of the SEP (“SEP Suspended Liability”), and that \$425,000 shall be suspended and shall be progressively

waived pending completion of SEP project milestones (“Suspended Liability”). The SEP Suspended Liability and Suspended Liability amounts will be waived upon completion of the following:

- a. Completion of Private Sewer Lateral Replacement Program SEP as set forth in Paragraphs 10 through 22 herein and Attachment K attached hereto and incorporated by reference (\$800,000);
- b. Timely progress toward completion of the Private Sewer Lateral Replacement Program by meeting a series of annual goals for specified program expenditures (Private Sewer Lateral SEP Deliverables) as set forth in Attachment L attached hereto and incorporated by reference (\$425,000).

**12. SEP Descriptions:** The Parties agree that this Stipulation includes the performance of these two SEP project milestones:

- a. **Private Sewer Lateral Replacement Program SEP:** The goal of this project is to reduce inflow and infiltration (I/I) into the Discharger’s collection system from defective private sewer laterals. A reduction in I/I will benefit surface water quality and beneficial uses by decreasing the number and volume of spills of untreated or partially treated sewage from the Discharger’s collection system to surface waters during wet weather. In addition, the program will reduce the amount of flow to the Clear Creek and Stillwater WWTPs during wet-weather events, avoiding the need to bypass wastewater treatment. Detailed plans concerning how the Discharger will implement the Private Sewer Lateral Replacement Program SEP are provided in the SEP proposal included herein as Attachment K.
- b. **SEP Completion Dates:** The Private Sewer Lateral Replacement Program SEP shall be concluded, and a Certificate of Completion shall be provided to the Central Valley Water Board by February 1, 2018 (“Private Sewer Lateral Replacement Program SEP Completion Date”). The SEP shall be implemented in accordance with the schedule and milestone dates provided in the Private Sewer Lateral SEP Deliverables included as Attachment L.

**13. Agreement of Discharger to Fund, Report, and Guarantee Implementation of SEP:** Respondent represents that: (1) it will fund the SEP in the amount as described in this Stipulation; (2) it will provide certifications and written reports to the Central Valley Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP by remaining liable for the SEP Suspended Liability in accordance with Paragraph 19 of Section III, until the SEP is completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulation. Respondent agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEP.

**14. Oversight of SEP:** Respondent is solely responsible for paying for all oversight costs incurred to oversee the SEP. The SEP oversight costs are in addition to the total

administrative civil liability imposed against the Respondent and are not credited toward Respondent's obligation to fund the SEP.

**15. SEP Progress Reports:** Respondent shall provide semi-annual reports of progress to a Designated Central Valley Water Board Representative, and the State Water Resources Control Board's Division of Financial Assistance, commencing ninety (90) days after this Stipulation becomes final and continuing through submittal of the Certificate of Completion described below in Paragraph 16. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

**16. Certification of Completion of SEP:** On or before the applicable SEP Completion Date, Respondent shall submit a certified statement of completion of the SEP ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Central Valley Water Board Representative and the State Water Resources Control Board's Division of Financial Assistance, by a responsible official representing the Respondent. The Certification of Completion shall include the following:

- a. Certification that the SEP has been completed in accordance with the terms of this Stipulation. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the Respondent.
- b. Certification documenting the expenditures by Respondent during the completion period for the SEP. Expenditures may be external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company 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 Central Valley Water Board for oversight. Respondent shall provide any additional information requested by the Central Valley Water Board staff which is reasonably necessary to verify SEP expenditures.
- c. Certification, under penalty of perjury, that Respondent 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, Respondent shall provide the Central Valley Water Board with the following documents from the lead agency prior to commencing SEP construction:
  - i. Categorical or statutory exemptions relied upon;
  - ii. Negative declaration if there are no potentially "significant" impacts;

- iii. Mitigated negative declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
- iv. Environmental Impact Report (EIR).

**17. Third Party Financial Audit:** In addition to the certification, upon completion of the SEP and at the written request of the Central Valley Water Board, Respondent, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Central Valley Water Board staff, or its designated representative, providing such party’s(ies’) professional opinion that the Respondent and/or an implementing party (where applicable) have expended money in the amounts claimed by Respondent. The audit report shall be provided to the Central Valley Water Board staff within three months of notice from Central Valley Water Board to Respondent of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

**18. Central Valley Water Board Acceptance of Completed SEP:** Upon Respondent’s satisfaction of its SEP obligations under this Stipulation and completion of the SEP and any audit requested by the Central Valley Water Board, Central Valley Water Board staff shall send Respondent a letter recognizing satisfactory completion of its SEP obligations under this Stipulation. This letter shall terminate any further SEP obligations of Respondent and result in the permanent waiver of the SEP Suspended Liability and Suspended Liability.

**19. Failure to Expend all SEP Suspended Liability Funds on the approved SEP:** In the event that Respondent is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board staff that the entire SEP Suspended Liability has been spent to complete the components of the SEP for which Respondent is financially responsible, Respondent shall pay the difference between the SEP Suspended Liability and the amount Respondent can demonstrate was actually spent on the SEP as an administrative civil liability. Respondent shall pay this remainder within thirty (30) days of its receipt of notice of the Central Valley Water Board’s determination that Respondent has failed to demonstrate that the entire SEP Suspended Liability has been spent to complete the SEP components.

**20. Force Majeure:** In the event that the SEP is not performed in accordance with the specific terms and conditions, including the time schedule, detailed in Attachments K and L, due to circumstances beyond the reasonable control of the Respondent and which could not have been reasonably foreseen and prevented by the exercise of due diligence, the Respondent will provide written notice to the designated Central Valley Water Board staff within five (5) days of the date Respondent first knew of the event or circumstance that caused the deviation from the SEP terms and conditions. The final determination as to whether the circumstances were beyond the reasonable control of Respondent will be made by the Executive Officer of the Central Valley Water Board. In this event, the Parties agree to meet and confer regarding an extension of time to complete the SEP.

For purposes of this Agreement, a “force majeure” is defined as an event which could not have been anticipated by Respondent, is beyond the control of Respondent, and is of such great import and character, including but not limited to an act of God; earthquake; flood and any other natural disaster; civil disturbance and strike; fire and explosion; declared war in the United States; or embargo. To trigger the force majeure protection under this Agreement, Respondent must demonstrate that timely compliance with the SEP and/or any affected interim deadlines will be actually and necessarily delayed, that it has taken measures to avoid and/or mitigate the delay by the exercise of all reasonable precautions and efforts, whether before or after the occurrence of the cause of the delay; and Respondent provides written notice as described above. Delays caused by actions under the control of the Respondent will not constitute a force majeure.

For purposes of this Agreement, a “force majeure” does not include delays caused by funding, easements, contractor performance, equipment delivery and quality, weather, permitting, and other related issues. In addition, this Agreement is not subject to modification based on force majeure due to construction delays, CEQA challenges, initiative litigation, adverse legislation, or other matters of a legal nature.

**21. Failure to Complete the SEP:** Except as provided in Paragraph 20, if the SEP is not fully implemented within the SEP completion dates required by this Stipulation, the Designated Central Valley Water Board Representative shall issue a Notice of Violation. As a consequence, Respondent shall be liable to pay the entire Suspended Liability or, some portion thereof less the value of the completion of any milestone requirements. Unless otherwise ordered, Respondent shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined via a “Motion for Payment of Suspended Liability” before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Central Valley Water Board’s determination. In addition, Respondent shall be liable for the Central Valley Water Board’s reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy Respondent’s obligations to implement the SEP.

**22. Publicity:** Should Respondent 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 Central Valley Water Board against Respondent.

**23. Compliance with Applicable Laws:** Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and compliance with the terms of this Stipulated 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.

**24. Party Contacts for Communications Related to Stipulated Order:**

**For the Central Valley Water Board:**

Bryan Smith  
Regional Water Quality Control Board  
Central Valley Region  
364 Knollcrest Drive, Suite 200  
Redding, CA 96002

**For Respondent:**

Jon McClain  
City of Redding  
Department of Public Works  
P.O. Box 496071  
Redding, CA 96049

**25. Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

**26. Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaints, Notices of Violation, and all claims, violations or causes of action that could have been asserted against the Respondent as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaints, Notices of Violation or this Order ("Covered Matters"). The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 10.

**27. Public Notice:** Respondent understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

**28. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning

any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

**29. No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

**30. 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.

**31. Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.

**32. If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- 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.

**33. No Admission of Liability:** In settling this matter, Respondent does not admit to any of the findings in the Complaints, Notices of Violation, this Stipulated Order, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the Respondent recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

**34. Waiver of Hearing:** Respondent has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

**35. Waiver of Right to Petition:** Respondent hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written 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.

**36. Covenant Not to Sue:** Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

**37. Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

**38. Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

**39. No Third Party Beneficiaries.** This Stipulated Order 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 Stipulated Order for any cause whatsoever.

**40. Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.

**41. 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.**

California Regional Water Quality Control Board Prosecution Staff  
Central Valley Region

By:   
Pamela Creedon  
Executive Officer

Date: August 7, 2012

City of Redding

By:

  
KURT STARMAN, CITY MANAGER

Date:

8/1/12

ATTEST:

  
PAMELA MIZE, City Clerk

Form Approved  
  
Barry E. DeWalt  
Assistant City Attorney

**Order of the Central Valley Water Board**

**42.** In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.

**43.** This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, section 21000, et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

**44.** The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name and Title)

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

ATTACHMENT A

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0570

For

VIOLATION OF WASTEWATER DISCHARGE REQUIREMENTS  
ORDER NO. R5-2007-0058 (NPDES NO. CA0082589)

IN THE MATTER OF

CITY OF REDDING  
STILLWATER WASTEWATER TREATMENT FACILITY  
WDID NO. 5A450103004

SHASTA COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to the City of Redding Stillwater Wastewater Treatment Facility (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. The Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2007-0058 (NPDES No. CA0082589).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a Publicly Owned Treatment Works. The treatment system consists of screening for removal of large solids, activated sludge treatment with secondary clarification, filtration, and chlorination/dechlorination. Waste activated sludge is treated by aerobic digestion followed by belt-filter-press dewatering. Biosolids are disposed at a sanitary landfill and land applied on property owned by the Discharger. Wastewater is discharged through a diffuser at Discharge D-001 to the Sacramento River, a water of the United States.
2. Section 301 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C, §1311) and the CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a NPDES permit.
3. On 21 June 2007, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2007-0058 (NPDES No. CA0082589), to regulate discharges of treated wastewater from the facility.
4. The discharge prohibitions and effluent limitations set forth in the WDRs include but are not limited to, the following:

COMPLAINT NO. R5-2011-0570  
 ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
 CITY OF REDDING  
 STILLWATER WASTEWATER TREATMENT FACILITY  
 SHASTA COUNTY

- The discharge of waste that causes violation of any narrative water quality objective contained in the Basin Plan is prohibited.
- The discharge of waste that causes violation of any numeric water quality objective contained in the Basin Plan is prohibited.

4. Order No. R5-2007-0058 includes, in part, the following effluent limitations:

**A. Effluent Limitations – Discharge Point D-001**

**1. Final Effluent Limitations – Discharge Point D-001**

The Discharger shall maintain compliance with the following effluent limitations at Discharge Point D-001, with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E):

- a. The Discharger shall maintain compliance with the effluent limitations specified in Table 6:

**Table 6. Effluent Limitations**

Parameter	Units	Effluent Limitation				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
BOD 5-day @ 20°C	Mg/L	10	15	30		
	lbs/day <sup>a</sup>	334	500	1,001		
Total Suspended Solids		10	15	30		
	lbs/day <sup>a</sup>	334	500	1,001		
pH	standard units				6.0	9.0
Copper, Total Recoverable	Ug/L	13.7		27.4		
Zinc, Total Recoverable	Ug/L	57.8		115.9		
Cyanide, Total (as CN)	Ug/L	31.8		63.7		
Chlorodibromomethane	Ug/L	12.1		24.2		
Dichlorobromomethane	Ug/L	18.1		36.2		
alpha-BHC	Ug/L	0.11		0.21		
beta-BHC	Ug/L	0.15		0.30		
gamma-BHC	Ug/L	0.81		1.62		
Chlorine Residual	Mg/L		0.01 <sup>b</sup>	0.02 <sup>b</sup>		
Total Coliform Organisms	MPN/100 ml	23 <sup>c</sup>		500		

- a Based upon a dry weather treatment design flow of 4.0 mgd.
- b 4-day average.
- c 1-hour average.
- d Monthly median.

- b. **Percent Removal:** The average monthly percent removal of BOD 5-day 20°C and total suspended solids shall not be less than 85 percent.

- c. **Acute Whole Effluent Toxicity.** Survival of aquatic organisms in 96-hour bioassays of undiluted waste shall be no less than:
    - i. 70%, minimum for one bioassay; and
    - ii. 90%, median for any three consecutive bioassays.
  - d. **Total Residual Chlorine.** Effluent total residual chlorine shall not exceed:
    - i. 0.01 mg/L, as a 4-day average;
    - ii. 0.02 mg/L, as a 1-hour average;
  - e. **Total Coliform Organisms.** Effluent total coliform organisms shall not exceed:
    - i. 23 most probable number (MPN) per 100 mL, as a 30-day median; and
    - ii. 500 MPN/100mL, more than once in any 30-day period.
  - f. **Average Daily Discharge Flow.** The monthly average daily dry weather (May through September) discharge flow shall not exceed 4.0 mgd. Flow occurring in May shall be excluded from this limitation if significant rain events occur or seasonal high groundwater conditions persist.
5. Furthermore, all NPDES permits must specify requirements for recording and reporting monitoring results. (40 C.F.R. § 122.48). CWC section 13383 authorizes the Regional Water Board to establish monitoring and reporting requirements. The WDRs require the Discharger to implement a discharge monitoring program and to prepare and submit timely monthly and annual NPDES self-monitoring reports to the Regional Water Board, which are designed to ensure compliance with effluent limitations contained in the WDRs.

#### STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED

6. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
7. Pursuant to CWC section 13385(a), any person who violates CWC section 13376, any waste discharge requirements issued pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Control Act (Compliance with the Provisions of the Clean Water Act), any requirements established pursuant to CWC section 13383, or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC section 13385(c).

8. CWC section 13385(c), provides for the imposition of civil liability by the Regional Water Board in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

### ALLEGED EFFLUENT LIMITATION VIOLATIONS

9. On 23 January 2011, between 0800 and 0859 hours, the 1-hour average chlorine residual concentration in Effluent EFF-001 was calculated to be 0.17 mg/L with a maximum concentration of 1.81 mg/l or 8,950 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L.
10. On 23 January 2011, between 0900 and 0959 hours, the 1-hour average chlorine residual concentration in Effluent EFF-001 was calculated to be 1.32 mg/L, with a maximum concentration of 5.00 mg/L or 24,900 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L.
11. On 27 January 2011 the 4-day average chlorine residual concentration in Effluent EFF-001 was calculated to be 0.015 mg/L, or 150 percent greater than the allowed 4-day average chlorine residual effluent limitation of 0.01 mg/L.
12. The discharge volume was determined by multiplying the 1-minute average discharge flow (1,462 gallons per minute (gpm) during the exceedance) multiplied by the exceedance time (actual discharge time above chlorine residual effluent limit) of 46 minutes. Total volume equals 1,462 gpm multiplied by 46 minute equals 67,250 gallons.

### FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY

13. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require. CWC section 13385, subdivision (e) also requires that at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s). The Regional Water Board is not required to consider these factors prior to the imposition of penalties under CWC section 13385, subsections (h) and (i).
14. On 17 November 2010, 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 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement Policy can be found at;

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf)

The administrative civil liability was derived from the use of the penalty methodology in the Policy. In summary, this penalty assessment is based on a consideration of the failure to respond to requests made pursuant to CWC section 13267, subdivision (b), for Violations 1 through 4. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require. The required factors have been considered for the prohibited discharge violations using the methodology in the Enforcement Policy, as explained in detail in Attachment A.

#### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

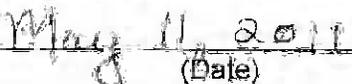
15. The maximum penalty for the violations described is \$672,500 based on a calculation of the total number of gallons discharged times the statutory maximum, plus the total number of per-day violations times the statutory maximum penalty (66,250 gallons at \$10/gallon plus 1 day at \$10,000/day). However, based on consideration of the above facts and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$72,000** for the violations of CWC section 13385. The specific factors considered in this penalty are detailed in Attachment A.
16. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.
17. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
18. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a) (2).

COMPLAINT NO. R5-2011-0570  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
CITY OF REDDING  
STILLWATER WASTEWATER TREATMENT FACILITY  
SHASTA COUNTY

**THE CITY OF REDDING STILLWATER WASTEWATER TREATMENT FACILITY IS  
HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed a Mandatory Penalty in the amount of **seventy-two thousand dollars (\$72,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **3/4/5 August 2011**, unless the Discharger does one of the following by **6 June 2011**:
  - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **seventy-two thousand dollars (\$72,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water 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.
  - a. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

  
\_\_\_\_\_  
ROBERT A. CRANDALL  
Assistant Executive Officer

  
\_\_\_\_\_  
(Date)

## Attachment A – ACL Complaint No. R5-2014-0570

### Specific Factors Considered-Civil Liability

#### City of Redding, Stillwater Wastewater Treatment Facility

Each factor of the Enforcement Policy and its corresponding score is presented below.

The Monetary Assessments in Administrative Civil Liability (ACL) Actions is set forth in the Water Quality Enforcement Policy using a nine step approach. The rationale for calculating the ACL is discussed below.

#### Step 1 – Potential for Harm for Discharge Violations

To determine the actual or threatened impact to beneficial uses caused by the violation is done using a three-factor scoring system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the Dischargers susceptibility to cleanup or abatement for each violation or group of violations.

##### Factor 1: Harm or Potential Harm to Beneficial Uses.

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0) to major (5). In this case the potential harm to beneficial uses was determined to be moderate (3). A moderate score means that the threat to beneficial uses (i.e., impacts are observed or reasonably expected and impacts to beneficial uses are moderate and likely to attenuate without appreciable acute or chronic effects). While the Discharger states that no impacts fish or other aquatic life were observed downstream of the discharge, the concentration of chlorine residual did exceed the USEPA recommended 1-hour average criteria for freshwater aquatic life protection of 0.019 mg/L. The concentration of chlorine residual in the discharge exceeded the water quality objective for short term exposure (0.02 mg/L) by 7,300%.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. In this case a score of 3 was assigned. A score of 3 means that the discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection). Chlorine residual is known to cause toxicity in fish and aquatic organisms.

##### Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case cleanup or abatement was not possible. Therefore, a factor of 1 is assigned.

#### Final Score – "Potential for Harm"

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 7** was calculated. The total score is then used to determine the Penalty Factors for per gallon discharges and per day discharges.

#### Step 2 – Assessment for Discharge Volumes

This step addresses per gallon and per day assessments for discharge violations.

##### Per Gallon Assessments for Discharge Volumes

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. Although the discharger violated the 1-hour average chlorine residual effluent limitation of 0.02 mg/L and the 4-day chlorine residual effluent limitation of 0.01 mg/L, the deviation from the requirement has been determined to be minor in this case. A minor deviation is defined as the intended effectiveness of the requirement remains generally intact (e.g., there is a general intent by the discharger to follow and meet the chlorine residual requirement). The discharge has not had a long term effect on the actual effluent limitation, monitoring requirements, or any other deadlines.

A discharge volume of 67,250 gallons was determined by multiplying the 1-minute average discharge flow (1,462 gpm during the exceedance) multiplied by the exceedance time of 46 minutes (actual discharge time above chlorine residual effluent limit). While the volume of the discharge appears to be great (67,250 gallons), it is not considered a High Volume Discharge as defines by the Water Quality Enforcement Policy. Therefore, California Water Code (CWC) section 13385(c)(2) allows for an additional liability of ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Therefore, the additional liability is calculated on a volume of 66,250 gallons.

##### Per Day Assessments for Discharge Volumes

CWC section 13385(c)(1) allows for additional ten thousand dollars per day (\$10,000) for each day in which the violation occurs. Since the discharge of violation occurred for approximately one hour, the violation has been determined to be one (1) day. This translates to an additional liability of \$10,000.

**Initial Liability Amount: \$67,253** (Number of Days (1) X Maximum Penalty (\$10,000) X Per Day Factor (0.1) + Number of Gallons (66,250) X Max per Gallon (\$10) X Per Day Factor (0.1)). The per day and per gallon factors are from Tables 1 & 2 of the Water Quality Enforcement Policy and shown below.

**Tables 1 & 2 of the Water Quality Enforcement Policy**

Deviation form Requirement	Potential for Harm (per gallon factors and per day factors)									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.15	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

**Step 3 – Per Day Assessment for Non-Discharge Violation: Does not apply**

**Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history.

Culpability

Adjustments should result in a multiplier between 0.5 and 1.5, with the lower multiplier for accidental incidents, and a higher multiplier for negligent behavior. The Discharger was given a neutral multiplier value of 1.

Cleanup and Cooperation

Adjustments should result in a multiplier between 0.75 and 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and a higher multiplier where this is absent. The Discharger was given a neutral multiplier value of 1.0, which neither increases nor decreases the violation amount. The discharger has a history of providing prompt notification of discharge events and cooperative in the cleanup following up and mitigation measures necessary to protect water quality.

History of Violation

The discharger has had 10 effluent limitation violations since 1993. Four separate discharges of chlorine residual resulted in five of the 10 effluent limitation violations (12/8/1993, 7/21/1998, 1/24/1999, and two on 1/23/2011). Two pH violations in October 2003, as well as the chlorine residual violations in January 2011 were caused by chlorine residual analyzer failures. While the Water Quality Enforcement Policy does not list a multiplier range, where there is a history of repeat violations a minimum multiplier of 1.1 should be used. However, given the long time in between effluent limitation violations, and the facility has not had recent problems with the chlorine residual violations until 2011, so the older violations were not considered. The Discharge was given a neutral value of a 1, which neither increases nor decreases the violation amount.

ATTACHMENT A  
CITY OF REDDING  
STILLWATER WASTEWATER TREATMENT FACILITY  
SHASTA COUNTY

### **Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

**Total Base Liability Amount: \$67,250.00** (Initial Liability Amount (\$66,250) X Adjustment Factors (1)(1)(1)).

### **Step 6 - Ability to Pay and Ability to Continue in Business**

The City of Redding, Stillwater Wastewater Treatment Facility is not a for profit enterprise. The City of Redding has approximately 30,000 service connections. The proposed ACL would equate to less than \$3.00 per service connection. The City of Redding's, wastewater treatment facilities Annual Operations Budget was \$32,792,940 in 2008-2009, \$58,048,650 (includes capital improvements costs) in 2009-2010, and \$35,872,240 for 2010-2011. The City of Redding appears to have the ability to pay the proposed ACL and remain solvent. The ability to pay and to continue in business factor affects the base liability amount as a straight multiplier. The Discharger was given a neutral multiplier value of 1.0, which neither increases nor decreases the violation amount.

### **Step 7 - Other Factors as Justice May Require**

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

#### Costs of Investigation and Enforcement Adjustment

The costs of investigation and enforcement are "other factors as justice may require" and should be added to the liability amount. The Regional Water Board has incurred \$4,750 in staff costs associated with the investigation of the violation and preparation of the enforcement action.

### **Step 8 - Economic Benefit**

An economic benefit gained from the discharge has not been determined. The economic benefit determination will require an inspection at the facility to review of the maintenance records for the failed pump, availability of replacement parts, staffing levels, response time, and employee interviews.

### **Step 9 - Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for the three violations (i.e., two 1-hour average violations and one 4-day violation) must be determined for comparison to the amounts being proposed.

#### Maximum Liability Amount

The maximum administrative civil liability which can be imposed under section 13385 of the CWC is \$10,000 per day per violation plus of ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. The calculated discharge is a total of 67,250 gallons, none of which was

cleaned up. Therefore, the **maximum administrative civil liability is \$672,500** (66,250 gallons at \$10/gallon plus 1 day at \$10,000/day).

Minimum Liability Amount

The minimum administrative civil liability determined under section 13385(h) of the CWC would be \$3,000 for each serious violation. Regional Water Board staff has determined that the 1-hour average chlorine residual exceeded the effluent limitation during two separate hours which results in two serious violations. The 4-day average chlorine residual exceeded the effluent limitation for one 4-day period resulting in one additional serious violation. Therefore, the **minimum administrative civil liability is \$6,000.**

**Step 10 – Final liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum (\$6,000) and maximum (\$672,500) amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is **\$72,000.**

**Table 1. Adjustment Factors**

<b>Adjustment Factors</b>	<b>Range</b>	<b>Factors Used</b>
Harm or Potential Harm to Beneficial Uses	0 to 5	3
Physical, Chemical, Biological or Thermal Characteristics of the Discharge	0 to 4	3
Susceptibility to Cleanup or Abatement	0 or 1	1
Final Score	0 to 10	7
Per Gallon Assessment	Minor, Moderate, Major	Minor
Per Day Assessment	Minor, Moderate, Major	Minor
Culpability	0.5 to 1.5	1.0
Cleanup and Cooperation	0.75 to 1.5	1.0
History of Violations	Subjective, based on history	1.0
Ability to Pay	Based on financial information	1
Other Factors as Justice May Require	Subjective, based on investigation	1
Economic Benefit	Subjective, based on investigation	1
<b>Violation Amount</b>		<b>\$72,000</b>

Penalty Calculation Methodology Worksheet - Version Date: 5/24/2016  
 Password for Workbook Protection: enforcement

Discharger Name/ID:		Violation 1	
Step 1	Potential Harm Factor (Generated from Button)		
Step 2	Per Gallon Factor (Generated from Button)	65,250	
	Gallons	10.00	
	Statutory / Adjusted Max per Gallon (\$)		65,250
	Total		65,250
	Per Day Factor (Generated from Button)		
	Days	1	
	Statutory Max per Day	10,000	
	Total		1,000
Step 3	Per Day Factor		
	Days		
	Statutory Max per Day		
	Total		
Step 4	Initial Amount of the ACL		67,250.00
	Culpability	1	67,250.00
	Cleanups and Cooperation	2	87,250.00
	History of Violations	1	67,250.00
Step 5	Total Base Liability Amount		67,250.00
Step 6	Ability to Pay & to Continue in Business	1	67,250.00
Step 7	Other Factors as Justice May Require	1	67,250.00
	Staff Costs	4,750	72,000.00
Step 8	Excess of Assets		72,000.00
Step 9	Minimum Liability Amount	6,000	72,000.00
	Maximum Liability Amount	67,250	72,000.00
Step 10	Final Liability Amount		72,000.00

Penalty Day Range Generator

Start Date of Violation = 1/23/11  
 End Date of Violation = 1/23/11  
 Maximum Days Fined (Steps 2 & 3) = 1 Days  
 Minimum Days Fined (Steps 2 & 3) = 1 Days

ATTACHMENT B

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2011-0587

For

VIOLATION OF WASTEWATER DISCHARGE REQUIREMENTS  
ORDER NOS. R5-2003-0130 and R5-2010-0096 (NPDES NO. CA0079731)

IN THE MATTER OF

CITY OF REDDING  
CLEAR CREEK WASTEWATER TREATMENT PLANT  
WDID NO. 5A450103001

SHASTA COUNTY

This Administrative Civil Liability Complaint (Complaint) is issued to the City of Redding Clear Creek Wastewater Treatment Plant (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. The Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order R5-2003-0130 and WDRs Order R5-2010-0096 (NPDES No. CA0079731).

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a Publicly Owned Treatment Works (POTW). The treatment system consists of screening for removal of large solids, grit removal, primary clarification, activated sludge treatment with secondary clarification, filtration, chlorination/dechlorination, flow equalization, and emergency storage. Waste activated sludge is stabilized in facultative sludge lagoons and air dried to generate Class B biosolids. Biosolids from the secondary treatment process are land applied on property owned by the Discharger. Wastewater is discharged through a diffuser at Discharge Point D-001 to the Sacramento River, a water of the United States.
2. Section 301 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C, §1311) and the CWC section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a NPDES permit. The Regional Board, through delegated authority, may issue a Waste Discharge Requirement Order (WDR) to allow for the discharge of pollutants to surface waters. The WDRs serve as a NPDES Permit under the Federal Clean Water Act. From 5 September 2003 to 22 September 2010, the Discharger's POTW was regulated by Waste Discharge Requirements Order R5-2003-0130 (NPDES No. CA0079731), to regulate discharges of treated wastewater from the facility. On 23 September 2010, the Central Valley Water Board issued Waste Discharge Requirements Order R5-2010-0096 (NPDES No. CA0079731), to regulate discharges of treated wastewater from the facility. Both WDR Order R5-2003-0130 and WDR Order R5-2010-0096 apply to violations cited in this Complaint.

3. Order No. R5-2003-0130 includes, in part, the following effluent limitations:

**B. Effluent Limitations**

1. Effluent Limitations shall not exceed the following limits:

Parameter	Units	Effluent Limitation				
		Monthly Average	Weekly Average	Monthly Median	4-day Average	Daily Maximum
BOD <sup>a</sup>	mg/L	10	15			30
	lbs/day <sup>b</sup>	734	1,101			2,202
Total Suspended Solids	mg/L	10	15			30
	lbs/day <sup>b</sup>	734	1,101			2,202
Chlorine Residual	mg/L				0.01	0.02 <sup>c</sup>
Total Recoverable Copper	ug/L	12				17
Total Recoverable Zinc	lbs/day <sup>b</sup>	0.88				1.2
	ug/L	81				120
Bromodichloromethane	lbs/day <sup>b</sup>	5.9				8.8
	ug/L	21				42
Dibromochloromethane	lbs/day <sup>b</sup>	1.5				3.1
	ug/L	14				29
Tetrachloroethene	lbs/day <sup>b</sup>	1.0				2.1
	ug/L	30				59
Total Coliform Organisms	lbs/day <sup>b</sup>	2.2				4.3
	MPN/100 ml			23		500

a 5-day, 20°C Biochemical Oxygen Demand (BOD)  
 b Based upon a design treatment capacity of 8.8 mgd.  
 c 1-hour average

- The arithmetic mean of 20°C BOD (5-day) and total suspended solids in effluent samples collected over a monthly period shall not exceed 15 percent of the arithmetic mean of the values for influent samples collected at approximately the same times during the same period (85 percent removal).
- The discharge shall not have a pH less than 6.0 nor greater than 9.0.
- The average dry weather (July through September) discharge flow shall not exceed 8.8 MGD).
- Survival of aquatic organisms in 96-hour bioassays of undiluted waste shall be no less than:

Minimum for one bioassay \_\_\_\_\_ 70%  
 Median for any three consecutive bioassays \_\_\_\_\_ 90%.

4. Order No. R5-2010-0096 includes, in part, the following effluent limitations:

**A. Effluent Limitations – Discharge Point No. 001**

**6. Final Effluent Limitations – Discharge Point No. 001**

- a. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point No. 001 with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E)

**Table 6. Effluent Limitations – Discharge point No. 001**

Parameter	Units	Effluent Limitation				
		Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
<i>Conventional Pollutants</i>						
Biochemical Oxygen Demand, 5-day 20°C	mg/L	10	15	30		
	lbs/day <sup>a</sup>	734	1,101	2,202		
Total Suspended Solids	mg/L	10	15	30		
	lbs/day <sup>a</sup>	734	1,101	2,202		
pH	standard units				6.0	8.5
<i>Priority Pollutants</i>						
Copper, Total Recoverable	ug/L	17		26		
Chlorodibromomethane	ug/L	3.5		10.3		
Dichlorobormomethane	ug/L	12.2		29.3		
Zinc, Total Recoverable	ug/L	57		86		
<i>Non-Conventional Pollutants</i>						
Ammonia Nitrogen, Total (as N)	mg/L	0.7		2.15		

<sup>1</sup> Based upon a design flow of 8.8 mgd.

- b. **Percent Removal:** The average monthly percent removal of BOD<sub>5</sub> and TSS shall not be less than 85 percent.
- c. **Acute Whole Effluent Toxicity.** Survival of aquatic organisms in 96-hour bioassays of undiluted waste shall be no less than:
- i. 70%, minimum for one bioassay; and
  - ii. 90%, median for any three consecutive bioassays.
- d. **Chronic Whole Effluent Toxicity.** There shall be no chronic whole effluent toxicity in the effluent.
- e. **Total Residual Chlorine.** Effluent total residual chlorine shall not exceed:
- i. 0.011 mg/L, as a 4-day average;
  - ii. 0.019 mg/L, as a 1-hour average;

- f. **Total Coliform Organisms.** From the effective date of this Order and for three years thereafter, effluent total coliform organisms shall not exceed:
    - i. 23 most probable number (MPN) per 100 mL, as a monthly median; and
    - ii. 240 MPN/100mL, more than once in any 30-day period.
  - g. **Total Coliform Organisms.** Beginning on the first day of the fourth year following the effective date of this Order, and thereafter, effluent total coliform organisms shall not exceed:
    - i. 23 most probable number (MPN) per 100 mL, as a 7-day median; and
    - ii. 240 MPN/100mL, more than once in any 30-day period.
  - h. **Average Daily Discharge Flow.** The average dry weather flow shall not exceed 8.8 mgd.
    - i. **Aluminum, Total Recoverable.** For a calendar year, the annual average effluent limitation shall not exceed 200 ug/L.
5. Furthermore, all NPDES permits must specify requirements for recording and reporting monitoring results. (40 C.F.R. § 122.48). CWC section 13383 authorizes the Regional Water Board to establish monitoring and reporting requirements. The WDRs require the Discharger to implement a discharge monitoring program and to prepare and submit timely monthly and annual NPDES self-monitoring reports to the Regional Water Board, which are designed to ensure compliance with effluent limitations contained in the WDRs.

#### **STATEMENT OF WATER CODE SECTIONS UPON WHICH LIABILITY IS BEING ASSESSED**

6. An administrative civil liability may be imposed pursuant to the procedures described in CWC section 13323. An administrative civil liability complaint alleges the act or failure to act that constitutes a violation of law, the provision of law authorizing administrative civil liability to be imposed, and the proposed administrative civil liability.
7. Pursuant to CWC section 13385(a), any person who violates CWC section 13376, any waste discharge requirements issued pursuant to Chapter 5.5 of the Porter-Cologne Water Quality Control Act (Compliance with the Provisions of the Clean Water Act), any requirements established pursuant to CWC section 13383, or any requirements of section 301 of the Clean Water Act is subject to administrative civil liability pursuant to CWC section 13385(c).

8. CWC section 13385(c), provides for the imposition of civil liability by the Regional Water Board in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
9. CWC sections 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states:

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

## **ALLEGED EFFLUENT LIMITATION VIOLATIONS**

### **Effluent Limitation Violations, Mandatory Minimum Penalties**

10. Between 17 December 2009 and 2 April 2011 the Discharger exceeded effluent limits and reported six serious violations for residual chlorine and total suspended solids (TSS) and four non-serious violations for biological oxygen demand (BOD<sub>5</sub>) and TSS. A summary of these violations can be found in Appendix A.

11. On 17 December 2009, between 0900 and 1000 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.025 mg/L or 25 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
12. On 17 December 2009, between 1000 and 1100 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.05 mg/L or 150 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
13. On 17 December 2009, between 1100 and 1200 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.043 mg/L or 115 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.02 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
14. On 25 March 2011, between 0000 and 0100 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.04 mg/L. This serious violation is subject to mandatory minimum penalties; however, given the potential for harm from this violation the Central Valley Water Board has elected to issue a discretionary penalty for this violation, detailed below.
15. On 25 March 2011, between 0100 and 0200 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.07 mg/L. This serious violation is subject to mandatory minimum penalties; however, given the potential for harm from this violation the Central Valley Water Board has elected to issue a discretionary penalty for this violation, detailed below.
16. On 27 March 2011, the daily maximum total settleable solids concentration at EFF-001 was measured at 46.3 mg/L or 54.3 percent greater than the allowed maximum daily maximum total settleable solids effluent limitation of 30 mg/L. This serious violation is subject to mandatory minimum penalties under CWC section 13385(h)(1).
17. On 27 March 2011, the daily maximum BOD-5 concentration at EFF-001 was measured at 36.4 mg/L or 21.3 percent greater than the allowed daily maximum BOD-5 effluent limitation of 30 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.
18. On 31 March 2011, the daily maximum total settleable solids concentration at EFF-001 was measured at 38.5 mg/L or 28.3 percent greater than the allowed maximum daily maximum total settleable solids effluent limitation of 30 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.

19. On 2 April 2011, the weekly average BOD<sub>5</sub> concentration at EFF-001 was measured at 15.5 mg/L or 3.3 percent greater than the allowed weekly average BOD-5 effluent limitation of 15 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.
20. On 2 April 2011, the weekly average total settleable solids concentration at EFF-001 was measured at 19.5 mg/L or 30 percent greater than the allowed weekly average total settleable solids effluent limitation of 15 mg/L. This non-serious violation is subject to mandatory penalties under CWC section 13385(i)(1) because the violation was preceded by three or more effluent limitation violations within a six-month period.

### **Effluent Limit Violations, Discretionary Penalties**

21. On 25 March 2011, between 0000 and 0100 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.04 mg/L or 110.5 percent greater than the 1-hour average chlorine residual effluent limitation of 0.019 mg/L. In addition, a maximum concentration of 0.32 mg/l or 1,584 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.019 mg/L was measured at EFF-001.
22. On 25 March 2011, between 0100 and 0200 hours, the 1-hour average chlorine residual concentration at EFF-001 was calculated to be 0.07 mg/L or 268 percent greater than the 1-hour average chlorine residual effluent limitation of 0.019 mg/L. In addition, a maximum concentration of 0.21 mg/L or 1,005 percent greater than the allowed 1-hour average chlorine residual effluent limitation of 0.019 mg/L was measured at EFF-001.
23. Excess chlorine is a pollutant parameter that is exceptionally harmful to the environment. The two violations cited exceeded the 1-hour average chlorine residual effluent limitation in WDR Order R5-2010-0096 by more than 100 percent. The gravity of these violations posed a serious threat to water quality and aquatic life in the Sacramento River. The Central Valley Water Board staff has determined that discretionary penalties based on the volume of discharge from the hours of 0000 to 0200 are appropriate for these two violations.
24. The discharge volume on 25 March 2011 from the hours of 0000 to 0200 was determined by multiplying the 1-minute average discharge flow (3,348.44 gallons per minute (gpm) during the exceedance) by the exceedance time (actual discharge time above chlorine residual effluent limitation of 0.019 mg/L) of 55 minutes. Total volume equals 3,348.44 gpm multiplied by 55 minutes for a total discharge of 184,164 gallons.

### **FACTORS CONSIDERED IN DETERMINING ADMINISTRATIVE CIVIL LIABILITY**

25. Pursuant to CWC section 13385, subdivision (e), in determining the amount of any civil liability imposed under CWC section 13385(c), the Central Valley Water Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, 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 violations, and other matters that justice may require. CWC section 13385, subdivision (e) also requires that at a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation(s).

26. On 17 November 2010, 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 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC section 13385(e). The entire Enforcement 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 administrative civil liability was derived from the use of the penalty methodology in the Policy. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require. The required factors have been considered for the prohibited discharge violations using the methodology in the Enforcement Policy, as explained in detail in Attachment B.

## **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

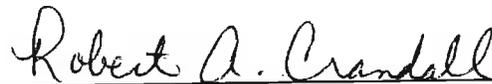
27. Pursuant to CWC section 13385, subsections (h) and (i), the Central Valley Water Board is required to assess a mandatory minimum penalty in the amount of twenty four thousand dollars (\$24,000) for violations of the WDRs Order No. R5-2003-0130 and WDRs Order No. R5-2010-0096 incurred by exceeding the effluent limitations, as shown in Attachment A.
28. The maximum penalty for the chlorine residual effluent limitation violation described above is \$1,856,640 based on a calculation of the total number of gallons discharged times the statutory maximum, plus the total number of per-day violations times the statutory maximum penalty (183,164 gallons at \$10/gallon plus 1 day at \$10,000/day). However, based on consideration of the factors in Finding 23 and after applying the penalty methodology, the Assistant Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$200,000** for the violations of CWC section 13385. The specific factors considered in this penalty are detailed in Attachment B.
29. There are no statutes of limitations that apply to administrative proceedings. The statutes of limitations that refer to "actions" and "special proceedings" and are contained in the California Code of Civil Procedure apply to judicial proceedings, not an administrative proceeding. See *City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal. App. 4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.)

COMPLAINT NO. R5-2011-0587  
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT  
CITY OF REDDING, CLEAR CREEK WASTEWATER TREATMENT PLANT  
SHASTA COUNTY

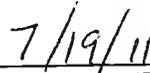
30. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.
31. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) pursuant to title 14, California Code of Regulations sections 15308 and 15321 subsection (a)(2).

**THE CITY OF REDDING CLEAR CREEK WASTEWATER TREATMENT PLANT IS HEREBY GIVEN NOTICE THAT:**

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed a penalty in the amount of **two hundred thousand dollars (\$200,000)**.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled **on 12/13/14 October 2011**, unless the Discharger does one of the following by **1 August 2011**:
  - a) Waives the hearing by completing the attached form (checking off the box next to Option 1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **two hundred thousand dollars (\$200,000)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking off the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking off the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water 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.
  - a. If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.



ROBERT A. CRANDALL  
Assistant Executive Officer



(Date)

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Redding, Clear Creek Wastewater Treatment Plant (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2011-0587 (hereafter 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. 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 in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **two hundred thousand dollars (\$200,000)** by check that references "ACL Complaint R5-2011-0587" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **3 August 2011**.
- 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 a 30-day public notice and comment period. Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. 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

**(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 Central Valley Water 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 Central Valley Water Board** Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). **By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement.** It remains within the discretion of the Central Valley Water 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 Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water 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 Central Valley Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

**Attachment A**  
**CITY OF REDDING, CLEAR CREEK WASTEWATER TREATMENT PLANT**

**Table 1. Calculation of Mandatory Minimum Penalties**

Violation Date	Discharge Point	Pollutant/Parameter	Effluent Limit	Analytical/Calculated Results	Percentage Over	Violation Type	180-day Violation Count	MMP
12/17/2009	D-001	Residual Chlorine	1-hr Average 0.02 mg/L	0.025 mg/L	25%	Serious Group II	1	\$3,000
12/17/2009	D-001	Residual Chlorine	1-hr Average 0.02 mg/L	0.05 mg/L	150%	Serious Group II	2	N/A
12/17/2009	D-001	Residual Chlorine	1-hr Average 0.02 mg/L	0.043 mg/L	115%	Serious Group II	3	N/A
3/25/2011	D-001	Chlorine Residual	1-hr Average 0.019 mg/L	0.04 mg/L	110.5%	Serious Group II	1	Discretionary
3/25/2011	D-001	Chlorine Residual	1-hr Average 0.019 mg/L	0.07 mg/L	268.4%	Serious Group II	2	Discretionary
3/27/2011	D-001	TSS	Daily Maximum 30 mg/L	46.3 mg/L	54.3%	Serious Group I	3	\$3,000
3/27/2011	D-001	BOD <sub>5</sub>	Daily Maximum 30 mg/L	36.4 mg/L	21.3%	Non-Serious	4	\$3,000
3/31/2011	D-001	TSS	Daily Maximum 30 mg/L	38.5 mg/L	28.3%	Non-Serious	5	\$3,000
4/02/2011	D-001	BOD <sub>5</sub>	Weekly Average 15 mg/L	15.5 mg/L	3.3%	Non-Serious	6	\$3,000
4/02/2011	D-001	TSS	Weekly Average 15 mg/L	19.5 mg/L	30%	Non-Serious	7	\$3,000
<b>Total Assessment:</b>								<b>\$24,000</b>

Notes:

- Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.
- Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.
- Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:
  - (a) violates a WDR effluent limitation;
  - (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
  - (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
  - (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.
- AMEL: Average Monthly Effluent Limitation
- MDEL: Daily Maximum Effluent Limitation
- N/A: Not Applicable

## Attachment B – ACL Complaint No. R5-2011-0587

### Specific Factors Considered-Civil Liability

#### City of Redding, Clear Creek Wastewater Treatment Plant

Each factor of the Enforcement Policy and its corresponding score is presented below for the 25 March 2011 chlorine residual effluent violation.

The Monetary Assessments in Administrative Civil Liability (ACL) Actions is set forth in the Water Quality Enforcement Policy using a nine step approach. The rationale for calculating the ACL is discussed below.

#### Step 1 – Potential for Harm for Discharge Violations

To determine the actual or threatened impact to beneficial uses caused by the violation is done using a three-factor scoring system to quantify: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) the Dischargers susceptibility to cleanup or abatement for each violation or group of violations.

##### Factor 1: Harm or Potential Harm to Beneficial Uses.

A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm is negligible (0) to major (5). In this case the potential harm to beneficial uses was determined to be below moderate (2). A below moderate score means a less than moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial is minor). While the no impacts fish or other aquatic life were observed downstream of the discharge, the concentration of chlorine residual did exceed the USEPA recommended 1-hour average criteria for freshwater aquatic life protection of 0.019 mg/L. The concentration of chlorine residual in the discharge exceeded the water quality objective for short term exposure (0.019 mg/L) by 268.4 percent.

##### Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material. In this case a score of 3 was assigned. A score of 3 means that the discharged material poses an above-moderate risk or a direct threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material exceed known risk factors and/or there is substantial concern regarding receptor protection). Chlorine residual is known to cause toxicity in fish and aquatic organisms.

##### Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned for this factor if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case cleanup or abatement was not possible. Therefore, a factor of 1 is assigned.

### Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 6** was calculated. The total score is then used to determine the Penalty Factors for per gallon discharges and per day discharges.

### Step 2 – Assessment for Discharge Volumes

This step addresses per gallon and per day assessments for discharge violations.

#### Per Gallon Assessments for Discharge Volumes

Where there is a discharge, the Water Boards shall determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the extent of Deviation from Requirement of the violation. Although the discharger violated the 1-hour average chlorine residual effluent limitation of 0.019 mg/L, the deviation from the requirement has been determined to be minor in this case. A minor deviation is defined as the intended effectiveness of the requirement remains generally intact (e.g., there is a general intent by the discharger to follow and meet the chlorine residual requirement). The discharge has not had a long term effect on the actual effluent limitation, monitoring requirements, or any other deadlines.

A discharge volume of 184,164 gallons was determined by multiplying the 30 -second average discharge flow rate (1,674 gpm during the exceedance) by the exceedance time of 55 minutes (actual discharge time above chlorine residual effluent limit). While the volume of the discharge appears to be great (184,164 gallons), it is not considered a High Volume Discharge as defined by the Water Quality Enforcement Policy. Therefore, California Water Code (CWC) section 13385(c)(2) allows for an additional liability of ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. Therefore, the additional liability is calculated on a volume of 183,164 gallons.

#### Per Day Assessments for Discharge Volumes

CWC section 13385(c)(1) allows for additional ten thousand dollars per day (\$10,000) for each day in which the violation occurs. Since the discharge of violation occurred for approximately one hour, the violation has been determined to be one (1) day. This translates to an additional liability of \$10,000.

**Initial Liability Amount: \$147,331** (Number of Days (1) X Maximum Penalty (\$10,000) X Per Day Factor (0.08) + Number of Gallons (183,164) X Max per Gallon (\$10) X Per Gallon Factor (0.08). The per day and per gallon factors are from Tables 1 & 2 of the Water Quality Enforcement Policy and shown below.

## ATTACHMENT B

CITY OF REDDING, CLEAR CREEK WASTEWATER TREATMENT PLANT  
SHASTA COUNTY**Tables 1 & 2 of the Water Quality Enforcement Policy**

Deviation form Requirement	Potential for Harm (per gallon factors and per day factors)									
	1	2	3	4	5	6	7	8	9	10
Minor	0.005	0.007	0.009	0.011	0.060	0.080	0.100	0.250	0.300	0.350
Moderate	0.007	0.010	0.013	0.016	0.100	0.15	0.200	0.400	0.500	0.600
Major	0.010	0.015	0.020	0.025	0.150	0.220	0.310	0.600	0.800	1.000

**Step 3 – Per Day Assessment for Non-Discharge Violation: Does not apply****Step 4 – Adjustment Factors**

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to cleanup or cooperate with regulatory authority, and the violator's compliance history.

Culpability

Adjustments should result in a multiplier between 0.5 and 1.5, with the lower multiplier for accidental incidents, and a higher multiplier for negligent behavior. The Discharger was operating in a bypass/blending manner using the blending structure at the Facility at the time of the violation. The valve at the blending structure was set in the manual setting and remained open for the duration of the discharge allowing the flow to continue to the facilities outfall structure. The bypass valve at the outfall structure was open allowing effluent to be sent to pond #6. The bypass valve to pond #6 was not capable of handling the volume of effluent being sent to the outfall structure from the blending structure valve being open. The Discharger was given a multiplier value of 1.25, due to the blending structure valve being operated in the manual position and not closing it in a timely manner.

Cleanup and Cooperation

Adjustments should result in a multiplier between 0.75 and 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation, and a higher multiplier where this is absent. The Discharger was given a multiplier value of 0.75, which decreases the violation amount. The discharger has a history of providing prompt notification of discharge events and cooperative in the cleanup following up and mitigation measures necessary to protect water quality.

History of Violation

The discharger has had 21 effluent limitation violations since January 2007. Four separate discharges of chlorine residual resulted in nine effluent limitation violations (two on 1/28/2007, one on 1/29/2007, one on 3/8/2007, three on 17 December 2009, and two on 3/25/2011). While the Water Quality Enforcement Policy does not list a multiplier range, where there is a history of repeat violations, a minimum multiplier of 1.1 should be used. Given the number of effluent limitations violation since January 2007, the Discharge was given a 1.25, which increases the initial liability amount by twenty five percent.

### **Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

**Total Base Liability Amount: \$172,653** (Initial Liability Amount (\$147,331) X Adjustment Factors (1.25)(0.75)(1.25).

### **Step 6 - Ability to Pay and Ability to Continue in Business**

The City of Redding, Clear Creek Wastewater Treatment Facility is not a for profit enterprise. The City of Redding has approximately 30,000 service connections, 18,000 being connected to the City of Redding Clear Creek Wastewater Treatment Facility. The proposed ACL would equate to less than \$11.00 per service connection. The City of Redding's, wastewater treatment facilities Annual Operations Budget was \$32,792,940 in 2008-2009, \$58,048,650 (includes capital improvements costs) in 2009-2010, and \$35,872,240 for 2010-2011. The City of Redding appears to have the ability to pay the proposed ACL and remain solvent. The ability to pay and to continue in business factor affects the base liability amount as a straight multiplier. The Discharger was given a neutral multiplier value of 1.0, which neither increases nor decreases the violation amount.

### **Step 7 – Other Factors as Justice May Require**

If the Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for "other factors as justice may require," but only if express findings are made to justify this.

#### **Costs of Investigation and Enforcement Adjustment**

The costs of investigation and enforcement are "other factors as justice may require", and should be added to the liability amount. The Regional Water Board has incurred \$4,350 in staff costs associated with the investigation of the violation and preparation of the enforcement action.

### **Step 8 – Economic Benefit**

An economic benefit gained from the discharge has not been determined.

### **Step 9 – Maximum and Minimum Liability Amounts**

The maximum and minimum amounts for the 25 March 2011 violations (i.e., two 1-hour average violations) must be determined for comparison to the amounts being proposed.

#### **Maximum Liability Amount**

The maximum administrative civil liability which can be imposed under section 13385 of the CWC is \$10,000 per day per violation plus of ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons. The calculated discharge is a total of 184,164 gallons, none of which was cleaned up. Therefore, the **maximum administrative civil liability is \$1,841,640** (183,164 gallons at \$10/gallon plus 1 day at \$10,000/day).

## ATTACHMENT B

CITY OF REDDING, CLEAR CREEK WASTEWATER TREATMENT PLANT

SHASTA COUNTY

Minimum Liability Amount

The minimum administrative civil liability determined under section 13385(h) of the CWC would be \$3,000 for each serious violation. Central Valley Water Board staff has determined that the 1-hour average chlorine residual exceeded the effluent limitation during two separate hours which results in two serious violations. However, only one (1) mandatory minimum penalty is issued for a 24-hour period chlorine residual violations. Therefore, the **minimum administrative civil liability is \$3,000.**

**Step 10 – Final liability Amount**

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum (\$3,000) and maximum (\$1,841,640) amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed discretionary amount for the Administrative Civil Liability is **\$177,000.**

**Table 1. Adjustment Factors**

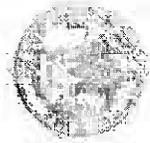
<b>Adjustment Factors</b>	<b>Range</b>	<b>Factors Used</b>
Harm or Potential Harm to Beneficial Uses	0 to 5	2
Physical, Chemical, Biological or Thermal Characteristics of the Discharge	0 to 4	3
Susceptibility to Cleanup or Abatement	0 or 1	1
Final Score	0 to 10	6
Per Gallon Assessment	Minor, Moderate, Major	Minor
Per Day Assessment	Minor, Moderate, Major	Minor
Culpability	0.5 to 1.5	1.25
Cleanup and Cooperation	0.75 to 1.5	0.75
History of Violations	Subjective, based on history	1.25
Ability to Pay	Based on financial information	1
Other Factors as Justice May Require	Subjective, based on investigation	1
Economic Benefit	Subjective, based on investigation	1
<b>Discretionary Violation Amount</b>		<b>\$177,000</b>



Linda S. Adams  
Acting Secretary for  
Environmental Protection

ATTACHMENT C  
California Regional Water Quality Control Board  
Central Valley Region  
Katherine Hart, Chair

416 Knollsrest Drive, Suite 100, Redding, California 96002  
(530) 224-4845 • FAX (530) 224-4857  
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.  
Governor

NOTICE OF VIOLATION

14 February 2011

CERTIFIED MAIL  
7009 2250 0002 8885 8941

Dennis McBride  
Wastewater Utility Manager  
City of Redding  
P.O. Box 496071  
Redding, CA 96049-6071

**CHLORINE RESIDUAL EFFLUENT LIMIT VIOLATION, NPDES ORDER NO. R5-2007-0058,  
CITY OF REDDING, STILLWATER WASTEWATER TREATMENT PLANT, ANDERSON,  
SHASTA COUNTY**

On 23 January 2011 the City of Redding's Stillwater Wastewater Treatment Plant discharged effluent to the Sacramento River with a chlorine residual greater than the daily maximum<sup>1</sup> chlorine residual effluent limitation of 0.02 mg/L. The high chlorine residual on 23 January 2011 also resulted in the 4-day chlorine residual effluent limitation of 0.01 mg/L being exceeded. The reported daily maximum chlorine residual for 23 January 2011 was 1.46 mg/L and the 4-day average chlorine residual was reported at 0.015 mg/L. The 23 January 2011 incident occurred over a period of one hour where the total discharge volume in violation of the effluent chlorine residual limitation was 67,253 gallons.

CWC section 13385(h)(2) defines a serious violation as an exceedance of 40% or more of a group I pollutant as defined in 40 CFR 123.45 or an exceedance by 20% or more of a group II pollutant as defined in 40 CFR 123.45. Chlorine residual is a group II pollutant under 40 CFR 123.45, and the measured exceedances are therefore serious violations under CWC section 13385 (h), and are subject to a mandatory minimum penalty of \$3,000 each. Administrative civil liability beyond the mandatory minimum penalty may be imposed.

This matter is being referred to the Executive Officer of the Central Valley Regional Water Quality Control Board for consideration of further enforcement action:

<sup>1</sup> Daily maximum is based on a 1-hour average.

Dennis McBride  
City of Redding

-2-

14 February 2011

If you have any questions regarding the above information, please contact Stacy Gotham of my staff at (530) 224-4993 or at the letterhead address above.



Bryan J. Smith, P.E.  
Supervising WRC Engineer

SSG: knr

cc: USEPA, Region 9, San Francisco  
SWRCB, Sacramento  
California Dept. of Fish and Game, Redding  
Shasta County Dept. of Resource Management, Environmental Health Division, Redding  
John Szychulda, Wastewater Utility Supervisor - Stillwater, City of Redding, Anderson  
Josh Kenner, Wastewater Utility - Compliance Coordinator, City of Redding, Redding

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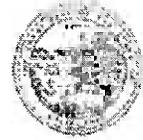
ATTACHMENT D

California Regional Water Quality Control Board  
Central Valley Region  
Katherine Hart, Chair



Linda S. Adams  
Acting Secretary for  
Environmental Protection

415 Knollcrest Drive, Suite 100, Redding, California 96002  
(530) 224-4845 • FAX (530) 224-4857  
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.  
Governor

NOTICE OF VIOLATION

31 May 2011

CERTIFIED MAIL  
7009 2250 0002 9885 4269

Mr. Dennis McBride  
Municipal Utilities Director  
City of Redding  
P.O. Box 496071  
Redding, CA 96049-6071

WDID 5A450103004

**VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER R5-2007-0058, NPDES PERMIT NO. CA0082589, CITY OF REDDING - STILLWATER WASTEWATER TREATMENT PLANT, ANDERSON, SHASTA COUNTY**

The discharge of treated wastewater from the City of Redding's (Discharger) Stillwater Wastewater Treatment Plant (Facility) is regulated by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) pursuant to Waste Discharge Requirements (WDRs) Order R5-2007-0058, NPDES Permit No. CA0082589 adopted by the Central Valley Water Board on 21 June 2007.

Central Valley Water Board staff has determined that the Discharger violated an effluent limitation of the WDRs in August 2009. This Notice of Violation explains the basis for determining the violation and explains the potential additional enforcement actions for the violations.

**Permit Conditions**

Effluent Limitations A.1 contained in WDR Order R5-2007-0058 limits the dichlorobromomethane effluent concentration as follows:

Parameter	Units	Effluent Limitations	
		Average Monthly	Maximum Daily
Dichlorobromomethane	ug/L	18.1	36.2

**Violation**

Effluent Limitation A.1, Dichlorobromomethane Average Monthly Effluent Limitation.

The effluent concentration of dichlorobromomethane for August 2009 was reported as 22 ug/L which exceeds the average monthly effluent limitation of 18.1 ug/L.

21 May 2011

**Enforcement Actions**

Pursuant to the California Water Code (CWC) section 13385, the violations of the WDRs are potentially subject to administrative civil liability of up to ten thousand dollars for each day in which the violations occurred, and up to ten dollars per gallon of wastewater discharged in excess of 1,000 gallons. Furthermore, pursuant to CWC section 13385 (h) and (i) certain effluent violations are subject to Mandatory Minimum Penalties of \$3,000 per qualifying violation. The actual liability can vary between the Mandatory Minimum Penalty amount and the maximum amount discussed above.

As described in the attached table, the violation cited in this letter is subject to a Mandatory Minimum Penalty in the amount of \$3,000. This matter is being referred to the Executive Officer of the Central Valley Water Board for consideration of issuance of an Administrative Civil Liability Complaint (ACLC). If the EO issues an ACLC, the amount will be set at the Mandatory Minimum Penalty, or an amount up to the maximum potential liability.

Please review the violation cited by this letter and the attached Mandatory Minimum Penalty calculation table for accuracy and submit any comments/corrections **by 15 June 2011**. If you have any questions regarding this letter, please contact Stacy Gotham at (530) 224-4993, or at the letterhead address above.



Bryan J. Smith, P.E.  
Supervising Water Resource Control Engineer

SSG:jmtm

Encl: Attachment A. Calculation of Mandatory Minimum Penalty.

cc: U.S. Environmental Protection Agency, San Francisco  
SWRCB, Sacramento  
Shasta County Department of Resource Management, Environmental Health Division,  
Redding  
Kurt Starman, City of Redding Manager, Redding  
John Szychulda, Wastewater Utility Supervisor - Stillwater Plant, Redding  
Josh Keener, City of Redding, Redding

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**Attachment A**

**CITY OF REDDING, SEWAGE WASTEWATER TREATMENT PLANT**

**Table 1. Calculation of Mandatory Minimum Penalty**

Violation Date	Discharge Point	Pollutant/ Parameter	Effluent Limit	Analytical/ Calculated Result	Percentage Over	Violation Type	180-day Violation Count	MMP	Penalty Status
8/31/2009	D-001	Dichlorobromomethane	18.1 ug/L AMEL	22 ug/L	21.5%	Serious Group II	1	\$3,000	New Assessment
<b>Total New Assessment:</b>								<b>\$3,000</b>	

- Notes:**
- Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.
  - Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.
  - Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:
    - (a) violates a WDR effluent limitation;
    - (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;
    - (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or
    - (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant-specific effluent limitations for any toxic pollutants.
- AMEL: Average Monthly Effluent Limitation



Linda S. Adams  
Acting Secretary for  
Environmental Protection

ATTACHMENT E  
California Regional Water Quality Control Board  
Central Valley Region  
Katherine Hart, Chair

415 Knollcrest Drive, Suite 100, Redding, California 96002  
(530) 224-4845 • FAX (530) 224-4857  
<http://www.waterboards.ca.gov/centralvalley>



Edmund G. Brown Jr.  
Governor

NOTICE OF VIOLATION

18 May 2011

CERTIFIED MAIL

7009 2250 0002 9885 4214

Mr. Dennis McBride  
Municipal Utilities Director  
City of Redding  
P.O. Box 496071  
Redding, CA 96049-6071

WDID 5A450103001

**VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER R5-2010-0096,  
NPDES PERMIT NO. CA0079731, CITY OF REDDING - CLEAR CREEK WASTEWATER  
TREATMENT PLANT, REDDING, SHASTA COUNTY**

Discharges from the City of Redding's (Discharger) Clear Creek Wastewater Treatment Plant (Facility) are regulated by Waste Discharge Requirements (WDR) Order R5-2010-0096, NPDES Permit No. CA0079731. On 5, 7, 8, and 13 April 2011 the Discharger submitted documentation of multiple violations of the subject WDR to the Central Valley Regional Water Quality Control Board (Central Valley Water Board). The violations occurred between the period of 23 March 2011 and 3 April 2011, when the Facility discharged effluent that was partially-treated (filters were bypassed) during a high influent flow event. The high influent flow event was triggered by multiple rain events during which time West Redding received approximately 15.4 inches<sup>1</sup> of rain in the month of March. The rainfall, however, was not atypical for Redding. In the last 6 water years, there have been three additional 30-day periods where rainfall totals exceeded 15 inches.<sup>2</sup>

The Discharger is in violation of the following limits set forth in the subject WDR:

1. Discharge Prohibition III.A. "Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."

During the period of 23 March 2011 to 3 April 2011 (12 days) the Discharger bypassed the filtration process for a portion of Facility waste flow. The total volume of effluent discharged during the 12-day bypass was approximately 195 million gallons<sup>3</sup>.

<sup>1</sup> As measured at the Redding Fire Station (RFS) and reported by the California Data Exchange Center.

<sup>2</sup> Data obtained from hydrologic years 05/06, 06/07, 07/08, 08/09, 09/10, 10/11 at Redding Fire Station (RFS) and reported by the California Data Exchange Center.

<sup>3</sup> Total discharge volume is a conservative estimate. On 26, 27, 28, and 29 March 2011 effluent flows periodically exceeded the reporting limit (23 MGD) of the effluent flow meter. Therefore the actual discharge volume for these four days is greater than the measured value reported by the Discharger.



2. Discharge Prohibition III.B. "The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Federal Standard Provisions I.G. and I.H. (Attachment D)."

The bypass started on 23 March 2011 and ended on 3 April 2011 (12 days). Standard Provision I.G(b) requires the Discharger to demonstrate that there were no "feasible alternatives to the bypass." This phrase has been interpreted to include the construction of wastewater storage units to handle peak flows and improvements to the sanitary sewer collection system to minimize inflow and infiltration. The Discharger did not have adequate storage units to handle the wet weather flows, and as discussed below, the Discharger's collection system has excessive inflow and infiltration.

3. Discharge Provision III.D. "The Discharger shall not allow pollutant-free wastewater to be discharged into the collection, treatment, and disposal system in amounts that significantly diminish the system's capability to comply with this Order. Pollutant-free wastewater means rainfall, ground water, cooling waters, and condensates that are essentially free of pollutants."

The Discharger has excessive inflow and infiltration into its collection system. The average dry weather influent flow at the Facility is approximately 7.1 MGD. The average influent flow between the start of the bypass and the last day of rain (31 March 2011) was 28 MGD. The maximum daily influent flow for the month was 37.8 MGD with a peak 1-hour average influent flow rate of 44 MGD (and an instantaneous peak flow of 83.5 MGD) on 20 March 2011. Therefore, the peak 1-hour influent flow exceeded six times the average dry weather flows.

4. Effluent Limitation A.1.a. "The Discharger shall maintain compliance with the following effluent limitations at Discharger Point No. 001 with compliance measured at Monitoring Location EFF-001 as described in the attached MRP (Attachment E)";

Parameter	Units	Average Monthly	Average Weekly	Maximum Daily
Biochemical Oxygen Demand, 5-day@ 20°C	mg/L	10	15	30
Total Suspended Solids	mg/L	10	15	30

On 27 March 2011 the effluent BOD<sub>5</sub> concentration exceeded the daily maximum limit, the reported value was 36.4 mg/L. In addition, the total suspended solids (TSS) maximum daily limit was exceeded on 27 March 2011 and 30 March 2011, the reported values were 46.3 mg/L and 38.5 mg/L, respectively. The BOD<sub>5</sub> and TSS weekly average limitations were also exceeded between 27 March 2011 and 2 April 2011, the calculated values were 15.5 mg/L and 19.1 mg/L, respectively.

5. Effluent Limitation A.1.d. "Total Residual Chlorine. Effluent total residual chlorine shall not exceed:

- i. 0.011 mg/L, as a 4-day average; and
- ii. 0.019 mg/L, as a 1-hour average."

On 25 March 2011 the effluent chlorine residual 1-hour average limit was exceeded twice in a 24-hour period. From midnight to 1 AM the average effluent chlorine residual was 0.04 mg/L with a peak chlorine residual of 0.32 mg/L. From 1 AM to 2 AM the average effluent chlorine residual was 0.07 mg/L with a peak chlorine residual of 0.21 mg/L. The total volume of effluent discharged, in exceedance of the chlorine residual limitation, was reported at 211,316 gallons.

6. Special Provisions C.4.b(iii) and (vi) states that when discharges to the emergency storage basin occur, the Discharger shall ensure compliance with the following operation and maintenance requirements:

- i. "The emergency storage basin shall not have a pH less than 6.5 or greater than 8.5 for periods of greater than 72 hours."
- vi. "Freeboard in the emergency storage basin shall not be less than 2 feet (measured vertically to the lowest point of overflow), except if lesser freeboard does not threaten the integrity of the emergency storage basin, no overflow of the emergency storage basin occurs, and lesser freeboard is due to direct precipitation or storm water runoff occurring as a result of annual precipitation with greater than a 100-year recurrence interval, or a storm event with an intensity greater than a 25-year, 24-hour storm event."

During the period of 29 March 2011 through 6 April 2011, ten of the Facility's twelve ponds were used for emergency storage. Nine of the ten emergency storage basins' pH values were greater than 8.5 (for a period of greater than 72 hours).

During the period of 27 March 2011 through 1 April 2011 the freeboard in Pond 10 was less than two feet. The subject storm event(s) do not meet the local 25-year, 24-hour storm event precipitation total and the local-area accumulated rainfall total does not exceed the 100-year recurrence interval annual precipitation.

Failure to comply with the requirements of your WDR may result in enforcement actions including a Cease and Desist Order pursuant to Section 13301 and/or Civil Liability under Section 13385 of the California Water Code (CWC). The Central Valley Water Board can impose administrative civil liabilities for violations of the terms and condition of the WDR. The maximum fine for each day of violation is ten thousand dollars (\$10,000) plus ten dollars (\$10) multiplied by the number of gallons by which the volume discharged exceeds 1,000 gallons.

Furthermore, mandatory minimum penalties are required by CWC section 13385, subdivisions (h) and (i) for specified violations of NPDES permits. For violations that are subject to mandatory minimum penalties, the Water Boards must assess an ACL for the mandatory minimum penalty or for a greater amount. CWC section 13385(h) requires that a mandatory minimum penalty of \$3,000 be assessed by the Water Boards for each serious violation. A serious violation is any waste discharge that exceeds the effluent limitation for a Group I pollutant by 40 percent or more, or a Group II pollutant by 20 percent or more. CWC section 13385(i) requires that a mandatory minimum penalty of \$3,000 be assessed by the Water Boards for each non-serious violation, not counting the first three violations in any period of 180 days.

Mr. Dennis McBride  
City of Redding

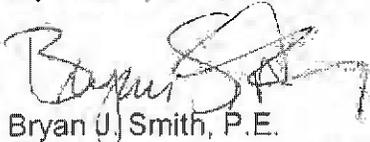
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18 May 2011

BOD<sub>5</sub> and TSS are Group I pollutants and chlorine residual is a Group II pollutant. Based on the submitted data, the two 1-hour average chlorine residual violations from 25 March 2011 and the 27 March 2011 maximum daily TSS violation are serious violations. The remaining four TSS and BOD<sub>5</sub> violations are non-serious violations. However, the four non-serious violations occurred after the 25 March 2011 chlorine violations and the 27 March 2011 TSS violation, and are considered the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> effluent violations in a 180 day period, and thus subject to a mandatory minimum penalty of \$3,000 each. This calculation is provided in Attachment A.

This matter has been referred to the Executive Officer for consideration of further enforcement action.

If you have any questions regarding the above information, please contact Stacy Gotham of my staff at (530) 224-4993 or at the letterhead address above.



Bryan U. Smith, P.E.  
Supervising Water Resources Control Engineer

SSG: jmtm

Encls: Attachment A. Calculation of Mandatory Minimum Penalties

cc: U.S. Environmental Protection Agency, San Francisco  
SWRCB, Sacramento  
Shasta County Department of Resource Management, Environmental Health Division,  
Redding  
Kurt Starman, City of Redding Manager, Redding  
Troy Mitchell, Wastewater Utility Supervisor – Clear Creek Plant, Anderson  
Josh Keener, City of Redding, Redding

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Attachment A

CITY OF REDDING, CLEAR CREEK WASTEWATER TREATMENT PLANT

Table 1. Calculation of Mandatory Minimum Penalties

Violation Date	Discharge Point	Pollutant/Parameter	Effluent Limit	Analytical Results	Percentage Over	Violation Type	180-day Violation Count	MMP	Penalty Status
3/25/2011	D-001	Chlorine Residual	0.019 mg/L 1-hour average	0.04 mg/L	110.5%	Serious Group II	1	\$3,000	New Assessment
3/25/2011	D-001	Chlorine Residual	0.019 mg/L 1-hour average	0.07 mg/L	268.4%	Serious Group II	2	\$3,000	New Assessment
3/27/2011	D-001	TSS	30 mg/L Daily Max	46.3 mg/L	54.3%	Serious Group I	3	\$3,000	New Assessment
3/27/2011	D-001	BOD <sub>5</sub>	30 mg/L Daily Max	36.4 mg/L	21.3%	Non-Serious Group I	4	\$3,000	New Assessment
3/30/2011	D-001	TSS	30 mg/L Daily Max	38.5 mg/L	28.3%	Non-Serious Group I	5	\$3,000	New Assessment
4/02/2011	D-001	BOD <sub>5</sub>	15 mg/L Weekly Average	15.5 mg/L	3.3%	Non-Serious Group I	6	\$3,000	New Assessment
4/02/2011	D-001	TSS	15 mg/L Weekly Average	19.1 mg/L	27.3%	Non-Serious Group I	7	\$3,000	New Assessment
<b>Total New Assessments:</b>								<b>\$21,000</b>	

Notes:  
 Serious Group I: any waste discharge that exceeds the effluent limitations for a group I pollutant by 40% or more.  
 Serious Group II: any waste discharge that exceeds the effluent limitations for a group II pollutant by 20% or more.  
 Non-Serious Violation: A non-serious violation occurs if the discharger does any one of the following four or more times in any period of 180 days:  
 (a) violates a WDR effluent limitation;  
 (b) fails to file a report of waste discharge pursuant to California Water Code section 13260;  
 (c) files an incomplete report of waste discharge pursuant to California Water Code section 13260; or  
 (d) violates a whole effluent toxicity limitation where the WDRs do not contain pollutant specific effluent limitations for any toxic pollutants.



**ATTACHMENT F**  
**California Regional Water Quality Control Board**  
**Central Valley Region**  
**Katherine Hart, Chair**



Linda S. Adams  
 Acting Secretary for  
 Environmental Protection

415 Knollcrest Drive, Suite 100, Redding, California 96002  
 (530) 224-4845 • FAX (530) 224-4857  
<http://www.waterboards.ca.gov/centralvalley>

Edmund G. Brown Jr.  
 Governor

**NOTICE OF VIOLATION**

18 May 2011

**CERTIFIED MAIL**  
 7009 2250 0002 9885 4221

Mr. Dennis McBride  
 Municipal Utilities Director  
 City of Redding  
 P.O. Box 496071  
 Redding, CA 96049-6071

WDID 5A450103004

**VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER R5-2007-0058, NPDES NO. CA0082589, CITY OF REDDING - STILLWATER WASTEWATER TREATMENT PLANT, ANDERSON, SHASTA COUNTY**

Discharges from the City of Redding's (Discharger) Stillwater Wastewater Treatment Plant (Facility) are regulated by Waste Discharge Requirements (WDR) Order R5-2007-0058, NPDES Permit No. CA0082589. On 5 and 7 April 2011 the Discharger submitted documentation of multiple violations of the subject WDR to the Central Valley Regional Water Quality Control Board (Central Valley Water Board). The violations occurred between the period of 26 March 2011 and 28 March 2011, when the Facility discharged effluent that was partially-treated (filters were bypassed) during a high influent flow event. The high influent flow event was triggered by multiple rain events during which time the southeast portion of Redding received approximately 8.39 inches<sup>1</sup> of rain in the month of March. The rainfall, however, was not atypical for Redding. In the last 6 water years, there have been at least three additional 30-day periods where rainfall totals exceeded 8.3 inches.<sup>2</sup>

The Discharger is in violation of the following limits set forth in the subject WDR:

1. Discharge Prohibition III.A. "Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited."

During the period of 26 March 2011 to 28 March 2011 (3 days) the Discharger bypassed the filtration process for a portion of Facility waste flow. The total volume of effluent discharged during the 3-day (51.5 hours) bypass was approximately 23.9 million gallons.

<sup>1</sup> As measured at the Redding Airport and reported by the National Weather Service.

<sup>2</sup> Data obtained from hydrologic years 05/06, 06/07, 07/08, 08/09, 09/10, 10/11 at the Redding Airport and reported by the National Weather Service and the Western Regional Climate Center.

2. Discharge Prohibition III.B: "The by-pass or overflow of wastes to surface waters is prohibited, except as allowed by Federal Standard Provisions I.G. and I.H. (Attachment D)."

The bypass started on 26 March 2011 and ended on 28 March 2011 (3 days). Standard Provision I.G(b) requires the Discharger to demonstrate that there were no "feasible alternatives to the bypass." This phrase has been interpreted to include the construction of wastewater storage units to handle peak flows and improvements to the sanitary sewer collection system to minimize inflow and infiltration. The Discharger did not have adequate storage units to handle the wet weather flows, and as discussed below, the Discharger's collection system has excessive inflow and infiltration.

3. Discharge Provision III.D: "The Discharger shall not allow pollutant-free wastewater to be discharged into the collection, treatment, and disposal system in amounts that significantly diminish the system's capability to comply with this Order. Pollutant-free wastewater means rainfall, ground water, cooling waters, and condensates that are essentially free of pollutants."

The Discharger has excessive inflow and infiltration into its collection system. The average dry weather influent flow at the Facility is approximately 2.6 MGD. The Facility experienced high influent flows for a period between 19 March 2011 and 29 March 2011 where influent flows exceeded 10 MGD for six days of the 10-day period. The maximum daily influent flow for the month was 12.57 MGD (20 March 2011). The peak 1-hour average influent flow rate was 13.35 MGD on 26 March 2011. Therefore, the peak 1-hour influent flow rate exceeded five times the average dry weather flow rate.

Failure to comply with the requirements of your WDR may result in enforcement actions including a Cease and Desist Order pursuant to Section 13301 and/or Civil Liability under Section 13385 of the California Water Code (CWC). The Central Valley Water Board can impose administrative civil liabilities for violations of the terms and condition of the WDR. The maximum fine for each day of violation is ten thousand dollars (\$10,000) plus ten dollars (\$10) multiplied by the number of gallons by which the volume discharged exceeds 1,000 gallons.

This matter has been referred to the Executive Officer for consideration of further enforcement action.

If you have any questions regarding the above information, please contact Stacy Gotham of my staff at (530) 224-4993 or at the letterhead address above.



Bryan J. Smith, P.E.  
Supervising Water Resources Control Engineer

SSG:jmm

cc: See Attached List

Mr. Dennis McBride  
City of Redding

-3-

18 May 2011

cc: U.S. Environmental Protection Agency, San Francisco  
SWRCB, Sacramento  
Shasta County Department of Resource Management, Environmental Health Division,  
Redding  
Kurt Starman, City of Redding Manager, Redding  
John Szychulda, Wastewater Utility Supervisor - Stillwater Plant, Anderson  
Josh Keener, City of Redding, Redding

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Central Valley Regional Water Quality Control Board

NOTICE OF VIOLATION

20 June 2012

CERTIFIED MAIL

7009 2250 0002 9885 2999

Mr. Jon McClain  
Assistant Public Works Director  
City of Redding  
P.O. Box 496071  
Redding, CA 96049-6071

WDID 5A450103004

**VIOLATION OF WASTE DISCHARGE REQUIREMENTS ORDER R5-2007-0058, NPDES NO. CA0082589, CITY OF REDDING - STILLWATER WASTEWATER TREATMENT PLANT, ANDERSON, SHASTA COUNTY**

The discharge of treated wastewater from the City of Redding's (Discharger) Stillwater Wastewater Treatment Plant (Facility) is regulated by the Central Valley Regional Water Quality Control Board (Central Valley Water Board) pursuant to Waste Discharge Requirements (WDRs) Order R5-2007-0058, NPDES Permit No. CA0082589 adopted by the Central Valley Water Board on 21 June 2007.

Central Valley Water Board staff has determined that the Discharger violated an effluent limitation of the WDRs in January 2012. This Notice of Violation explains the basis for determining the violations and explains the potential additional enforcement actions for the violations.

**Permit Conditions**

WDR Order R5-2007-0058 Effluent Limitation 1.a. sets forth the following effluent limitations for pH:

Parameter	Unit	Average Monthly	Average Weekly	Maximum Daily	Instantaneous Minimum	Instantaneous Maximum
pH	standard units	--	--	--	6.0	9.0

On 1 March 2012, the Discharger submitted documentation of Facility effluent pH limitation violations to the Central Valley Water Board. The violations occurred on 12 January 2012 and 13 January 2012, when effluent was discharged to the Sacramento River with a pH of less than 6.0 s.u. On 12 January 2012, effluent pH ranged from a minimum of 4.12 to less than

KARL E. LONGLEY ScD, P.E., CHAIR | PAMELA C. CREEDON P.E., BCEE, EXECUTIVE OFFICER

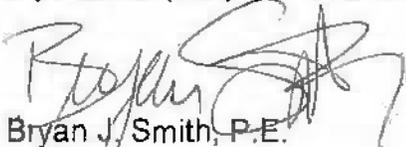
6.0 s.u. for a total discharge time period of 303 minutes. The total effluent volume discharged to the Sacramento River during the 303 minute time period is estimated at 450,000 gallons<sup>1</sup>. On 13 January 2012, effluent pH ranged from a minimum of 5.53 to less than 6.0 s.u. for a total discharge time period of 198 minutes. The total effluent volume discharged to the Sacramento River during 198 minute time period is estimated at 247,500 gallons<sup>2</sup>.

The Discharger indicated that a combination of unseasonably low flows coupled with solids levels being maintained for normal wintertime operation probably caused the measured decrease in alkalinity resulting in the low effluent pH level.

### **Enforcement Actions**

Pursuant to the California Water Code (CWC) section 13385, the violations of the WDRs are potentially subject to administrative civil liability of up to ten thousand dollars for each day in which the violations occurred, and up to ten dollars per gallon of wastewater discharged in excess of 1,000 gallons. This matter has been referred to the Executive Officer for consideration of further enforcement action.

Please submit any comments/corrections regarding this Notice of Violation **by 18 July 2012**. If you have any questions regarding the above information, please contact Scott Gilbreath of my staff at (530) 224-4851 or at the footer address.



Bryan J. Smith, P.E.  
Supervising Water Resources Control Engineer

SMG: jmtm

- cc: U.S. Environmental Protection Agency, San Francisco  
SWRCB, Sacramento  
Shasta County Department of Resource Management, Environmental Health Division,  
Redding  
John Szychulda, Wastewater Utility Supervisor – Stillwater Plant, Anderson  
Josh Keener, City of Redding, Redding  
Layne Friedrich/ Drevet Hunt, Lawyers for Clean Water, Inc., San Francisco  
Bill Jennings, California Sportfishing Protection Alliance, Stockton

<sup>1</sup> Based on 1/12/2012 reported effluent flow rate of 2.14 mgd

<sup>2</sup> Based on 1/13/2012 reported effluent flow rate of 1.8 mgd.



# California Regional Water Quality Control Board Central Valley Region

ATTACHMENT H



Katherine Hart, Chair

415 Knollcrest Drive, Suite 100, Redding, California 96002  
(530) 224-4845 • FAX (530) 224-4857  
<http://www.waterboards.ca.gov/centralvalley>

Linda S. Adams  
Acting Secretary for  
Environmental Protection

Edmund G. Brown Jr.  
Governor

## NOTICE OF VIOLATION

15 February 2011

Dennis McBride  
Wastewater Utility Manager  
City of Redding  
P.O. Box 496071  
Redding, CA 96049-6071

**CERTIFIED MAIL**  
7009 2250 0002 9885 3958  
  
WDID: 5SSO10801

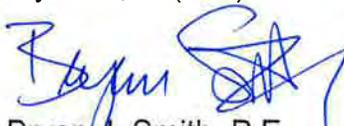
### **SANITARY SEWER OVERFLOWS, SWRCB GENERAL ORDER NO. 2006-0003-DWQ, CITY OF REDDING, SHASTA COUNTY**

On 24 October 2010 and 11 December 2010 the City of Redding's (City) collection system had a sanitary sewer overflow (SSO) that resulted in discharges of untreated wastewater to surface waterbodies. The 24 October 2010 SSO (located at 2700 South Market Street) caused a discharge of approximately 19,000 gallons to Linden Creek. The 11 December 2010 SSO (located at 2317 Waldon Street / 2222 California Street) caused a discharge of approximately 450 gallons to Calaboose Creek. Both receiving waters are tributaries of the Sacramento River.

The City wastewater collection system is regulated by State Water Resources Control Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General WDR). General WDR, Prohibition C.1 states, "Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited." The 24 October 2010 and 11 December 2010 SSOs are in violation of Prohibition C.1 of the General WDR.

This matter is being referred to the Executive Officer of the Central Valley Regional Water Quality Control Board for consideration of further enforcement action, possibly including the imposition of administrative civil liability.

If you have any questions regarding the above information, please contact Stacy Gotham, of my staff, at (530) 224-4993 or at the letterhead address above.

  
Bryan J. Smith, P.E.  
Supervising WRC Engineer

PUBLIC WORKS  
FIELD OPERATIONS

**FEB 16 2011**

cc: SWRCB, Sacramento  
California Dept. of Fish and Game, Redding  
Shasta County Dept. of Resource Management, Environmental Health Division, Redding  
Josh Kenner, Wastewater Utility - Compliance Coordinator, City of Redding, Redding

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PUBLIC WORKS  
FIELD OPERATIONS

APR 16 2012



ATTACHMENT I  
EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Central Valley Regional Water Quality Control Board**

**NOTICE OF VIOLATION**

13 April 2012

**CERTIFIED MAIL**

7009 2250 0002 9885 2869

Mr. Jon McClain  
Assisitant Public Works Director  
City of Redding  
P.O. Box 496071  
Redding, CA 96049-6071

WDID: 5SSO10801

**RAW SEWAGE SPILLS, STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS (WDRs) FOR SANITARY SEWER SYSTEMS, WATER QUALITY ORDER NO. 2006-0003-DWQ, CITY OF REDDING CS, SHASTA COUNTY**

The Redding Collection System which is owned and operated by the City of Redding (Enrollee) is regulated under Waste Discharge Requirements (WDRs) Water Quality Order No. 2006-0003-DWQ (Sanitary Sewer Systems WDRs). Central Valley Regional Water Board staff reviewed the certified reports submitted to the database by the legal responsible official regarding the Category 1 SSO(s) that occurred between 1 January 2012 and 31 March 2012. The SSO(s) are summarized in the following table:

CIWQS Violation ID	Date of Spill	Spill ID	Volume Spilled (gallons)
916927	1/9/2012	775937	69900

The SSO(s) described above are in violation of WDRs Order No. 2006-003-DWQ as described below:

- Furthermore, if the spill reaches surface waters, Discharge Prohibition No. 1 of the WDR states: *"Any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited."*
- The Provisions section of the WDRs states: *"The Enrollee must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the California Water Code and is grounds for enforcement action."*

CIWQS violation reports are publicly available at

[http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/publicreports.shtml#sso](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml#sso)

The Enrollee should take the appropriate actions to prevent future SSO occurrences, take all feasible steps to remediate the consequences of the overflows and implement the provisions of the Sanitary Sewer Systems WDRs.

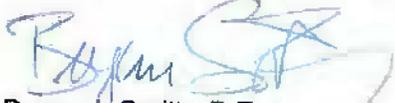
Mr. Jon McClain  
City of Redding

-2-

13 April 2012

These violations are subject to possible further enforcement action by the Central Valley Water Board, including administrative enforcement orders, administrative assessment of civil liability in amounts up to \$10,000 (ten thousand dollars) per day, referral to the State Attorney General for injunctive relief, and referral to the District Attorney for criminal prosecution.

If you have any questions regarding this Notice of Violation, please contact Scott Gilbreath at (530) 224-4851 or [sgilbreath@waterboards.ca.gov](mailto:sgilbreath@waterboards.ca.gov).



Bryan Smith, P.E.  
Supervising Water Resource Control Engineer

SMG: jmtm

cc: Victor Lopez, State Water Board, SSO Program, [vlopez@waterboards.ca.gov](mailto:vlopez@waterboards.ca.gov)  
James Fischer, State Water Board, Office of Enforcement, [jfischer@waterboards.ca.gov](mailto:jfischer@waterboards.ca.gov)

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**City of Redding**  
**SSOs Covered by Stipulated ACL**

ATTACHMENT J

<b>CIWQS ID #</b>	<b>Date</b>	<b>Location</b>	<b>Spill Volume (gal)</b>
778800	02/26/2012	1600 Victor Ave.	200
778798	02/15/2012	3751 Traverse St.	30
775937	01/09/2012	Behind 2118 Sophy Pl.	69,900
775260	01/01/2012	1261 Dusty Ln.	400
774437	11/28/2011	485 Wright Dr.	150
771521	08/22/2011	2475 Beverly Dr.	60
768481	06/20/2011	615 Orchard Estates Dr.	200
766781	04/21/2011	1065 Dara Ct.	35
765612	03/28/2011	3251 School St.	25
765610	03/14/2011	ROW north of 1100 Butte St.	25
763169	02/16/2011	11082 Campers Ct.	138
763161	02/04/2011	ROW adjacent to 1918 Chestnut St.	50
762373	01/19/2011	710 Pioneer Dr.	400
759392	12/11/2010	2222 California St.	550
759101	11/10/2010	Hemingway St. & San Gabriel St.	93
758118	10/24/2010	2700 Market St.	18,900
757165	09/03/2010	901 College View Dr.	90
756763	09/02/2010	1025 Denton Way	700
756302	08/18/2010	610 Churn Creek Rd.	40
756301	08/18/2010	500 Davis Ridge Rd.	150
754690	07/05/2010	ROW adjacent to 1923 Sonoma St.	10
752851	06/01/2010	1800 Mesa St.	500
749811	02/16/2010	3100 Foothill Blvd.	10
749193	02/08/2010	3252 Auburn Dr.	780
749190	02/07/2010	ROW adjacent to 965 West St.	30
749182	02/05/2010	630 Twin View Blvd.	60
748623	01/20/2010	Lakeside Dr. ROW near Regatta Ct.	150
748320	01/11/2010	Cypress Ave. Bridge	1,680
748245	01/05/2010	705 Loma Vista Dr.	2
747466	12/10/2009	1540 Cottonwood Ave.	115
747268	11/27/2009	11780 Talofa Dr.	600
746709	11/07/2009	1721 Market St.	20
737314	05/09/2009	7831 Terra Linda Way	1,400
737120	05/02/2009	1717 Benton Dr.	15
735663	03/27/2009	1250 Parkview Ave.	400
735435	03/24/2009	Venus Way & Mercury Dr.	100
735145	03/16/2009	975 N. Market St.	30,000
735141	03/16/2009	410 Overhill Dr.	40,000
735098	03/16/2009	Orange Ave. Area	51,000
735094	03/16/2009	Willis St. Area	25,500
733610	02/16/2009	407 Lake Blvd.	500
731669	01/09/2009	2151 Wilson Ave.	1,500
731520	01/06/2009	1717 Benton Dr.	15
731515	01/04/2009	975 N. Market St.	3,000
731487	01/06/2009	1717 Benton Dr.	15
731260	12/30/2008	1130 Continental St.	200
731259	12/30/2008	1130 Continental St.	200
730954	12/20/2008	2933 West Way	10
730313	12/07/2008	300 Boulder Creek Dr.	500
729815	11/24/2008	Lancers Ln. & Burton Ct.	500
729098	11/08/2008	1153 LeBrun Ave.	350

727792	10/11/2008	2439 Placer St.	100
727758	10/10/2008	963 West St.	120
727712	10/08/2008	Shasta St. & Almond St.	100
727241	10/01/2008	410 Overhill Dr.	3,000
727172	09/29/2008	410 Overhill Dr.	200
726890	09/24/2008	2650 Eighth St.	3
726598	09/18/2008	1035 Placer St.	500
724780	08/14/2008	Placer St ROW at O'Conner Ave.	30
724287	08/05/2008	4099 Remington Dr.	200
721140	06/29/2008	1310 Ridge Dr.	50
719566	06/13/2008	2830 King St.	100
718946	06/03/2008	3879 Patterson Ct.	75,000
717203	05/09/2008	1977 Salzburg Dr.	20
717019	05/03/2008	1055 Harpole Ln.	700
716213	04/15/2008	2334 Washington Ave	125
715919	04/06/2008	3345 Magnums Way	400
715594	03/31/2008	1169 Almond St.	10
714647	03/05/2008	3105 Foothill Blvd	23,000
714573	03/03/2008	3105 Foothill Blvd.	10,000
713952	02/25/2008	Eureka Way ROW at Willis St	900
712399	02/02/2008	1684 E. Cypress Ave.	22,500
710886	01/04/2008	Lakeside Dr. ROW	250
705035	10/10/2007	795 Lincoln St.	100
704995	10/10/2007	2070 Skyline Dr.	540
656783	09/03/2007	1000 East St.	4

**Total # of SSOs: 76**

**Total Volume : 389250**

## ATTACHMENT K PROJECT DESCRIPTION

**Project Title**    Private Sewer Lateral Replacement Program SEP

**Geographic area of interest:**    City of Redding

**Name of responsible entity:**    City of Redding Public Works Department, Wastewater Utility

**Estimated cost for project completion:**    \$800,000

**Estimated Non-participating costs:**    \$170,500

**Contact information:**    Name    Jon McClain

Address            P.O. Box 496071, Redding, CA 96049-6071

Phone (530) 224-6068            email:    [jmclain@ci.redding.ca.us](mailto:jmclain@ci.redding.ca.us)

### **Overview:**

For the requested Supplemental Environmental Project (SEP), the City of Redding (City) hereby proposes a private lateral replacement program. The goal would be a reduction of inflow and infiltration (I&I) from defective private laterals into the City's sewer collection system, thereby benefiting the public and improving water quality. This program would be voluntary and target areas with infrastructure that is at least 40 years old, with program funding utilized over five years. The City maintains its discretion to alter the terms of this project as necessary to maximize public and environmental benefit, for example by broadening allowances for repair and similar modifications.

### **Project:**

The City would develop a private lateral replacement program targeting residential neighborhoods with sewer infrastructure at least 40 years old. The program would be voluntary and fund replacements up to a \$5,000 maximum, with this maximum reviewed after the first year of the project and subject to change if necessary to maximize public benefit. Interested private homeowners would request to participate in the program through an application process, and these applications would be reviewed in the order received. To be eligible for the program, the homeowner's private sewer lateral would need to meet all of the following criteria:

- Must be in the City's wastewater service area.
- Constructed prior to January 1, 1973.
- Have a lateral clean-out at the structure.
- Fail the visual (CCTV) and/or hydrostatic test – i.e., offset joints, root wades, broken pipe sections, etc.

- Twenty percent of the applications approved by the third party as meeting other criteria would be hydrostatically tested before and after replacement to collect data for future use.

The program would consist of eleven tasks:

## PHASE I

### Task A – Project Management

Project management encompasses all QA/QC activities, selection of third party for oversight and administration, preparation of construction contract documents, database management, quarterly and final reporting, and all necessary costs directly associated with specific project oversight. It also allows for field inspection of work in progress and training purposes.

### Task B – Public Notification of Program

The City would prepare a letter explaining the program to be sent to property owners with homes over 40 years old. Approximately 18,000 homes within the City's sewer system meet that criterion. An announcement of the program would be made by direct mailing and would also be included in the monthly newsletter that accompanies utility bills. The City would also prepare a press release explaining the program, the reasons for the program, and what a SEP is. Packages would also be sent to local contractors licensed to perform the work to help promote the program.

## PHASE II

### Task A – Handling Requests to be included in the Program

The third party would review property owner requests to determine if they meet initial selection criteria, such as the age of the home and access to a cleanout at the house for inspection purposes. Inspection appointments would be made by the third party for requests that meet the initial selection criteria.

### Task B – Inspection

The third party would evaluate the lateral to determine if it meets eligibility criteria. The inspection process would confirm or deny eligibility. This inspection process is as follows:

- Determine age of lateral
- Locate cleanout
- Hydro clean lateral
- CCTV lateral to assess condition and determine length to main
- Determine leakage rate by hydrostatic test (20% of applicants) – record data for monitoring report and future use
- Determine if lateral meets the criteria for the program
- Make recommendation to City

#### Task C – City Determines Eligibility

City staff would review recommendations of third party and select laterals for the program. The third party would then contact the property owner and provide the information necessary to get three quotes from qualified contractors to perform the work.

#### Task D – Property Owner obtains three quotes

Using the construction contract documents provided by the third party the property owner would obtain three quotes for the work from contractors with a Class A (General Engineering Contractor), C-34 (Pipeline Contractor), or C-36 (Plumbing Contractor) license. Quotes would be on construction contract documents, which would include:

- Price quote detail sheet – to allow comparison between bids
- Technical Specifications – to describe minimum construction requirements
- City of Redding Construction Standards – to describe minimum construction requirements
- Indemnification/Insurance/Bonding Requirements
- DIR Wage Determinations – Prevailing Wage Rates
- Plumbing/Encroachment Permit Applications
- IRS Form W-9 for Property Owner to report receipt of grant funds

#### Task E – City Approval of proposed work

The third party reviews the quotes submitted by the property owner and recommends to City approval of the reimbursement agreement up to lowest bid amount or maximum allowed per connection of \$5,000, whichever is lower. This maximum would be reviewed after the first year of the program and adjusted if necessary to maximize the number of laterals to be replaced.

### PHASE III

#### Task A – Contractor completes the work

The contractor is hired by the property owner and completes the quoted work approved by the City. The contractor is responsible for permit compliance (Plumbing Permit and Encroachment Permit) and acceptance by both the Public Works Inspector for work within the Right-of-Way and the Building Inspector for work on private property.

#### Task B - Property Owner requests inspection by Third Party

Upon completion of the work, the property owner requests inspection by the third party. This inspection to include:

- Hydro clean lateral
- CCTV inspection (DVD)

- Hydrostatic test

If the lateral passes the hydrostatic test, the third party would obtain signature/acceptance of the work from the property owner and advise the City the lateral work is approved for payment.

Task C - Contractor Payment for Approved Work

The City issues a two payee check to both the property owner and the contractor. (This method would ensure that the contractor got paid timely and the property owner did not have to upfront the funds for the work.) An IRS Form 1099 G would be provided to the property owner for the work. (In most cases this benefit is not taxable but goes into the value of the home (basis) for future sale and capital gains calculation.)

PHASE IV

Task A - Data Summary and Final Audit

The City’s third party would prepare an Engineer’s Report summarizing the program and a final audit of the program expenditures. The Engineer’s Report would include:

- Areas where private laterals were replaced,
- The type of materials replaced,
- The estimated age of materials replaced,
- The condition of the laterals prior to repair or replacement,
- Comparison of pre and post leakage test results for the 20% of replacements that are hydrostatically tested before replacement.

**Cost:**

The estimated total cost of the project is \$970,500, of which \$800,000 would be SEP participating costs dedicated to the development and implementation of the private lateral replacement program. Additional costs to the City, estimated to be \$170,500, are considered to be non-participating, and are not included in the SEP amount. These non-participating costs include City staff and material cost beyond costs considered in the SEP amount. A breakdown of the program cost estimates is shown in the following table. These numbers are estimates and actual costs may vary.

<b>Program Component</b>	<b>SEP Participating Cost Estimate</b>	<b>SEP Non-Participating Cost Estimate</b>
Notification	\$20,000	\$5,000
Third Party Selection/Admin./Oversight	\$75,000	\$19,000
Lateral Replacement Construction	\$705,000	\$126,500
Construction Inspection Cost		\$20,000
<b>Total Estimated Cost</b>	<b>\$800,000</b>	<b>\$170,500</b>

**Implementation:**

Upon approval of the settlement agreement, the City would begin development and implementation of the private lateral replacement program.

**Deliverables Table (Attached):**

The deliverable dates are based on a January 1, 2013 project start date. This assumption is based on the possibility that this SEP project would be approved by the Executive Officer of the Regional Water Quality Control Board, and that contracting and finalization of the project agreements can be completed in calendar year 2012. If this cannot be accomplished, due dates would be revised and adjusted accordingly. The suspended penalty will be reduced and waived in proportion to the related SEP fund expenditures.

**Third Party Oversight**

The City's third party auditor would review the financial aspects of the program and would provide a final assessment report to the Board within 21 days after completion of the project, outlining how the project met the financial goals of the proposal.

**ATTACHMENT L  
PRIVATE SEWER LATERAL SEP DELIVERABLES TABLE**

<b>Milestone</b>	<b>Description</b>	<b>Completion Date</b>	<b>SEP Participating Expenditure Amount</b>	<b>Suspended Penalty Reduction Amount</b>
Program Administration	3 <sup>rd</sup> Party Administration; Public Notification; Monthly, Quarterly & Annual Reports; Annual Program Review & Revision	Ongoing	\$95,000	\$47,000
Lateral Replacement – Year 1		December 2013	\$141,000 (annual goal)	\$75,000*
Lateral Replacement – Year 2		December 2014	\$141,000 (annual goal)	\$75,000*
Lateral Replacement – Year 3		December 2015	\$141,000 (annual goal)	\$75,000*
Lateral Replacement – Year 4		December 2016	\$141,000 (annual goal)	\$75,000*
Lateral Replacement – Year 5		December 2017	\$141,000 (annual goal)	\$75,000*
Final Engineer’s Report & Audit		February 1, 2018		\$3,000
		<b>TOTALS</b>	<b>\$800,000</b>	<b>\$425,000</b>

\*The suspended penalty is reduced annually by the same percentage as the SEP total expended. If the annual expenditure goal is not met the remainder will be carried over to the next year and the corresponding reduction in suspended penalty will occur in future years.

**Exhibit F**

Via Electronic Mail and United States Mail

September 10, 2012

Chairman Dr. Karl E. Longley and Members of the Board  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Pamela Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Robert Crandall, Assistant Executive Officer  
Central Valley Regional Water Quality Control Board  
364 Knollcrest Drive, Suite 205  
Redding, CA 96002

**Re: Comments on Settlement Agreement and Stipulation for Entry of Order; Order (Proposed), Order No. R5-2012-00XX (Proposed)  
In the matter of *City of Redding, Redding Department of Public Works***

Dear Chairman Longley and Members of the Board,

On behalf of California Sportfishing Protection Alliance (“CSPA”), we submit comments on the Settlement Agreement and Stipulation for Entry of Order; Order (Proposed) (“Proposed Settlement”) between the City of Redding and the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”).

As with many recent enforcement actions taken by the Regional Board, the Proposed Settlement does not include necessary, comprehensive injunctive measures that will bring the City of Redding into compliance with the Clean Water Act. As structured, the Proposed Settlement will not be effective in bringing the City into compliance with the law, and therefore will not ensure protection of water quality in the Redding area. The Regional Board should not approve the Proposed Settlement, and should instead revise it to include meaningful injunctive measures that comprehensively address the deficiencies in the City’s wastewater management and treatment system. The Regional Board should also revise the Proposed Settlement to impose civil liability in an amount that will effectively motivate the City to make timely and appropriate investments in its infrastructure, as well as deter future violations by the City and other dischargers.

## **I. CSPA's Interest**

CSPA is a 501(c)(3) non-profit public benefit conservation and research organization. CSPA was established in 1983 for the purpose of conserving, restoring, and enhancing the state's water quality, wildlife and fishery resources, aquatic ecosystems and associated riparian habitats. CSPA accomplishes its mission by actively seeking federal, state, and local agency implementation of environmental regulations and statutes, and routinely participates in administrative, legislative and judicial proceedings. CSPA's members use and enjoy the Sacramento River, its tributaries, and the waters in and around the Redding area for fishing, boating, swimming, bird watching, picnicking, viewing wildlife, and engaging in scientific study. The City discharges raw and/or inadequately treated sewage into the Sacramento River and to waters tributary to the Sacramento River, which degrades water quality and harms aquatic life in these waters.

CSPA agrees that the Regional Board should be taking long overdue action to address the repeated and ongoing violations by the City of Redding ("City") of both the Federal Water Pollution Control Act ("Clean Water Act") and the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act"). However as explained below, the Proposed Settlement does not include measures necessary to ensure future compliance with the Clean Water Act by Redding.

To compel Redding's compliance with the Clean Water Act, CSPA issued a sixty (60) day notice of intent to sue letter on May 7, 2012. CSPA filed a complaint against the City of Redding on July 17, 2012. CSPA's notice letter and complaint allege violations of the (1) *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2003-0130, NPDES Permit No. CA0079731 ("2003 Clear Creek NPDES Permit"), (2) *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2010-0096, NPDES Permit No. CA0079731 ("2010 Clear Creek NPDES Permit"), and (3) *Waste Discharge Requirements for the City of Redding, Stillwater Wastewater Treatment Facility*, Order No. R5-2007-0058, NPDES Permit No. CA0082589 ("2007 Stillwater NPDES Permit"). CSPA alleges violations of each of these permits caused by the sanitary sewer overflows ("SSOs") from the City's sewage collection system ("Collection System"). CSPA's notice letter and complaint also allege violations of *Waste Discharge Requirements for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (General Permit)*, State Water Resources Control Board, Order No. 2003-0005-DWQ, NPDES Permit No. CAS000004 ("MS4 Permit"). The MS4 requires the City to effectively prohibit non-stormwater discharges (such as SSOs) to its municipal separate storm sewer system ("MS4"). CSPA alleges the City's numerous and repeated SSOs which discharge to the MS4 result in a violation of the MS4 Permit.

In its complaint, CSPA requests comprehensive injunctive relief to bring the City into compliance with the 2010 Clear Creek NPDES Permit, the 2007 Stillwater NPDES Permit, and the MS4 Permit. It also requests penalties for the City's violations of each of these permits.

## **II. Background on the City's Wastewater Infrastructure**

The City owns and operates two wastewater treatment plants ("WWTP"), Clear Creek WWTP and Stillwater WWTP, located on either side of the Sacramento River in the City of Redding. Effluent from the Clear Creek Wastewater Treatment Plant is discharged to the Sacramento River. Effluent from the Stillwater Wastewater Treatment Plant is either discharged to the Sacramento River, or applied to land owned by the discharger. The City's wastewater infrastructure includes the WWTPs and its Collection System, which consists of 17 lift stations, and approximately 423 miles of collection mains.<sup>1</sup>

## **III. Regulation of the City's Wastewater Infrastructure**

There are three National Pollution Discharge Elimination System ("NPDES") permits relevant to the Proposed Settlement: (1) 2003 Clear Creek NPDES Permit, (2) 2010 Clear Creek NPDES Permit, and (3) 2007 Stillwater NPDES Permit. Each of these permits imposes terms and conditions on the City of Redding's discharges from both its Collection System and its WWTPs. The City is also subject to and required to comply with the State Water Resources Control Board General Order WQ-2006-0003 for Sanitary Sewer Systems ("SSO WDR"). The SSO WDR imposes terms and conditions upon discharges from, and the operation of, the City's Collection System. The Proposed Settlement references alleged violations of each of the City's NPDES permits and the SSO WDR.

## **IV. The Proposed Settlement**

The Proposed Settlement alleges the City of Redding failed to comply with terms and conditions of the SSO WDR, the 2003 Clear Creek NPDES Permit, the 2008 Clear Creek NPDES Permit, and the 2007 Stillwater NPDES Permit. To settle the alleged violations, the City of Redding and the Regional Board have agreed to the imposition of \$1,450,000 in liability, including \$800,000 toward a Supplemental Environmental Project ("SEP"), \$225,000 to the State Water Pollution Cleanup and Abatement Account, \$21,000 in mandatory minimum penalties, and the balance in stipulated penalties. A total of \$425,000 in liability will be progressively suspended if the City of Redding meets progressive annual milestones related to completion of the SEP.

The SEP requires the City to dedicate \$800,000 to a fund to subsidize the repair and replacement of private laterals in the City of Redding. Private laterals are the sewer pipes that carry wastewater from residences, commercial establishments, and other private property to the publicly owned and operated Collection System. The "**goal** of [the SEP] is to reduce inflow and infiltration into the [City's] collection system from defective private sewer laterals." Proposed Settlement, ¶ 12(a) (emphasis added). According to the Proposed Settlement, implementing the

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<sup>1</sup> The City provides sewage collection and treatment services to a population of approximately 70,000 people. The City charges \$40.95 per month for single family residences to collect, convey, and treat sewage generated in the City. The charge to multi-family units and commercial and industrial dischargers are higher. A rate schedule can be found here <http://www.ci.redding.ca.us/municipalutilities/Docs/RATES/RATES%20WASTEWATER%202011-2012.pdf>

SEP will result in fewer SSOs and help avoid bypassing wastewater treatment at the WWTPs during wet-weather events.

While the Proposed Settlement calls for \$1.45 million in civil liability, over 55% (\$800,000) goes to a City-run program the City should have invested in long ago to prevent the alleged violations in the first place, and an additional 31% is “deferred” provided the City invests as promised. Thus, the Proposed Settlement only requires the City to pay \$225,000 (approximately 15% of the overall liability), despite the fact that since September 3, 2007 it has violated state and federal law at least 206 times.<sup>2</sup> The “penalty” to be paid by Redding amounts to \$1,092.23 per violation – hardly significant enough to create a change in behavior and prevent future violations.

The Proposed Settlement purports to address and resolve 206 alleged violations of the City’s NPDES permits and the SSO WDR occurring since September 3, 2007. Of these seventy-six (76) were caused by discharges of effluent from the City’s WWTPs with pollutant levels that exceeded the effluent limitations set forth in the 2003 Clear Creek NPDES Permit, the 2008 Clear Creek NPDES Permit, or the 2007 Stillwater NPDES Permit. Fifty-four (54) were caused by bypass events at the City’s WWTPs. Seventy-six (76) of the alleged violations were caused by SSOs from the City’s Collection System.

## **V. CSPA’s Comments on the Proposed Settlement**

CSPA agrees with the Regional Board that the City of Redding must be held accountable for its repeated failure to comply with its NPDES permits and the SSO WDR. CSPA does not however agree that the Proposed Settlement will (a) ensure that the City takes meaningful and necessary steps to solve the problems that cause its regular violations, or (b) provide sufficient deterrence such that the City of Redding, or other dischargers, will be motivated to invest in the necessary infrastructure or operation and management of their facilities to prevent violations from occurring in the first place.

### **A. The Proposed Settlement Does Not Require Redding to Take Action Designed to Eliminate, or Even Minimize, Future Violations Similar to Those it Claims to “Resolve”**

CSPA’s first major concern with the Proposed Settlement is that it fails to include injunctive measures that will ensure the City improves its wastewater infrastructure to comply with the law. The Proposed Settlement includes a SEP – which offsets the City’s liability – that provides for the creation of a fund to grant qualifying property owners up to \$5,000 to upgrade their private laterals.

The SEP is intended to reduce inflow and infiltration to the City’s Collection System, with the ultimate goal being the overall reduction of water flowing in the Collection System and to the WWTPs. Assuming this program is effective, it will likely reduce the amount of water

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<sup>2</sup> CSPA calculated 206 violations by adding the violations alleged in the various Administrative Civil Liability Complaints and Notices of Violation allegedly resolved by the Proposed Settlement. A summary table of the violations as calculated by CSPA is provided as Table 1 in Attachment A.

flowing in the system, and may address the cause of some of the alleged violations.<sup>3</sup> However it certainly will not address all of the capacity related problems faced by Redding. The SEP, while important, will only partially address one of the many problems faced by Redding.

The Proposed Settlement does not include comprehensive injunctive measures that will be necessary for Redding to come into compliance with the law. For example, more than 40% of the SSOs “resolved” by the Proposed Settlement were caused by roots in the Collection System. *See* Attachment A, Table 2. Another 30% were caused by grease and/or debris in the Collection System. *Id.* The Proposed Order does not include any requirements designed to address these issues. Similarly, the Proposed Settlement does not require the City to develop and implement strategies to address the over 70 violations of limitations on pollutant levels in its treated effluent. *See* Attachment A, Table 1 (identifying violations). Without a comprehensive program that addresses all of the shortcomings in the City’s operation, maintenance, and management of its wastewater infrastructure, the Proposed Settlement will not ensure the City will move ahead in compliance with its permits. The Proposed Settlement therefore fails to ensure the protection of water quality in the Sacramento River and its local tributaries. The Regional Board should therefore reject the Proposed Settlement, and instead instruct staff to prepare a comprehensive enforcement that requires programmatic changes Redding’s collection, management, treatment, and discharge of wastewater.

**B. The Civil Liability Imposed by the Proposed Settlement is Not an Effective Deterrence to Prevent Future Violations**

As explained, the absence of meaningful injunctive relief in the Proposed Settlement will not ensure that the City comes into compliance with the Clean Water Act or the Porter-Cologne Act. The civil liability proposed will not achieve this result either. If the monetary “penalty” for failing to comply with the law is significant enough that the cost of failing to comply approaches the cost of compliance, then the City would seemingly be inclined to take the measures necessary to ensure compliance in the first place. The Proposed Settlement does not contain such a deterrent.

The Regional Board staff and the City have agreed on a total civil liability of \$1.45 million. If the City was actually obligated to pay this entire amount as a “penalty,” it may actually serve as an effective deterrent to future violations. But that is not the case here. Instead the City is offered the option of using \$800,000 (over 55%) of the total liability to fund a program it should have implemented long ago.

Apparently private lateral repair and replacement is a significant source of inflow and infiltration in the City. It appears that inflow and infiltration is substantial enough that it regularly causes SSOs and overwhelms the treatment plant such that the City is unable to properly treat its wastewater. Considering the magnitude of the problem, and the City’s obligations to address these issues, the City should have invested in a private lateral replacement program years ago. Its failure to do so has caused hundreds of thousands of gallons of untreated

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<sup>3</sup> According to CSPA’s calculations, 50 violations resulted from bypasses at the WWTPs and 8 SSOs (or just over 10%) resulted from insufficient capacity in the Collection System. *See* Attachment A, Table 1 and 2.

raw sewage to discharge from the Collection System, and millions of gallons of inadequately treated sewage to be discharged to the Sacramento River.

The Proposed Settlement allows the City to use over half the money it should pay as a penalty for violating the law to fund a program it should already be funding. In so doing, the Regional Board creates a perverse incentive to Redding and other dischargers to put off compliance costs unless and until they are compelled to do so. In essence, a discharger is better off delaying needed investment until it violates the law – and harms the environment – since at that point it will then be allowed to spend money fixing the problem and simultaneously avoid paying a penalty for its violation.

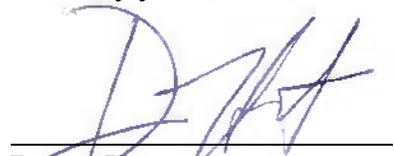
CSPA strongly disagrees with the approach to civil liability taken by the Regional Board. The idea that a discharger would be able to use over half of the “penalty” assessed to fund a program it should already have in place will not effectively deter non-compliance and protect water quality. Instead, it creates a system that encourages dischargers to delay improvements until they are caught, and the harm to the environment has already occurred. The Regional Board should require the City to implement the SEP, but it should not allow the City to offset its civil liability with the funds spent on the SEP.

**VI. Request to Have the Proposed Settlement Revised and Heard by the Full Board**

CSPA thanks the Regional Board for the opportunity to comment on the Proposed Settlement. The Proposed Settlement authorizes the adoption of the Order it contains by the Regional Board’s delegee, rather than the Regional Board itself. The comments presented here constitute significant new information that reasonably effects the propriety of the Proposed Settlement. Further, the issues addressed by the Proposed Settlement are themselves significant and warrant full public consideration by the Regional Board. CSPA therefore requests the Regional Board hold a public hearing to hear public comment prior to adoption of the Proposed Settlement. CSPA further requests that the Regional Board direct staff to revise the Proposed Settlement to include comprehensive injunctive relief and not allow the City to offset its liability by funding a program it should have funded years ago.

Thank you for your consideration of these comments.

Sincerely yours,



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Drevet Hunt  
Lawyers for Clean Water, Inc.

cc: Bill Jennings, California Sportfishing Protection Alliance

**Attachment A**

**Table 1: Violations Addressed in the Proposed Settlement**

<b>Violations Alleged in Proposed Order</b>	<b>Number of Violations</b>
Alleged May 2011 ACL Violations	6
Alleged July 2011 ACL Violations	32
Alleged Chlorine Violation	5
Alleged DCBM Violation	31
Alleged Bypass Violation	54
Alleged pH Violations	2
Alleged SSO Violations	76
Total	206

**Table 2: SSOs and Causes (from data available on CIWQS)**

<b>Cause</b>	<b>Number of SSOs</b>	<b>Percentage</b>
Roots	33	43%
Capacity	8	11%
Failed Pump Station	2	3%
Grease	13	17%
Debris	11	14%
Contractor Error	9	12%
Total	76	100%

**Exhibit G**

**From:** "Howard, Ellen@Waterboards" <Ellen.Howard@waterboards.ca.gov>  
**Subject:** **City of Redding: Time Request for December 6/7 Board Meeting Agenda**  
**Date:** November 14, 2012 1:33:44 PM PST  
**To:** "Landau, Ken@Waterboards" <Ken.Landau@waterboards.ca.gov>, "Coupe, David@Waterboards" <David.Coupe@waterboards.ca.gov>  
**Cc:** "tdunham@somachlaw.com" <tdunham@somachlaw.com>, "Carrigan, Cris@Waterboards" <Cris.Carrigan@waterboards.ca.gov>, "Macedo, Julie@Waterboards" <Julie.Macedo@waterboards.ca.gov>, "Carrigan, Cris@Waterboards" <Cris.Carrigan@waterboards.ca.gov>, "Smith, Bryan@Waterboards" <Bryan.Smith@waterboards.ca.gov>, "drev@lawyersforcleanwater.com" <drev@lawyersforcleanwater.com>, "Creedon, Pamela@Waterboards" <Pamela.Creedon@waterboards.ca.gov>, "Macedo, Julie@Waterboards" <Julie.Macedo@waterboards.ca.gov>  
▶ 1 Attachment, 9.4 KB

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FOR PURPOSES OF EX PARTE COMMUNICATIONS, THE DISCHARGER’S COUNSEL AND OTHER INTERESTED PARTIES ARE CC’ED ON THIS EMAIL

Mr. Landau and Mr. Coupe-

In response to the Board Chair’s decision to consider the adoption of above-mentioned item at a Regional Board meeting, the Central Valley Water Board Prosecution Team would like to request the item to be placed on the forthcoming December 6/7 meeting agenda with 40 minutes reserved for presentations related to the proposed settlement agreement and SEP between the City of Redding and the Prosecution Team. We request the allocation of time for presentations to the Board as follows:

- 1) 10 minutes: Prosecution Team staff presentation
- 2) 10 minutes: City of Redding comments
- 3) 10 minutes: Interested Parties comments
- 4) 10 minutes: Director of Office of Enforcement comments on SEP proposal

We look forward to your consideration of our proposed timeline.

Ellen Howard  
Counsel for the Prosecution Team

Ellen Howard  
Staff Counsel, Office of Enforcement  
State Water Resources Control Board  
1001 “I” Street  
Sacramento, CA 95814  
916.341.5677



[mime-attach....eml \(9.4 KB\)](#)

**From:** "Landau, Ken@Waterboards" <Ken.Landau@waterboards.ca.gov>  
**Date:** November 8, 2012 11:04:14 AM PST  
**To:** Tess Dunham <tdunham@somachlaw.com>, "Creedon, Pamela@Waterboards" <Pamela.Creedon@waterboards.ca.gov>, "Smith, Bryan@Waterboards" <Bryan.Smith@waterboards.ca.gov>, "Crandall, Robert@Waterboards" <Robert.Crandall@waterboards.ca.gov>  
**Cc:** "Macedo, Julie@Waterboards" <Julie.Macedo@waterboards.ca.gov>, "Howard, Ellen@Waterboards" <Ellen.Howard@waterboards.ca.gov>, "Coupe, David@Waterboards" <David.Coupe@waterboards.ca.gov>  
**Subject: City of Redding Settlement Agreement**

Parties,

The Advisory Team, in consultation with the Board Chair, has determined that there are significant policy issues associated with the proposed settlement agreement and that this matter should be brought to the Board for a hearing. The major issues of concern involve

- 1) the appropriateness of the amount of the cash payment to the Cleanup and Abatement Fund, and
- 2) whether the inflow/infiltration problem in the private laterals is a contributing problem to the violations that should have been previously addressed by the City, and is therefore not an appropriate activity for a SEP.

The Prosecution should proceed to schedule this matter for a hearing at the next appropriate Regional Board meeting.

The Advisory Team requests that the Prosecution consider improving findings of any settlement agreement or proposed Board Order to better explain how a proposed SEP complies with the State Board SEP Policy. Further, please note that the proposed settlement agreement requires semi-annual reporting on the progress of the SEP, while the SEP Policy requires a minimum of quarterly monitoring on SEP progress (SEP Policy G.2).

Ken Landau  
Advisory Team

**Exhibit H**

Via Electronic Mail and United States Mail

November 20, 2012

Chairman Dr. Karl E. Longley and Members of the Board  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

Pamela Creedon, Executive Officer  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670-6114

**Re: Comments on Settlement Agreement and Stipulation for Entry of Order; Order  
(Proposed), Order No. R5-2012-00XX (Proposed)  
In the matter of *City of Redding, Redding Department of Public Works***

Dear Chairman Longley and Members of the Board,

On behalf of California Sportfishing Protection Alliance (“CSPA”), we submit these comments to supplement CSPA’s September 10, 2012 comments<sup>1</sup> regarding the Proposed Settlement between the City of Redding and the Central Valley Regional Water Quality Control Board. CSPA is pleased the Regional Board has agreed to hold a public hearing on this matter and looks forward to presenting comments at the December 6, 2012 hearing.

CSPA’s September 10 comments focused on deficiencies in the Proposed Settlement resulting from its failure to include meaningful injunctive measures that address all of the causes of the violations it allegedly “resolves” (*see* CSPA letter section V.A.), and the ineffectiveness of the civil liability amount assessed in deterring future violations by Redding or others (*see* CSPA letter section V.B.). CSPA’s September 10 comments emphasized that the issues raised by the Proposed Settlement are “significant and warrant full public consideration by the Regional Board.”

CSPA’s comments here specifically address the inconsistencies between the Proposed Settlement and the State Water Board’s February 2009 SEP Policy (“SEP Policy”). CSPA’s comments are particularly relevant given the November 8, 2012 correspondence from Ken Landau to the parties, in which Mr. Landau noted:

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<sup>1</sup> CSPA incorporates its September 10 comments by reference.

The Advisory Team, in consultation with the Board Chair, has determined that there are significant policy issues associated with the proposed settlement agreement and that this matter should be brought to the Board for a hearing. The major issues of concern involve (1) the appropriateness of the amount of the cash payment to the Cleanup and Abatement Fund, and (2) whether the inflow/infiltration problem in the private laterals is a contributing problem to the violations that should have been previously addressed by the City, and is therefore not an appropriate activity for a [Supplemental Environmental Project (“SEP”)].

Each of these points highlights the inconsistency between the SEP in the Proposed Settlement and the SEP Policy. Each is addressed below.

**There Has Been No Showing of a Compelling Justification for Allowing Redding to Pay Only 15% of the Assessed Liability As Required by the SEP Policy**

While the Proposed Settlement calls for \$1.45 million in civil liability, over 55% (\$800,000) goes to a City-run program the City should have invested in long ago to prevent the alleged violations in the first place, and an additional 31% is “deferred” provided the City invests as promised. Through implementation of the SEP, the City can avoid over 85% of its total assessed liability. Thus, the Proposed Settlement only requires the City to pay \$225,000 (approximately 15% of the overall liability), despite the fact that since September 3, 2007 it has violated state and federal law at least 206 times.<sup>2</sup>

The SEP Policy provides that “no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than the 50% of the total adjusted monetary assessment against the discharger, absent compelling justification.” When adopting the SEP Policy, the State Board stressed that SEPs must have environmental value and “further the enforcement goals of the State Water Board and Regional Water Boards.” By allowing the City of Redding to effectively avoid 85% of the total liability incurred through implementation of a SEP, on its face the Proposed Settlement is inconsistent with SEP Policy. Not only is the City avoiding more than 50% of its liability, the State is deprived of \$425,000 that it could use to fund environmentally beneficial projects through the Cleanup and Abatement Account. And, as explained in CSPA’s September 10 letter, the important enforcement goal of deterring future violations is completely undermined by only requiring the City to pay 15% of its total liability.

Further, under the SEP Policy if a Regional Board seeks to allow a discharger to apply more than 50% of the total assessed liability to a SEP, the Regional Board “must affirmatively notify the Director of Office of Enforcement of the State Water Board” and

Affirmatively describe in detail the proposed SEP, the settlement value of the SEP, the reasons why the Regional Water Board proposes to accept the SEP in lieu of monetary liability payment, and the exceptional circumstances that justify exceeding the recommended percentage limit.

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<sup>2</sup> CSPA calculated 206 violations by adding the violations alleged in the various Administrative Civil Liability Complaints and Notices of Violation allegedly resolved by the Proposed Settlement. A summary table of the violations as calculated by CSPA is provided as Table 1 in Attachment A to CSPA’s September 10 comments.

SEP Policy at 2. CSPA is unaware of a notification to the Director of Enforcement providing the required details. If one exists CSPA requests that it be circulated to the public, including by placing it on the Regional Board's website in the area that provides information relevant the hearing on this matter. Until this justification is provided, and the Office of Enforcement approves of the SEP even though it exceeds the 50% threshold, the Regional Board's adoption of the Proposed Settlement will violate the SEP Policy.

Putting aside the SEP's deficiencies due to the fact that it would fund tasks the City is already obligated to perform (see below), the SEP should be limited to offsetting no more than 50% of the total assessed liability. To achieve this, the Regional Board should not defer the \$425,000. Similarly, the total value of the SEP should be limited to \$725,000, with the balance of \$725,000 paid to the Cleanup and Abatement Account.

### **The Proposed SEP Allows the City to Fund Activities It Is Already Required to Perform, In Contradiction to the SEP Policy**

The Proposed SEP includes funding to implement a program that minimizes inflow and infiltration into the City's sewage collection and treatment system, is inconsistent with the SEP Policy's requirement that the proposed SEP "not be an action ... that is otherwise required of the discharger by any rule or regulation of any federal, state, or local entity." The City is already required to address inflow and infiltration into its sewage system under the SSO WDR. State Water Resources Control Board General Order WQ-2006-0003, § D.13.vii (requiring implementation of a capital improvement program to ensure flows in system do not exceed capacity). As such, the SEP is inappropriate under the SEP Policy because it impermissibly allows the City to use SEP funds to address its flow and capacity problems, an action it is already required to perform under the SSO WDR.

CSPA further notes that both the City's NPDES Permits for their wastewater treatment plants<sup>3</sup> prohibit bypass unless there are no feasible alternatives. 2010 Clear Creek NPDES Permit, Standard Provisions I.G.3.; 2007 Stillwater NPDES Permit, Standard Provisions I.G.3. The Proposed Settlement allegedly settles claims related to the City's violations of these provisions of its NPDES permits, and specifically states that the SEP "will reduce the amount of flow to the Clear Creek and Stillwater WWTPs during wet-weather events, avoiding the need to bypass wastewater treatment." On its face, the SEP requires action that the City is already required to perform (i.e., prevent flows to its wastewater treatment plants to avoid bypass.).

CSPA agrees that the City must address its capacity problems. A part of doing so is by reducing inflow and infiltration to the system, including inflow and infiltration from laterals. But as explained, this is something that the City is already required to do, and therefore is an

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<sup>3</sup> *Waste Discharge Requirements for the City of Redding, Stillwater Wastewater Treatment Facility*, Order No. R5-2007-0058, NPDES Permit No. CA0082589 ("2007 Stillwater NPDES Permit"); *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2010-0096, NPDES Permit No. CA0079731 ("2010 Clear Creek NPDES Permit"). Prior to adoption of the 2010 Clear Creek NPDES Permit, the City's was required to comply with *Waste Discharge Requirements for the City of Redding, Clear Creek Wastewater Treatment Facility*, Order No. R5-2003-0130, NPDES Permit No. CA0079731.

inappropriate SEP. To address this important issue, the Regional Board should be requiring the City solve its capacity issues as injunctive requirements in the Proposed Settlement, not through a SEP.

If Redding and the Regional Board wish to provide for a SEP to offset some of the City's total liability, the parties should consider habitat restoration program or some other similar project that will benefit the Sacramento River Watershed.

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Thank you for your consideration of these comments. We look forward to presenting testimony at the hearing on this matter at the December 2012 Regional Board meeting.

Sincerely yours,



Drevet Hunt  
Lawyers for Clean Water, Inc.

cc: Bill Jennings, California Sportfishing Protection Alliance

**Exhibit I**

**From:** "Carrigan, Cris@Waterboards" <Cris.Carrigan@waterboards.ca.gov>  
**Date:** December 6, 2012 8:54:23 AM PST  
**To:** "Coupe, David@Waterboards" <David.Coupe@waterboards.ca.gov>, "Layne Friedrich (layne@lawyersforcleanwater.com)" <layne@lawyersforcleanwater.com>, "drev@lawyersforcleanwater.com" <drev@lawyersforcleanwater.com>, "Bill jennings (deltakeep@me.com)" <deltakeep@me.com>, "Michael Lozeau (michael@lozeaudrury.com)" <michael@lozeaudrury.com>, "Creedon, Pamela@Waterboards" <Pamela.Creedon@waterboards.ca.gov>, "Macedo, Julie@Waterboards" <Julie.Macedo@waterboards.ca.gov>, "Howard, Ellen@Waterboards" <Ellen.Howard@waterboards.ca.gov>, "Smith, Bryan@Waterboards" <Bryan.Smith@waterboards.ca.gov>, "Tess Dunham (tdunham@somachlaw.com)" <tdunham@somachlaw.com>, "Landau, Ken@Waterboards" <Ken.Landau@waterboards.ca.gov>  
**Subject: RE: City of Redding SEP in excess of 50% - OE Director's Proposed Findings**

All; If the Central Valley Water Board requests me to do so today, I will enter the enclosed determination authorizing the proposed SEP in excess of 50% of the total proposed civil liability. Thanks! Cris

**From:** Coupe, David@Waterboards  
**Sent:** Wednesday, November 28, 2012 11:49 AM  
**To:** Layne Friedrich (layne@lawyersforcleanwater.com); drev@lawyersforcleanwater.com; Bill jennings (deltakeep@me.com); Michael Lozeau (michael@lozeaudrury.com); Creedon, Pamela@Waterboards; Macedo, Julie@Waterboards; Howard, Ellen@Waterboards; Carrigan, Cris@Waterboards; Smith, Bryan@Waterboards; Tess Dunham (tdunham@somachlaw.com); Landau, Ken@Waterboards  
**Subject:** City of Redding: Pre-hearing Rulings

All:

As a follow-up to yesterday's pre-hearing settlement conference, and after consultation with the Board Chair, the Advisory Team memorializes the following rulings:

1. The November 20, 2012 letter from the Lawyers for Clean Water on behalf of the California Sportfishing Protection Alliance is **ADMITTED** as a part of the record for this proceeding.

2. In response to Ms. Howard's email of 11/14 concerning suggested time allocations, these suggested time allocations are **GRANTED**. As noted in her email, the time allocations will be as follows:

10 minutes: Prosecution Team staff presentation

10 minutes: City of Redding comments

10 minutes: Interested Parties comments

10 minutes: Director of Office of Enforcement comments on SEP proposal

Additional questions of strictly a procedural nature may be addressed to the Advisory Team with a copy to the other parties.

David P. Coupe

Attorney III and Member of the Advisory Team

c/o San Francisco Bay Regional Water Quality Control Board

1515 Clay Street, Suite 1400

Oakland, CA 94612

Phone: (510) 622-2306

Fax: (510) 622-2460

E-mail: [dcoupe@waterboards.ca.gov](mailto:dcoupe@waterboards.ca.gov)



**Director of Office of Enforcement's Determination of Compelling Justification for City of Redding's Proposed Supplemental Environmental Project in Excess of Fifty Percent of Administrative Civil Liability**

WHEREAS; The City of Redding ("City") and the California Regional Water Quality Control Board, Central Valley Region Prosecution Staff ("Prosecution Staff") have proposed a Settlement Agreement and Stipulation for Entry of Order ("Stipulated Order") to resolve alleged water quality violations by the City; and

WHEREAS; The Stipulated Order includes a Supplemental Environmental Project ("SEP") whereby the City would create a dedicated fund that owners of private sewer laterals at least 40 years old that feed into the City's public collection system could access for replacement of their private laterals; and

WHEREAS; The value of the proposed SEP exceeds 50% of the total proposed administrative civil liability under the Stipulated Order; and

WHEREAS; The State Water Resources Control Board's February 2, 2009 Policy on Supplemental Environmental Projects ("SEP Policy") governs the consideration and approval of SEPs by the State Water Resources Control Board ("State Board") and California's Regional Water Quality Control Boards ("Regional Boards"); and

WHEREAS; The SEP Policy defines SEPs as projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an Administrative Civil Liability ("ACL") action, are not otherwise required of the discharger; and

WHEREAS; The SEP Policy provides that a SEP shall only consist of measures that go above and beyond the otherwise applicable legal obligations of a discharger; and

WHEREAS; Unless otherwise required by law, the SEP Policy requires any order imposing a SEP to state that, if the SEP is not fully implemented in accordance with the terms of the order and, if any costs of Water Board oversight or auditing are not paid, the Water Board is entitled to recover the full amount of the suspended penalty, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim milestone; and

WHEREAS; The SEP Policy requires that a SEP must directly benefit or study groundwater or surface water quality or quantity, and the beneficial uses of waters of the State, including, but not limited to, by enhancing or creating pollution prevention or reduction; and

WHEREAS; The SEP Policy provides additional SEP criteria to be considered, including, but not limited to, whether the SEP directly benefits the area where the harm occurred, whether the entity identified as responsible for completing the SEP has the institutional stability and capacity to complete the SEP, and whether the SEP proposal includes, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project; and

WHEREAS; The SEP Policy requires that there must be a nexus between the violation(s) and the SEP. In other words, there must be a relationship between the nature or location of the violation and the nature or location of the proposed SEP; and

WHEREAS; All orders that include a SEP must: (1) Include or reference a scope of work, including a budget; (2) require periodic reporting on the performance of the SEP by the discharger so that the Regional Boards are able to monitor the timely and successful completion of the SEP; (3) include a time schedule for implementation with single or multiple milestones and that identifies the amount of liability that will be permanently suspended or excused upon the timely and successful completion of each milestone; (4) contain or reference performance standards and identified measures or indicators of performance in the scope of work; (5) specify that the discharger is ultimately responsible for meeting these milestones, standards, and indicators; and (6) require that whenever the discharger, or any third party with whom the discharger contracts to perform a SEP, publicizes a SEP or the results of the SEP, it will state in a prominent manner that the project is being undertaken as part of the settlement of a Water Board enforcement action (collectively hereinafter the "Procedural Requirements"); and

WHEREAS; Unless otherwise permitted by statute, the SEP Policy provides that no settlements shall be approved by the Water Boards that fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment against the discharger, absent compelling justification; and

WHEREAS; If a Regional Board proposes an order containing a SEP that exceeds 50 percent of the total adjusted monetary assessment, that Regional Board shall affirmatively notify the Director of the Office of Enforcement of the State Water Board of that proposal; and

WHEREAS; Upon request from a Regional Board or the State Board, the Director of the Office of Enforcement shall determine whether exceptional circumstances provide compelling justification for exceeding the SEP Policy's 50 percent limit of the total adjusted monetary assessment against the discharger on SEPs; and

WHEREAS; On December 6, 2012, the California Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), did affirmatively notify the Director of the Office of Enforcement of its proposal to approve a SEP in excess of 50 percent of the total adjusted monetary assessment proposed in the Stipulated Order.

THEREFORE; I have considered the facts and information submitted by the California Sportfishing Protection Alliance and the City, as well as those contained in the administrative record for this proceeding and hereby make the following findings:

- 1) The SEP proposed by the City, which provides a pool of money for private property owners of sewer laterals in excess of forty years of age to access for replacement of those aged, broken and leaky laterals, is consistent with the SEP Policy because;
  - a) Inflow and infiltration (I&I) is a significant contributing cause of alleged sanitary sewer overflow violations from the City's collection system, of the alleged unpermitted bypass violations at the City's wastewater treatment plant and of other

alleged violations resulting in discharges to waters of the State being resolved by the proposed Stipulated Order.

- b) The City's SEP enhances the beneficial uses of the waters of the State by reducing I&I into the City's treatment system and thereby reducing the likelihood of sanitary sewer overflows, unpermitted bypasses at the treatment plant and other discharges to waters of the State.
- c) Reducing I&I provides a benefit to the public at large by reducing the likelihood of discharges to waters of the State.
- d) The City lacks the legal authority to compel private property owners to replace the aging private laterals and, accordingly, the SEP cannot otherwise legally be required of the discharger by the Central Valley Water Board.
- e) The SEP goes above and beyond the otherwise applicable obligations of the discharger since the City lacks the legal authority, and cannot be compelled by the Central Valley Water Board, to replace private laterals.
- f) The SEP specifically states that the monetary liabilities associated with the SEP are suspended pending completion of project milestones, and that if it is not fully implemented the Central Valley Water Board will be entitled to recover the full amount of the suspended penalty less any liability amount permanently suspended or excused based on timely and successful completion of interim milestones.
- g) The SEP directly benefits the quality of surface water and enhances and creates pollution prevention because, by reducing I&I it also reduces the likelihood of future sanitary sewer overflow violations from the City's collection system, of future unpermitted bypass violations at the City's treatment facility and of other future unpermitted discharges.
- h) The SEP furthers the additional criteria the SEP Policy establishes; (1) by providing a direct benefit to those enjoying the beneficial uses of the surface waters in and around the City, which is where the harm from the alleged violations occurred; (2) because the City has the institutional stability and capacity to complete the SEP; and (3) because the SEP includes requirements for monitoring to track the long-term success of the project.
- i) There is a direct nexus between the nature of the alleged violations to be resolved by the settlement and reducing I&I because the SEP reduces the probable overall environmental and public health impacts or risks to which the alleged violations resolved by the Stipulated Order contributed, and because the SEP is designed to reduce the likelihood that similar violations will occur in the future. There is also a direct geographic nexus between the area impacted by the alleged violations and the benefits to beneficial uses the SEP will enhance.
- j) The SEP satisfies all of the SEP Policy's Procedural Requirements.

- 2) The SEP is consistent with and furthers the Central Valley Water Board's policies and objectives for SEPs set forth in Resolution No. R5-2008-0180 Approving Supplemental Environmental Project List Criteria etc.
- 3) Exceptional circumstances provide compelling justification for approving a SEP in excess of 50% of the total liability in this case because;
  - a) In the last 10 years, the City has spent over \$14 million replacing and lining its sewer mains, resulting in increased system capacity and reduced I&I. The City has also improved its system capacity with a \$90 million investment in treatment facility upgrades. The City has invested several million dollars over the past five years, and has committed to continue to expend substantial sums of money in the future, to identify problem areas and reduce I&I within its public collection system. The City is actively committed to reducing I&I and improving its collection and treatment system.
  - b) The City's collection system is over 100 years old in many places. There are approximately 30,000 private laterals that feed into the City's collection system.
  - c) The City has identified aging private laterals as one of the remaining significant sources of I&I within its collection system.
  - d) The City lacks legal authority to compel private property owners to repair or replace private laterals.
  - e) The SEP is limited to funding the replacement of private laterals that are at least 40 years old.
  - f) Private laterals 40 years old or older were built with inferior materials by modern standards, have exceeded their life expectancy in any event and are frequently cracked and leaky.
  - g) Although the City is not a small community, it has the requisite characteristics of an economically disadvantaged community. The City's median income is 69% of the state average, which would qualify it as economically disadvantaged for purposes of a compliance project if it were small. The City's unemployment rate is above the state average.
  - h) The Central Valley Water Board regularly authorizes compliance projects for I&I reduction for small disadvantaged communities.
  - i) Similar private lateral replacement SEP projects have been approved in the City of Pacifica and the City of San Bruno enforcement actions arising out of the San Francisco Bay Region.
  - j) The effluent released during the alleged bypass violations, which accounts for a very large sum of the total proposed civil liabilities because of the large number of gallons discharged, was treated to tertiary standards before being discharged. Many of the NPDES permittees in the Central Valley Water Board's geographic area are not required to treat beyond tertiary standards in their currently-applicable permits.

- k) The City employs CWEA certified collection system staff and has no operator certification violations on its record.
- l) The City is in the latter stages of developing a Wastewater Mater Plan that provides a stable and long-range plan to expand and upgrade its public collection system, to identify capacity limitations and to fund capital improvements.
- m) The City hydro-cleaned more than double the national average of linear feet in its collection system in 2011, taking extraordinary efforts to reduce I&I.
- n) The City “camera inspected” 10% of its system to identify I&I related trouble spots in the last two years.
- o) The City inspected and repaired over double the national average of its manholes in 2011, many of those remotely located on riparian corridors. Outdated and dysfunctional manholes contribute to excessive I&I.
- p) Through its overall efforts to reduce I&I and improve system capacity, the City has reduced the number of SSO spills in 2011 by half over its previous 5-year average.
- q) The number and volume of spills from the City’s collection system are one-fourth the statewide average for category 1 spills and less than half the statewide average for category 2 spills. The City’s spill ratios compare even more favorably to Central Valley Regional averages.

Based on the foregoing; the Central Valley Water Board’s request to approve the City’s proposed SEP in excess of 50 percent of the total proposed civil liability for the violations alleged in the Stipulated Order is hereby; **GRANTED**

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

Cris Carrigan, Director  
Office of Enforcement  
State Water Resources Control Board

**Exhibit J**



# CITY OF REDDING

## PUBLIC WORKS DEPARTMENT

### FIELD OPERATIONS

Shipping: 20055 Viking Way, Bldg. #3 Redding, CA 96003

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October 3, 2012

Mr. Bob Crandall  
Assistant Executive Officer  
California Regional Water Quality Control Board  
Central Valley Region  
364 Knollcrest Dr., Suite 200  
Redding, CA 96002

Dear Mr. Crandall:

**SUBJECT:** Response to Comments and Additional Information Regarding the City of Redding's Wastewater Collection and Treatment Program

The City of Redding (City) requests that your office take into consideration the following response to comments recently submitted by Lawyers for Clean Water (comments). Those comments address ongoing settlement negotiations between your office and the City. The proposed settlement agreement provides significant benefit to the citizens of Redding, protects and enhances the quality of water used throughout California, comprehensively resolves outstanding enforcement matters, and is in the best interest of the overall public. Please consider the following information and the City's request that this matter be resolved without further administrative proceedings.

No new or significant information is presented with the comments, and they do not affect the appropriateness of the proposed settlement. The comments characterize the City's wastewater collection and treatment program as deficient, lacking in appropriate investment, improperly managed, and unprotective of water quality. Following is a description of program activities indicating the resources and effort invested to ensure proper management, operation and maintenance of the collection and treatment systems. The City would also like to address inaccurate information presented in the comments, as it presents a misleading characterization of the state of the City's wastewater collection and treatment program.

For example, the comments include an Attachment A summarizing the information apparently used when considering the proposed settlement agreement. The total number of violations to be addressed in the settlement is shown as 206, which is incorrect. City staff could not determine how that number was derived, considering the various enforcement documents mentioned only address 22 potential violations. The settlement agreement also includes 76 sanitary sewer overflows (SSOs), which together would bring the total number of potential violations to 98. A review of the CIWQS online reporting system maintained by the State Water Resources Control Board also indicates 98 potential violations if both SSO and treatment plant violation data are combined. The number of violations stated in the comments appears to have been incorrectly determined, indicated by the 31 violations listed for "Alleged DCBM Violations" in Table 1. That

event resulted in only 1 violation, which can be verified using the CIWQS system. The number of violations presented in the comments is incorrect and provides an inaccurate picture of the City's regulatory compliance.

The City maintains a comprehensive program to ensure the City owned collection system and treatment facilities are well maintained and responsibly operated, and substantial resources have been and continue to be invested in this infrastructure. In addition to maintenance and repair of the public wastewater system, this investment allows for economic growth and an enhancement of capacity through the responsible and timely expansion of this infrastructure. The following summary of the City's efforts addresses the wastewater collection system and the two wastewater treatment plants owned and operated by the City.

### Sanitary Sewer System

Redding is served by an extensive sanitary sewer collection system composed of over 420 miles of public mains, lift stations and related facilities, as well as the private laterals that connect into that system. Currently the City has no jurisdiction over private laterals, nor mechanisms in place to independently address lateral maintenance or the problems that arise in its absence. The City has in place a developed and well managed operation and maintenance program for this system, bolstered by experienced, CWEA certified collection system staff that is very familiar with the system and able to focus efforts on high maintenance and high risk assets. In addition, substantial effort is taken to model community growth and forecast capital projects needed to adequately expand and upgrade the public system. A new Wastewater Master Plan is currently being prepared that will serve as a stable, long-range plan with an emphasis on identification of capacity limitations and on asset maintenance and replacement. The Wastewater Utility's rate structure represents a responsible effort to adequately fund operation and maintenance, address capacity issues, and replace aging system components.

The City appreciates the importance of routine maintenance and of system repair and replacement, especially as ways to limit sanitary sewer overflows (SSOs), protect public health and water quality, and reduce treatment costs associated with high levels of inflow and infiltration (I&I). The following ongoing efforts are only an example, but indicate the extent to which the City properly operates and maintains the sanitary sewer collection system:

- Sewer main cleaning - According to a nationwide study commissioned by the American Society of Civil Engineers (ASCE)<sup>1</sup>, wastewater agencies clean an average of thirty percent of their collection system annually. In 2011, City staff hydro-cleaned 1,498,910 linear feet of sewer line, representing 68% of the system and 76% of small-diameter pipes. This cleaning focuses on the identified system "hot spots" and small-diameter pipes that pose the greatest risk of blockage and overflow.
- Sewer main viewing - The City's annual goal for viewing is 3% of the system. With camera equipment out of service for repairs September through the end of December, 4% of the system was viewed in 2011, and during the more representative 2010, 6% was viewed.

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<sup>1</sup> Black & Veatch, 1998. *Optimization of Collection System Maintenance Frequencies and System Performance*.

- Manhole and remote manhole inspection – According to the ASCE study, wastewater agencies inspect an average of 26% of manholes annually. The City’s annual goal for manhole inspection is 33%, focusing on remote manholes often located along riparian corridors. In 2011, staff inspected a total of 6,004 manholes and made necessary repairs to prevent groundwater intrusion, resulting in the inspection of 77% of system manholes.
- Sewer main replacement and lining – Between June, 2002, and January, 2012, the City completed projects for sewer main replacement, and sewer main lining, with an overall total cost of \$14,407,000. These projects replaced aging infrastructure, increased system capacity, and reduced I&I. Future projects continue to be placed on the capital improvement list by priority, with replacement generally focusing on older sections of the system most likely to contribute I&I.

These efforts continue to reduce the number of SSOs the City’s collection system experiences, and by 2011 the annual number of SSOs had fallen to half the previous 6-year average. Consideration of other indices further highlights the effectiveness of the City’s operation and maintenance programs. For example, the system’s performance compares quite favorably with that of other agencies in California, indicated by both the number of SSOs and the overall volume released being well below state and regional averages. The following table summarizes statewide and regional data for 2010 and 2011 taken from the CIWQS online reporting system maintained by the State Water Resources Control Board:

	Spill Rate (#spills/100mi/yr)		Spill Volume (gallons/1000 capita/yr)	
	Category 1 SSOs	Category 2 SSOs	Volume- Category 1	Volume- Category 2
Redding Collection System	.7	2.33	116.7	1.03
State - Municipal - Average	2.72	5.16	1628.65	3.23
Region - Municipal - Average	3.23	6.41	569.03	92.82

Through this aggressive, proactive program of routine maintenance, repair and replacement, the City ensures it’s collection system is properly managed, operated and maintained. By extending the useful life of system assets, identifying aging infrastructure and capacity issues, and reducing the number and volume of SSOs, ratepayer funds are responsibly allocated and public health and water quality are protected. These efforts, along with the City’s expanding flow monitoring program, also reduce the amount of I&I entering the system, thereby protecting downstream treatment works while forestalling expansion and modification of these facilities.

Private Lateral Maintenance and Repair

The City has no authority over the roughly 30,000 private laterals that carry residential, commercial and industrial flow into the public system, and the public interest in granting such authority is negligible. Because median income in the City is 69% of the state average, the community meets the criteria of a disadvantaged community. This limited household income, the area’s exceptional economic circumstances, and an unemployment rate above the state average contribute to a significant number of private laterals being inadequately maintained and often utilized beyond reasonable service life. Some older sections of

the City's system date from the early 1900s, and while the public system in these areas is given priority for replacement, the private laterals connected to these sections tend to contribute an increased rate of leakage while disproportionally serving areas housing lower income residents. While public system efforts have produced significant results, and possibilities for substantial improvement remain, the multifaceted impacts of I&I cannot be adequately reduced and controlled without a focus on private laterals.

The issue of private laterals and the impact on collection systems is widespread, and many municipalities and wastewater districts have experimented with public-private projects to determine funding methods, public interest, and potential results. Industry studies have found that as much as 80% of system I&I may come from private sources<sup>2</sup>, and private laterals alone contribute an average of 24% of system I&I<sup>3</sup>. A mechanism is clearly needed to address the public impact of these private assets, and the supplemental environmental project (SEP) proposed as part of the settlement agreement would be a reasonable and direct means to do so. Approval to use as much as 55% of the settlement penalty for the proposed SEP would benefit the public by potentially delaying rate increases and by providing funding for private improvements that might otherwise be delayed or not implemented. This potential project, and the benefits likely to result, played a significant part in the City's agreement with the subject settlement.

#### Wastewater Treatment Facilities

Significant investment has also been made to expand and modify the City's wastewater treatment plants. This work was identified as a cost effective means to gain additional capacity for the future, provide better removal of ammonia and other pollutants, and protect water quality through capacity assurance and process resilience. Expansion and modification of the Clear Creek Wastewater Treatment Plant (CCWTP) is nearing completion, with construction work at the Stillwater Wastewater Treatment Plant (SWTP) just beginning; together these projects have an estimated cost of approximately \$90 million. Both projects are funded by State Revolving Fund (SRF) loans. Prior to loan approval a SRF-required Sewer System Evaluation Survey determined these projects would be more cost effective than alternate projects aimed at reducing I&I in the collection system due to the system's size and the potentially broad distribution of I&I sources. These projects are supplemented by a robust collection system operation and maintenance program and well-funded capital planning, leaving a concerted effort to address deficient private laterals as the most significant outstanding community need.

Treatment performance and regulatory compliance will almost certainly be enhanced with the completion of these projects, but the facilities performed well even prior to these modifications. From 2008 to 2011, the total number of violations varied year to year at each plant, ranging from one violation in some years to greater numbers in years of significant wet weather events. It is important to note that CIWQS data indicates that during this time period 20% of the violations at the SWTP and 15% of the violations at the

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<sup>2</sup> Strand Associates, Inc., 2006. *Inflow and Infiltration From Private Property*.

<sup>3</sup> Water Environment Research Foundation, 2006. *Cost Effective Rehabilitation of Private Sewer Laterals*.

CCWTP related to monitoring or reporting errors, and did not involve the release of pollutants or an affect on water quality. Also, 30 % of the SWTP incidents listed as violations in CIWQS, and 15% of the CCWTP incidents, relate to events that occurred during the storms of March, 2011; the City contends that these do not constitute violations.

During the same time period, the treatment plants measure well in relation to regulatory performance of facilities throughout the state. As the table below indicates, from 2008-2011 the average number of annual violations at both facilities was less than the Region 5 average and comparable to the statewide average. As noted above, those averages would be lower if reporting violations and violations the City disagrees with were not considered.

Average # of Violations Per Year 2008-2011	Region 5	Statewide	Stillwater WWTP	Clear Creek WWTP
	8.9	3.4	2.5	5

Conclusion

The City appreciates the opportunity to provide this additional information and address inaccuracies contained in the recent comments received by your office. The proposed settlement is fair and reasonable, representing an effective approach to comprehensively resolve outstanding enforcement matters while providing funding for a private lateral replacement program. Such a program would benefit the public at large and the citizens of Redding by protecting water quality and by providing a means to reduce the impact deficient private assets have on the public wastewater collection and treatment system. Thank you for your consideration of this additional information. The proposed settlement agreement is the most effective means to resolve the matter, and the City hopes that the agreement can be executed without recourse to further administrative proceedings.

Sincerely,



Josh Keener  
Wastewater Compliance Coordinator

- C: Rick Duvernay, City Attorney  
Brian Crane, Director of Public Works  
Jon McClain, Assistant Director of Public Works  
Tess Dunham, Somach, Simmons and Dunn