

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

In the matter of:)	
)	
NORTH MARIN WATER)	SETTLEMENT AGREEMENT AND
DISTRICT, WILD HORSE)	STIPULATION FOR ENTRY OF
STORAGE TANK, MARIN)	ADMINISTRATIVE CIVIL LIABILITY
COUNTY)	ORDER
)	
May 22, 2014, Discharge to)	PROPOSED ORDER
Vineyard Creek, Novato)	
)	
Administrative Civil Liability)	
Complaint No. R2-2014-1024)	
)	
)	
)	

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board San Francisco Bay Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and the North Marin Water District (NMWD) (collectively Parties), and is presented to the Regional Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation resolves the violation alleged herein by the imposition of administrative civil liability against NMWD in the amount of **\$38,100**.

Section II: RECITALS

2. During all relevant periods, NMWD owned and operated the Wild Horse potable water storage tank in the City of Novato, Marin County.

3. Water Code section 13376 requires that a person who proposes to discharge pollutants to navigable waters of the United States shall file a report of waste discharge with the Regional Water Board at least 180 days prior to discharging said pollutants. A person who violates Water Code section 13376 is liable civilly under Water Code section 13385, subdivision (a)(1).

4. The Water Quality Control Plan for the San Francisco Bay Region, Chapter 4, Table 4-1, prohibition 1, prohibits discharges with “particular characteristics of concern to beneficial uses ... to any non-tidal water” The Regional Water Board issued the prohibition pursuant to Water Code section 13243. A person who violates prohibitions

issued pursuant to Section 13243 is liable civilly under Water Code section 13385, subdivision (a)(4).

5. Section 301 of the Federal Water Pollution Control Act (“Clean Water Act”) (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit. A person who violates Clean Water Act section 301 is liable civilly under Water Code section 13385, subdivision (a)(5).

6. Water Code section 13385, subdivision (c), authorizes the Regional Water Board to impose administrative civil liability for violation of section 13385, subdivision (a), in an amount not to exceed the sum of both of the following (1) ten thousand dollars (\$10,000) for each day in which each violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up and the volume discharged but 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

7. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under section 13385, subdivision (c), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation, 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 violation, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require.

8. The Prosecution Team alleges that NMWD violated Water Code section 13376, Clean Water Act section 301, and the Water Quality Control Plan for the San Francisco Bay Region by discharging approximately 204,000 gallons of potable drinking water containing up to 0.61 mg/L of chlorine into a tributary of Vineyard Creek on May 22, 2014. The discharge occurred when NMWD’s electrical and mechanical staff inadvertently shorted the control wire for the tank level sensor when working on the cathodic protection system of the Wild Horse potable water storage tank.

9. On September 19, 2014, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R2-2014-1024 to NMWD proposing penalties totaling \$45,500, including staff costs, for these violations. A copy of Administrative Civil Liability Complaint No. R2-2014-1024 is Attachment A hereto.

10. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations for \$38,100 without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. During settlement discussions, NMWD presented additional evidence showing that the chlorinated discharge flowed over land one half mile and then flowed another mile along a dry creek

bed of Wild Horse Creek before reaching a wet ponded area of Vineyard Creek. Given this distance and the high volatility of chlorine, it is most likely that 50 percent or more of the residual chlorine either evaporated or was absorbed by soil or other organic matters with a substantial amount of the water percolating into the ground. The reduction of the residual chlorine in the discharge under these circumstances is akin to “abatement” of the discharge.

11. The liability imposed by this Order for the violation is consistent with California Water Code section 13385 and a reasonable liability determination using the penalty methodology in the State Water Resources Control Board’s (State Water Board’s) Water Quality Enforcement Policy.

12. The Prosecution Team believes that the resolution of the alleged violation set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violation, except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

13. To resolve by consent and without further administrative proceedings the alleged violation set forth herein, the Parties have agreed to the imposition of administrative civil liability in the amount of **\$38,100** against NMWD.

Section III: STIPULATIONS

The Parties stipulate to the following:

14. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged herein and personal jurisdiction over the Parties to this Stipulation.

15. **Administrative Civil Liability:** NMWD shall pay a total of **\$38,100** in Stipulated Administrative Civil Liability, which includes \$6,300 for the costs incurred by Regional Water Board staff to investigate and prosecute the matters. Of the Stipulated Administrative Civil Liability, \$14,000 shall be suspended pending completion of the Supplemental Environmental Project described in paragraph 17 and Attachment B. The remainder, \$24,100, shall be submitted by check made payable to the State Water Resources Control Board, no later than thirty (30) days following execution of this Order by the Regional Water Board or its delegate. The check shall reference the Order number listed on page one of this Stipulation. The original signed check shall be sent to the following address, and notification of payment shall be sent to the Office of Enforcement (email to Andrew.Tauriainen@waterboards.ca.gov) and the Regional Water Board (email to Habte.Kifle@waterboards.ca.gov).

Division of Administrative Services
Attn: Accounting, 18th Floor
P.O. Box 100
Sacramento, CA 95812

16. **Supplemental Environmental Project:** The Parties agree that \$14,000 of the Stipulated Administrative Civil Liability shall be suspended pending completion of the Supplemental Environmental Project (SEP) described in this paragraph and Attachment B. The suspended portion shall be referred to as the SEP Amount.

a. **Description**

Vineyard Creek Supplemental Environmental Enhancement Project. The proposed project includes removal of a substantial area of invasive, non-native Himalaya blackberries and restoration with native plantings (grasses, shrubs and up to ten trees) on Marin County Flood Control District property (APN 146-193-01) as a STRAW Project in conjunction with Novato Unified School District, (Pleasant Valley Elementary School and/or Sinaloa Middle School, both in the vicinity of the proposed project). It is expected that approximately 130 lineal feet of the Vineyard Creek Embankment would be improved. NMWD will rely on Marin County Flood Control Districts' permitting authority with the California Department of Fish and Wildlife (DFW) to remove the blackberries and install the new plantings. The actual planting would be coordinated and supervised by STRAW staff. NMWD has indicated that it will irrigate the area to establish the planting for up to three years and maintain the plantings for five years. A water service is available adjacent to the subject property. Plantings would be installed in a tier fashion with grasses nearest the water course, shrubs on the embankment crown, and trees providing shade/cover, away from the embankment. NMWD will conduct the necessary Environmental Review to complete the work and provide funding for the STRAW project materials and staffing necessary to conduct the plantings. NMWD will pay and has arranged for third party oversight of project implementation with the San Francisco Bay Estuary Partnership. Further details can be found in Attachment B.

b. **Representations and Agreements**

NMWD understands that its promise to implement the SEP outlined in this paragraph and Attachment B is a material condition of this Stipulation. NMWD represents: (1) that the Implementing Party shall utilize the funds provided to it to implement the SEP in accordance with the Project Milestones and Budget set forth in the Attachment B; (2) NMWD (or the Implementing Party on behalf of NMWD) shall provide written reports certified under penalty of perjury to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP, and (3) within 30 days of the completion of the SEP, NMWD shall provide written certification, under penalty of perjury, that NMWD and the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the Clean Water Act, and the Porter-Cologne Act. NMWD agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.

c. Publicity

Whenever NMWD or its agents or subcontractors or the Implementing Party publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being, or has been, undertaken as part of the settlement of an enforcement action by the Regional Water Board against NMWD.

d. Progress Reports

NMWD and/or the Implementing Party shall provide quarterly progress reports as described in Attachment B. NMWD and/or the Implementing Party shall permit inspection of the SEP by Regional Water Board staff or its third party oversight staff at any time without notice.

e. Certifications and Audits

i. Certification of Expenditures

On or before January 31, 2016, NMWD (or the Implementing Party on behalf of NMWD) shall submit a certified statement by a responsible district officer representing NMWD and a responsible official representing the Implementing Party documenting the expenditures by NMWD and the Implementing Party during the completion period for the SEP. In making such certification, the officials 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. NMWD shall provide any additional information requested by Regional Water Board staff or its third party oversight staff that is reasonably necessary to verify SEP expenditures.

ii. Certification of Performance of Work

On or before January 31, 2016 NMWD shall submit a report, under penalty of perjury, stating that the SEP has been completed in accordance with the terms of this Stipulation including Attachment B. Documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by NMWD.

iii. Certification that Work Performed Meets or Exceeds Requirements of CEQA and Other Environmental Laws

Within 90 days of this Stipulation and Order becoming effective, NMWD shall submit documentation, under penalty of perjury, stating that the SEP meets or exceeds the requirements of the California Environmental Quality Act (CEQA), if applicable, and/or other applicable environmental laws. NMWD (or the Implementing Party on behalf of NMWD) shall, before the SEP implementation date, consult with other interested State

agencies regarding potential impacts of the SEP. Other interested State agencies include, but are not limited to, the California Department of Fish and Wildlife.

iv. Third Party Audit

If Regional Water Board staff obtains information that causes staff to reasonably believe that NMWD or Implementing Party has not expended money in the amounts claimed by NMWD or Implementing Party, or has not adequately completed any of the work in the SEP, Regional Water Board staff may require, and NMWD shall submit, at its sole cost, a report prepared by an independent third party acceptable to Regional Water Board staff providing such party's professional opinion that NMWD and/or the Implementing Party has expended money in the amounts claimed by NMWD. In the event of such an audit, NMWD and the Implementing Party agree that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to Regional Water Board Staff within three months of the completion of NMWD's SEP obligations.

f. Regional Water Board Acceptance of Completed SEP

Upon NMWD's satisfaction of its obligations under this Stipulation, the completion of the SEP and any audits, Regional Water Board staff will issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of NMWD and/or the Implementing Party under this Stipulation.

g. Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP

In the event that NMWD is not able to demonstrate to the reasonable satisfaction of Regional Water Board staff that it and/or the Implementing Party has spent the entire SEP Amount for the completed SEP, NMWD shall pay the difference between the SEP Amount and the amount NMWD can demonstrate was actually spent on the SEP, as an administrative civil liability.

h. Failure to Complete the SEP

If the SEP is not fully implemented within the SEP Completion Period required by this Stipulation or there has been a material failure to satisfy a milestone requirement set forth in Attachment B, Regional Water Board enforcement staff shall issue a Notice of Violation. As a consequence, NMWD shall be liable to pay the entire Suspended Administrative Civil Liability or some portion thereof less the value of the completion of any milestone requirements. Unless otherwise ordered, NMWD shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Regional Water Board. The amount of the suspended liability owed shall be determined by the Executive Officer or the Executive Officer's delegate. Upon notification of the amount assessed for failure to fully implement the SEP, the amount assessed shall be paid to the Cleanup and

Abatement Account within thirty days. In addition, NMWD shall be liable for the Regional 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 NMWD's obligations to implement the SEP.

17. **Compliance with Applicable Laws:** NMWD understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

18. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:

Habte Kifle
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
habte.kifle@waterboards.ca.gov
(510) 622-2371

For North Marin Water District:

Chris DeGabriele
General Manager
North Marin Water District
P.O. Box 146
Novato, CA 94948
cdegabriele@nmwd.com
(415) 897-4133

19. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

20. **Matters Covered by this Stipulation:** Upon adoption of the Order incorporating the terms set forth herein, this Stipulation, represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged herein or which could have been asserted against NMWD as of the date of this Stipulation based on the specific facts alleged herein. The provisions of this Paragraph are expressly conditioned on NMWD's full payment of administrative civil liability by the deadline specified above.

21. **Public Notice:** The Parties understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances. If significant new information is received during the public review and comment period that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board or its delegee for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegee.

22. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

23. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

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

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

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

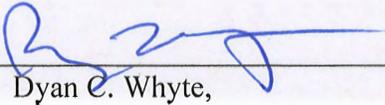
26. **No Admission of Liability:** In settling this matter, NMWD does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, state or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 or section 13385, subdivision (e).

27. **Waiver of Hearing:** NMWD has been informed of the rights provided by Water Code section 13323, subdivision (b) and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
28. **Waiver of Right to Petition:** NMWD hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
29. **Covenant Not to Sue:** NMWD covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
30. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
31. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.
32. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
33. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, SAN FRANCISCO BAY REGION PROSECUTION TEAM

Date: 3/5/15

By: 
Dyan C. Whyte,
Assistant Executive Officer

Approved as to form:

By: Andrew Tauriainen
Andrew Tauriainen, Senior Staff Counsel
State Water Resources Control Board
Office of Enforcement

NORTH MARIN WATER DISTRICT

Date: 3/4/2015 By: Chris DeGabriele
Chris DeGabriele, General Manager

Section IV: ORDER OF THE REGIONAL WATER BOARD

34. The Regional Water Board incorporates the Stipulation described above by this reference as if set forth fully herein.

35. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the State Water Resource Control Board's Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based upon information obtained by the Prosecution Team in investigating the allegations set forth in the Stipulation, or otherwise provided to the Regional Water Board. In addition to these considerations, this Order recovers the costs incurred by Regional Water Board staff for this matter.

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

37. The Stipulation and Order are severable; should any provision be found invalid the remainder shall be in full force and effect.

38. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if NMWD fails to perform any of its obligations under the Order.

39. Fulfillment of NMWD's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Stipulation in accordance with the terms of the Order.

Settlement Agreement and Stipulated Administrative Civil Liability
North Marin Water District

IT IS HEREBY ORDERED, pursuant to Water Code section 13323 and Government Code section 11415.60 on behalf of the California San Francisco Bay Regional Water Quality Control Board that NMWD shall pay **\$38,100** in administrative civil liabilities.

Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date: _____

ATTACHMENT A

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2014-1034

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**COMPLAINT R2-2014-1024
ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF**

**NORTH MARIN WATER DISTRICT
WILD HORSE STORAGE TANK
MARIN COUNTY**

This complaint assesses an administrative civil liability (Complaint) pursuant to California Water Code section 13385 to North Marin Water District (hereinafter Discharger) for an unauthorized discharge of approximately 204,000 gallons of chlorinated potable water from its Wild Horse storage tank to an unnamed dry tributary to Vineyard Creek in Novato. A \$45,500 liability is proposed for the alleged Water Code violation.

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) hereby gives notice that:

1. The North Marin Water District (Discharger) is alleged to have violated provisions of law for which the Regional Water Board may impose civil liability pursuant to California Water Code section 13385. This Complaint is issued under Water Code section 13323 and proposes to assess \$45,500 in penalties for the violations cited based on the considerations described herein.
2. Unless waived, the Regional Water Board will hold a hearing on this matter on December 10, 2014, in the Elihu M. Harris Building, First Floor Auditorium, 1515 Clay Street, Oakland, 94612. You or your representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. You will be mailed an agenda approximately ten days before the hearing date. You must submit all comments and written evidence concerning this Complaint to the Regional Water Board not later than 5 p.m. on November 10, 2014, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.
3. At the hearing, the Regional 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 judicial civil liability. You can waive your right to a hearing to contest the allegations contained in this Complaint by signing and submitting the waiver and paying the civil liability in full or by taking other actions as described in the waiver form.

ALLEGATIONS

4. On the afternoon of May 22, 2014, the Discharger's electrical and mechanical staff worked on the cathodic protection system of its Wild Horse potable water storage tank in the City of Novato, Marin County, and apparently inadvertently shorted the control wire for the tank level sensor. As a result, potable water began discharging from the Wild Horse tank at approximately

5:55 p.m., and continued until approximately 11:42 p.m., after notification by a concerned resident who observed the effects of the discharge.

5. The discharge totaled approximately 204,000 gallons of potable water containing up to 0.61 milligrams per liter (mg/L) of residual chlorine. The discharge reached Vineyard Creek via an unnamed tributary located near the tank. Vineyard Creek and its tributaries are waters of the State and of the United States.
6. On May 23, 2014, the Discharger inspected Vineyard Creek in response to the discharge and observed no fish kill and noted no erosion along Vineyard Creek and the unnamed tributary.
7. On May 24, 2014, the concerned resident reported to the California Office of Emergency Services (Cal OES) an unauthorized discharge reaching Vineyard Creek resulting in murky water and an accumulation of dead vegetation in a wet ponded pool in Vineyard Creek. In the dry months, stretches of Vineyard Creek and its tributaries dry up except for pools that are groundwater fed. The resident who reported the discharge voluntarily aerates the ponded pool to maintain it as a valuable dry season refuge for fish, including steelhead and rainbow trout. Cal OES forwarded the report to the Regional Water Board. In response, Cheryl Prowell, Regional Water Board spill responder, inspected Vineyard Creek that day. While Ms. Prowell found no dead fish, she did observe turbid water in the ponded pool in Vineyard Creek which likely resulted from the Wild Horse tank discharge and associated erosion of a dirt road at Wild Horse tank and dry creek banks as it flowed to the ponded pool.
8. On May 29, 2014, Regional Water Board staff requested that the Discharger submit a spill report to assess and determine the water quality and environmental impacts associated with the discharge. The Discharger submitted the spill report on June 5, 2014. In addition to the facts described above, the report indicated that the control system failure sent a false low level alarm to the Supervisory Control and Data Acquisition (SCADA) system and was acknowledged by the duty distribution operator at the time of the event. The Discharger's duty distribution operator was in training when he received the SCADA alarm notification and thus did not immediately respond.

ALLEGED VIOLATIONS

9. The Discharger violated Water Code section 13376, Clean Water Act section 301 and the Water Quality Control Plan for the San Francisco Bay Region by discharging approximately 204,000 gallons of potable drinking water containing up to 0.61 mg/L of chlorine into a tributary of Vineyard Creek on May 22, 2014.

LEGAL AUTHORITY

10. Water Code section 13376 requires that a person who proposes to discharge pollutants to navigable waters of the United States shall file a report of waste discharge with the Regional Water Board at least 180 days prior to discharging said pollutants. A person who violates Water Code section 13376 is liable civilly under Water Code section 13385, subdivision (a)(1).

11. The Regional Water Board's Water Quality Control Plan for the San Francisco Bay Region, Chapter 4, Table 4-1, prohibition 1, prohibits discharges with "particular characteristics of concern to beneficial uses ... to any non-tidal water" The Regional Water Board issued the prohibition pursuant to Water Code section 13243. A person who violates prohibitions issued pursuant to Section 13243 is liable civilly under Water Code section 13385, subdivision (a)(4).
12. Section 301 of the Federal Water Pollution Control Act ("Clean Water Act") (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit. A person who violates Clean Water Act section 301 is liable civilly under Water Code section 13385, subdivision (a)(5).
13. Water Code section 13385, subdivision (c), authorizes the Regional Water Board to impose administrative civil liability for violations of section 13385, subdivision (a), in an amount not to exceed the sum of both of the following (1) ten thousand dollars (\$10,000) for each day in which each violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up and the volume discharged but 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.
14. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under section 13385, subdivision (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.
15. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code sections 13327 and 13385(e). The entire Enforcement Policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf
16. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, Title 14, section 15321.
17. There are no statutes of limitation that apply to administrative proceedings. The statutes of limitation that refer to "actions" and "special proceedings" and are contained in the Code of Civil Procedure apply to judicial proceedings, not 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, Section 405(2), p. 510.)

PROPOSED CIVIL LIABILITY

18. **Maximum Liability:** The violation occurred on one day, and the volume discharged but not cleaned up is estimated at 204,000 gallons. Therefore, the maximum administrative civil liability the Regional Water Board may impose is \$2,040,000.
19. **Minimum Liability:** According to Water Code section 13385, subdivision (e), at a minimum, liability shall be assessed at a level that recovers the economic benefit or saving, if any, derived from the violations.
20. **Proposed Liability:** Based on consideration of the above facts, after applying the Enforcement Policy penalty methodology as set forth in Exhibit A, the Assistant Executive Officer of the Regional Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$45,500**.
21. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties for further unauthorized discharge for which penalties have not yet been assessed or for violations that may subsequently occur.



Dyan C. Whyte
Assistant Executive Officer

September 19, 2014

Date

Exhibit A –Factors Considered to Determine Administrative Civil Liability

EXHIBIT A

Factors in Determining Administrative Civil Liability for North Marin Water District Unauthorized Discharge of Chlorinated, Potable Water to Unnamed Dry Tributary to Vineyard Creek Novato, Marin County

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability based on the factors in Water Code sections 13327 and 13385 subdivision (e).

Each factor in the Enforcement Policy and its corresponding category, adjustment, or amount for the alleged violation is presented below.

Violation: – Unauthorized Discharge of 204,000 Gallons of Chlorinated Water to an Unnamed Dry Tributary to Vineyard Creek

On May 22, 2014, North Marin Water District (“District”) discharged approximately 204,000 gallons of potable water that contained up to 0.61 milligrams per liter (mg/L) of residual chlorine to an unnamed dry tributary to Vineyard Creek. The discharge resulted from an overflow from the District’s Wild Horse water storage tank due to a blown fuse to the tank level sensor.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm” factor considers the harm to beneficial uses that resulted, or may result, from exposure to the pollutants in the discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the harm or potential harm to beneficial uses; (2) the degree of toxicity of the discharge, and (3) whether the discharge is susceptible to cleanup or abatement.

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 to beneficial uses is negligible (0) to major (5).

For the violation, the potential harm to beneficial uses is minor (i.e., a score of 1). This is because the discharge caused sedimentation and erosion and resulted in dead vegetation and turbid water summer refuge fish pool in Vineyard Creek. Turbid water can impair the feeding ability of fish. The dead vegetation could also elevate oxygen demand in the ponded pool as it decomposes over the summer and fall. The ponded pool contains fish, including rainbow trout and steelhead. The oxygen levels are maintained in the creek at this local by a local resident who operated an aeration system. A higher harm factor is not proposed because no dead fish were observed a day after the discharge occurred.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics for the Discharge

A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

For the violation, the risk or threat of the discharge is moderate (i.e., a score of 2). The discharge was potable water with free chlorine at concentrations up to 0.61 mg/L. Chlorine exhibits toxicity to aquatic life even at low concentrations, and the U.S. EPA Water Quality Criterion for chlorine to prevent acute (lethal) effects to aquatic life is 0.019 mg/L.

Factor 3: Susceptibility to Cleanup or Abatement

A score of 0 is assigned for this factor if 50 percent or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50 percent of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated.

For the violation, the discharge was not susceptible to cleanup or abatement (i.e., factor of 1). The discharged material flowed into and commingled with ambient water in the ponded pool in Vineyard Creek so cleanup or abatement was not possible.

Step 2 – Assessments for Discharge Violations

When there is a discharge, the Water Board determines an initial liability amount on a per-gallon and/or a per-day basis using the sum of the Potential for Harm scores from Step 1 and a determination of degree of Deviation from Requirement.

For the violation, the sum of the three factors from Step 1 is 4. The degree of Deviation for the violation is moderate. The general requirements prohibiting discharges to any non-tidal water and requirements for reports of waste discharge and NPDES permits were only partially compromised, because the District was not permitted and was not under specific order prohibiting the discharge.

For the violation, the prosecution staff used both per-gallon and per-day factors as allowed by statute. The resulting per-gallon and per-day multiplier factor is 0.016, based on a Potential for Harm score of 4 and a “Moderate” Deviation from Requirement.

<p><u>Initial Liability Amount</u></p> <p>The initial liability for the violation is calculated on a per-gallon and per-day basis as follows:</p> <p><u>Per Gallon Liability:</u> (203,000 gallons) x (0.016) x (\$10/gallon) = \$32,480</p> <p><u>Per Day Liability:</u> \$10,000/day x (0.016) x (1 day) = \$160</p> <p>Total Initial Liability = \$32,640</p>

Step 3 – Per Day Assessment for Non-Discharge Violations

This assessment is for a discharge violation. Step 3 applies to non-discharge violations.

Step 4 – Adjustments to Determine Initial Liability for Violation

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

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is used, with a higher multiplier for negligent behavior.

For the violation, the culpability multiplier is 1.2. This multiplier is warranted because the District's duty operator did not promptly respond to the SCADA alert notification as a reasonable person would have done under similar circumstances in his/her exercise of ordinary care. The discharge continued for about 6 hours (i.e., from 5:55 p.m. to 11:42 p.m.), and the volume of the discharge would have been substantially reduced had the duty operator promptly responded to the SCADA warning notification.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is used, with a higher multiplier when there is a lack of cooperation.

For the violation, the cleanup and cooperation factor multiplier is 1. Cleanup was not possible once the discharge reached the water way. The District staff was responsive to Regional Water Board staff requests. Since the incident, the District upgraded the level sensors for 16 storage tanks, and will upgrade tank level sensors for the remaining 24 tanks over the next two fiscal years. These will decrease the likelihood of tank overflows. Also, the District will develop a best management practices plan to prevent future water quality impacts associated with planned and unplanned chlorinated potable water discharges.

History of Violations

This factor is used to increase the liability when there is a history of repeat violations using a minimum multiplier of 1.

For the violation, the history factor multiplier is 1 because there is no record of the District having a similar violation in the past.

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

$\$32,640$ (Initial Liability) \times 1.2 (Culpability Multiplier) \times 1 (Cleanup and Cooperation Multiplier) \times 1 (History of Violations Multiplier) = Total Base Liability

Total Base Liability = **$\$39,168$ (rounded to $\$39,200$)**

Step 6 – Ability to Pay and to Continue in Business

The Enforcement Policy provides that if the Water Board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

In this case, the Regional Water Board prosecution staff has sufficient information to suggest that the District has the ability to pay the proposed liability. The District provides service to about 62,000 residents, primarily in Novato. In its 2013 Comprehensive Annual Financial Report for the fiscal years ended June 30, 2013, the District reported \$18.6 million in total revenues and \$96.2 million in total capital assets (net).¹ The proposed liability is about 0.3 percent of the 2013 total revenues.

Step 7 – Other Factors as Justice May Require

Regional Water Board prosecution staff incurred \$6,300 (rounded) in staff costs to prepare this analysis and supporting information. This consists of 80 hours of an engineer at \$55 per hour, 4 hours of a senior engineer at \$97 per hour, 10 hours of supervisory engineer at \$106 per hour, and 4 hours of the Assistant Executive Officer at \$114 per hour. These staff costs include standard overhead costs to the State and are based on the low end of the salary range for each class. The Assistant Executive Officer intends to seek additional liability for staff costs incurred in bringing the matter to settlement or hearing. Although the final amount for such costs cannot be determined until completion of the matter, such costs could be quite substantial when additional investigation and analysis is required or if there is a hearing on this matter before the Regional Water Board.

Step 8 – Economic Benefit

The Enforcement Policy directs the Water Boards to determine any economic benefit associated with the violations and to recover the economic benefit gained plus 10 percent in the liability assessment.

Regional Water Board prosecution staff did not find a significant economic benefit associated with the violation. The alleged violation was an accident due to failure to respond to the SCADA alert that has no direct association with economic benefit.

Step 9 – Maximum and Minimum Liability Amounts

¹ <http://www.nmwd.com/financials/NMWDFinancials2013.pdf>

a) ***Minimum Liability Amount***

The Enforcement Policy requires that the minimum liability amount imposed not be below a Discharger's economic benefit plus 10 percent. Based on the Regional Water Board Prosecution Staff's estimate, the proposed liability is above this amount. Mandatory minimum penalties do not apply to the violation because the discharge is unauthorized.

b) ***Maximum Liability Amount***

The maximum administrative civil liability amount is the maximum amount allowed by Water Code Section 13385: (1) \$10,000 for each day in which the violation occurs; and (2) \$10 for each gallons exceeding 1,000 gallons that is discharged and not cleanup. The maximum liability for the violation is \$2,040,000.

Step 10 – Final Liability Amount

The total final liability amount proposed is **\$45,500** for the unauthorized discharge to the unnamed dry creek tributary to Vineyard Creek. The total proposed liability is based on consideration of penalty factors discussed above. It includes the Total Base Liability plus staff costs, and it is within the maximum and minimum liability amounts.

ATTACHMENT B

**North Marin Water District
Proposal for Supplemental Environmental Project:**

Vineyard Creek

Basic Information:

1. Project Name:
Vineyard Creek Supplemental Environmental Enhancement Project (SEP)
2. Project Amount:
\$14,000
3. Project Developed By:
North Marin Water District
4. Project to be Performed By:
North Marin Water District, County of Marin, Point Blue-STRAW (Students and Teachers Restoring a Watershed)
5. Contact:
Chris DeGabriele, General Manager, North Marin Water District
(415) 897-4133 ext. 8905

Project Description:

6. Provide a concise description of the SEP, including the goal(s) of the SEP and detailed plans for achieving the goal(s). If available, include photos or graphics of project area or other applicable images.

In response to the Administrative Civil Liability Complaint R2-2014-1024 for unauthorized chlorinated water discharge from Wild Horse Storage Tank, Novato, Marin County, CA, NMWD proposes a SEP within the Vineyard Creek Watershed, which was subjected to the Wild Horse Storage Tank Overflow on May 22, 2014. The proposed project includes removal of a substantial area of invasive, non-native Himalaya blackberries and restoration with native plantings (grasses, shrubs and up to ten trees) on Marin County Flood Control District property (APN 146-193-01) as a STRAW Project in conjunction with Novato Unified School District, (Pleasant Valley Elementary School and/or Sinaloa Middle School, both in the vicinity of the proposed project). An aerial

photograph map (Exhibit 1) showing the proposed project area as Detail 1, along with photos of the existing area showing the invasive blackberry patch to be removed (Exhibit 2) and an example similar project on Leveroni Creek where NWMD has improved an embankment with native planting and grasses (Exhibit 3). It is expected that approximately 130 lineal feet of the Vineyard Creek Embankment would be improved. NMWD will rely on Marin County Flood Control Districts' permitting authority with the California Department of Fish and Wildlife (DFW) to remove the blackberries and install the new plantings. The actual planting would be coordinated and supervised by STRAW staff. NMWD will be responsible for irrigation water to establish the planting for up to three years and maintain the plantings for five years. A water service is available adjacent to the subject property. Plantings would be installed in a tier fashion with grasses nearest the water course, shrubs on the embankment crown, and trees providing shade/cover, away from the embankment. NMWD will conduct the necessary Environmental Review to complete the work and provide funding for the STRAW Project.

Compliance with SEP Criteria:

This section must address how the project meets all the following SEP criteria.

7. Describe how the SEP directly benefits or studies groundwater or surface water quality or quantity and the beneficial uses of the waters of the State, in one of the following categories:
 - a. Monitoring program
 - b. Studies or investigations
 - 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
 - k. Watershed management facilitation services
 - l. Compliance training, compliance education, and the development of educational materials
 - m. Enforcement projects
 - n. Non-point source program implementation
 - o. Other

The proposed Supplemental Environmental Project directly benefits surface water quality in Vineyard Creek by enhancing native habitat, restoring the Vineyard Creek embankment to natural condition, and provides an educational opportunity for Novato Unified School District students.

8. Confirm that the SEP contains only measures that go above and beyond applicable obligations of the discharger.

NMWD has no current obligation to maintain Vineyard Creek and receives no water supply benefit from this tributary of Novato Creek which is down stream of NMWD's Stafford Dam and Stafford Lake water supply reservoir. Thus, the proposed SEP is above and beyond applicable obligations of NMWD.

9. Demonstrate that the SEP does not directly benefit, in a fiscal manner, a Water Board's functions, its members, or its staff.

The SEP does not directly or indirectly benefit in any fiscal manner the Water Board's functions, or that of its members or staff.

10. Describe the SEP's nexus to the nature or location of the violation(s), such as: the SEP is located within the same watershed in which the violation(s) occurred, or the SEP reduces likelihood of similar violation in the future.

The proposed SEP is located within the same watershed in which the Wild Horse Storage Tank discharge occurred and is just downstream of the area of concern identified in the Administrative Civil Liability Complaint R2-2014-1024.

11. Describe any plans to continue and/or maintain the SEP beyond the SEP-funded period. This is especially important in the case of restoration projects.
 - a. How maintenance will be funded
 - b. How other continued activities will be funded

NMWD proposes to self-monitor plant health and survival and will replace plants as needed for a period of five years. NMWD will also maintain irrigation water to the plantings for a period of three years to ensure they become fully established. NMWD will quarterly monitor the site and will fund the monitoring plant replacement and irrigation out of its annual operations budget.

12. If applicable, include documented support by one of the following:
 - a. Other agencies
 - b. Public groups
 - c. Affected persons
 - d. Documentation of compliance with the California Environmental Quality Act

NMWD has received verbal support for the project from Marin County Resource Conservation District and the County of Marin.

Project Milestones and Budget:

13. Include a time schedule for implementation of the SEP scope of work. Include milestones (deliverables or key reporting points) that are linked to the budget for

the SEP. Include quarterly reports, final report, and any post-project monitoring in the project milestones table.

NMWD proposes to plan the installation, with assistance from the County of Marin and Point Blue-STRAW, beginning June 1, 2015; enlist the County of Marin to remove invasive blackberries the first week of July 2015 (July 6, 2015); undertake the installation with Point Blue-STRAW beginning November 2, 2015; and will provide a completion report by December 31, 2015 with a photographic record for monitoring purposes upon completion of all plant installation.

14. Also, include procedures for accounting of all costs and expenses incurred by the SEP, and provisions that any funds left over after the successful completion of the SEP must be turned over to the State Cleanup and Abatement Account.

NMWD will establish a separate project accounting number and monitor all costs using the NMWD cost accounting software system to insure that all costs and expenses incurred are adequately documented. Should the entire financial obligation pursuant to the SEP portion of the ACL R2-2014-1024 not be used the cost accounting will document the remaining amount to be forwarded to the State Clean Up and Abatement Account.

Project Performance Measures:

15. Describe measures or indicators for the success of the SEP and procedures to evaluate compliance with the performance measures or indicators.

NMWD proposes to monitor performance by determining successful installation and following appropriate BMP's consistent with PRBO-STRAW typical policies. Additionally, NMWD will encourage Novato Unified School District student participants to visit the project regularly. NMWD will self-monitor survival of the plantings and irrigation on a quarterly basis outside of project requirements and funded by the NMWD operations budget annually for a period of five years.

Reports to the Water Board:

16. Confirm that this SEP will meet reporting requirements: at a minimum, the SEP must include quarterly reports on the progress of completion of the SEP to the Regional Water Board, a third party oversight organization, and the State Water Board's Division of Financial Assistance. Additionally, the SEP must include a final report documenting completion of the SEP, and addressing how performance measures were met, along with a copy of accounting records of expenditures.

NMWD will submit reports to the San Francisco Bay Area Regional Water Quality Control Board at start of the project, July 1, 2015, quarterly on September 1, 2015 and upon completion of the project by December 31, 2015. Included with the reports will be a review of performance measures, a copy of accounting records and expenditures and photograph documentation of planting installations.

Third Party Oversight Organization:

17. This proposal must specify a company or organization retained to oversee and audit the SEP and describe funding to this organization for the oversight. The costs for oversight are separate from the costs of the SEP and are borne by the discharger. This organization must be knowledgeable in CIWQS data entries and Regional Water Board's public records procedures.

NMWD proposes that San Francisco Estuary Partnership provide the third-party documentation for the SEP. NMWD will provide funding for the San Francisco Estuary Partnership through project completion to perform the oversight separate from the costs estimated in this proposal. NMWD has consulted with Athena Honore to address appropriate monitoring measures for this SEP as proposed.

NMWD will communicate in writing and via e-mail to the San Francisco Bay Estuary Partnership if for any reason the proposed dates cannot be met.

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DETAIL 1



DETAIL 1

VINEYARD CREEK

TRUMBULL TANK

WILD HORSE VALLEY TANK

UPPER WILD HORSE VALLEY TANK



NO.	DATE	REVISION	BY	APP.
NORTH MARIN WATER DISTRICT NOVATO, CALIFORNIA				
WILD HORSE VALLEY TANK AERIALS				
DES	DR	CH	SCALE	: 1"=150'-0"
DN	AC	DM	DATE	: 10/8/14
APPROVED: CHIEF ENGINEER			SHEET NO.	: 1 OF 1 SHEETS
R.E. C40936			SERVICE AREA	1
			JOB NO.	2000
			NO.	001



Proposed Vineyard Creek SEP (Existing Condition)



NMWD Leveroni Creek Environmental Enhancement