

SETTLEMENT AGREEMENT AND MUTUAL RELEASE  
ADMINISTRATIVE CIVIL LIABILITY  
COMPLAINT NO. R5-2006-0502

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE – ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2006-0502 (this "Agreement") is made and entered into by the United Auburn Indian Community (UAIC) and the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region ("Regional Water Board") (collectively, the "Parties") with reference to the following facts:

RECITALS:

A. On or about March 7, 2006, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R5-2006-0502 ("Complaint"), which proposed to assess an administrative civil liability of \$435,000 against UAIC and HydroScience Operations, Inc. ("Operator") for certain alleged violations of NPDES Permit No. CA 0084697, Waste Discharge Requirements Order Nos. 5-01-068 and R5-2005-0032 (the orders) which are alleged to have occurred at UAIC's Wastewater Control Facility in Placer County during periods between September 2003 and January 2005.

B. The Complaint alleged 166 violations of the effluent limitations contained in the two orders, and assessed penalties in the amount of \$435,000 for 145 of these violations. In addition, the Regional Water Board's staff investigation identified additional alleged non-effluent violations of monitoring and reporting requirements. The Regional Water Board staff calculated the discretionary liability that it would impose under Water Code section 13385(a) for all the alleged violations collectively and calculated the mandatory minimum penalties required to be recovered under Water Code Section 13385(h) and (i). The Assistant Executive Officer determined that the mandatory minimum penalty was in excess of the discretionary amount he would assess in accordance with the Water Code and the Water Quality Enforcement Policy.

C. In calculating the discretionary liability amount for the effluent and non-effluent violations, the Assistant Executive Officer considered the factors enumerated in Water Code section 13385(e). The Assistant Executive Officer alleged certain monitoring results and changes to the wastewater treatment plant processes were not timely reported. The Assistant Executive Officer also concluded that there was insufficient information to determine whether the alleged effluent violations for chlorine resulted in any threat to the environment due to inadequate reporting of alleged violations. The Assistant Executive Officer also concluded that the alleged effluent violations for coliform did not pose a significant threat to human health or the environment and resulted from equipment malfunction in the application of a new treatment technology which produces high quality effluent.

D. UAIC and HydroScience Operations, Inc. waived the right to have a hearing before the Regional Water Board within 90 days of issuance of the Complaint and presented evidence to the Assistant Executive Officer that (1) all of the coliform violations alleged in the complaint were the result of distinct operational upsets; (2) the results for coliform were incorrectly reported

using a 7 day rolling median, as opposed to a fixed median, which was not specified in the orders; (3) there were calculation errors in the Complaint, (4) the quality of the effluent discharged from the Facility at all times had lower coliform levels than the receiving water; (5) no chlorine had been discharged from the facility in violation of the NPDES Permit; and (6) there was no threat to the public's health or environment posed by any of the alleged violations at this WWTP which produces high quality effluent.

E. After reviewing the evidence provided by UAIC and HydroScience Operations, Inc. in response to the Complaint, the Assistant Executive Officer decided to reconsider the amount of the proposed administrative civil liability alleged in the Complaint. The Assistant Executive Officer concluded that (1) the applicable effluent limitation for coliform in the orders is not clearly expressed as a rolling median and that, therefore, for purposes of mandatory minimum penalties, the effluent limitation would be interpreted as a fixed, calendar week median, and (2) that calculation errors resulted in mandatory minimum penalties being incorrectly assessed for alleged violations occurring on September 25, 2003 and October 31, 2003, which reduces the mandatory minimum penalty from \$435,000 to \$165,000.

The Assistant Executive Officer determined based on the factors in Water Code section 13385(e) that the appropriate discretionary liability for the alleged violations is \$300,000. The Assistant Executive Officer found that the underlying cause of the violations was an unforeseeable mechanical failure of membranes used in the new treatment system, allowing increased levels of turbidity into the ultraviolet light disinfection system, disrupting the disinfection process. The Operator took action to identify the cause of the upset and to provide improved disinfection, including periodic rental of an additional ultraviolet light disinfection unit and use of chlorine disinfection. Ultimate resolution of the effluent problems took many months. The Assistant Executive Officer alleged that, in addition to effluent violations, there was a failure to properly and timely notify the Regional Water Board of alleged and possible effluent violations, to report the use of chlorine at the facility for effluent disinfection, to properly monitor effluent chlorine residuals, and to take all reasonable steps to assess and minimize the effects of any possible effluent violations. The Assistant Executive Officer has concluded that the proposed discretionary liability of \$300,000 would recover the economic benefit, if any, and exceeds the mandatory minimum penalty of \$165,000.

F. The parties conferred for the purpose of settling this matter and the allegations described herein without a formal hearing. Therefore, UAIC enters into this Agreement without the admission of any fact or the adjudication of any issue in this matter, and by entering into this agreement UAIC is not admitting to liability for any of the alleged violations.

G. The Parties, through their respective representatives, have reached this settlement for the violations alleged in the Complaint and additional alleged violations of the orders as described below. This settlement is subject to public comment as provided below. The general terms of the settlement are that UAIC will, in exchange for a full and final release of all claims arising out of the specified alleged violations, (1) pay an administrative civil liability of \$150,000 to the State Water Resources Control Board's Cleanup and Abatement Account, and (2) complete the John D. Vincent Vernal Pool Preserve Enhancement Plan Supplemental Environmental Project

(SEP) at a cost of no less than \$150,000 in accordance with the specific terms and conditions detailed in Attachment A (“the SEP”), which is attached hereto and incorporated into this Agreement.

H. In addition to the violations alleged in the Complaint, this settlement resolves other alleged violations of the orders, including two violations of the Boron effluent limitation, and one violation of the Pesticide effluent limitation. These alleged violations encompass all alleged violations of Orders 5-01-068 and R5-2005-0032 of which UAIC and the Assistant Executive Officer were actually aware as of November 30, 2006.

I. As a material condition of this Agreement, UAIC represents and warrants that the SEP is not and was not previously contemplated, in whole or in part, by UAIC or any related entity for any other purpose, except to partially satisfy UAIC’s obligations as may be ordered in response to Complaint No. R5-2006-0502, and that the SEP would not be undertaken by UAIC or any related entity in the absence of this enforcement action. UAIC also affirms that, to the best of its knowledge, UAIC, its officers, and members, will not receive any direct or indirect financial benefit from the SEP and will not use the SEP to satisfy any legal obligation other than that in this Agreement.

J. Acceptance of the SEP by the Assistant Executive Officer does not constitute approval of the project by the Regional Water Board in regard to Clean Water Act Section 401 Water Quality Certification or any other regulatory approval by the Regional Water Board for the project. The Parties, Wildlands, Inc., or other appropriate parties are fully responsible for obtaining any needed approvals or permits for the SEP activity.

NOW, THEREFORE, in exchange for their mutual promises and for other good and valuable consideration specified herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. UAIC covenants and agrees that it will not contest or otherwise challenge this Agreement before the Regional Water Board, the State Water Resources Control Board or any court. The Assistant Executive Officer likewise covenants and agrees that he will not contest or otherwise challenge this Agreement before the Regional Water Board, the State Water Resources Control Board or any court, provided that he does not exercise his authority to declare the Agreement to be null and void as the result of public comment, as specifically detailed below.
2. UAIC agrees to pay \$150,000 of the proposed Administrative Civil Liability Order to the State Water Resources Control Board and to initiate the SEP, both within 10 days of receiving written notice from the Assistant Executive Officer that the Agreement is no longer subject to challenge pursuant to Water Code sections 13320 or 13330, or that all such challenges have been resolved. UAIC further agrees to conduct and complete the SEP in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment A.
3. The Assistant Executive Officer agrees to dismiss HydroScience Operations, Inc. from the matter upon certification of the settlement by the Assistant Executive Officer pursuant to paragraph 9 below.

4. In the event that the SEP is not performed in accordance with the specific terms and conditions, including the time schedule, detailed in Attachment A, or is determined by the Executive Officer to not qualify as a SEP in accordance with the State Water Resources Control Board's Enforcement Policy, for any reason within the reasonable control of UAIC or its agents, UAIC will provide written notice to the Executive Officer within five days, and UAIC agrees to immediately pay an additional administrative civil liability amount of \$150,000 to the State Water Resources Control Board's Cleanup and Abatement Account upon written demand by the Assistant Executive Officer. If the payment is not timely received, the Assistant Executive Officer may request that the Regional Water Board adopt the Administrative Civil Liability Order contained in Attachment B (the "Order"), which is attached hereto and incorporated into this Agreement. In this event, UAIC covenants and agrees that it will not contest or otherwise challenge the adoption of the Order before the Regional Water Board, the State Water Resources Control Board or any court.

5. UAIC and its respective successors and assigns, agents, attorneys, employees, officers, and representatives hereby release and discharge the Regional Water Board and the State of California, including each and every constituent agency, board, department, office, commission, fund or entity thereof, and successors and assigns, agents, attorneys, employees, officers, shareholders and representatives of the Regional Water Board, the State of California, and each and every constituent of the State of California from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that they may have or claim to have against one another by reason of any matter or omission arising from any cause whatsoever relating to the Complaint and this Agreement.

6. UAIC's complete performance of its obligations under this Agreement shall effect a release and discharge of UAIC and its entities including Thunder Valley Casino, its respective successors and assigns, agents, attorneys, employees, officers, and representatives by the Regional Water Board from any and all claims, demands, actions, causes of action, obligations, damages, penalties, liabilities, debts, losses, interest, costs, or expenses of whatever nature, character, or description, that it may have or claim to have against UAIC or its Thunder Valley Casino by reason of any matter or omission arising from any cause whatsoever relating to the Complaint and this Agreement. Notwithstanding this section, however, the Regional Water Board expressly reserves its rights under Civil Code section 1542.

7. The Parties agree that there will be no further contacts with the media by the Parties, their representatives, or their agents regarding the Complaint or this Agreement prior to noon on the date that the public notice is scheduled to be published. The Assistant Executive Officer will provide at least 48 hours notice to UAIC prior to publishing the public notice.

8. UAIC agrees that if UAIC, or any related entity, publicizes the SEP or the results of the SEP, it will state in a prominent manner that the SEP is being undertaken as part of the settlement of this enforcement action by the Central Valley Regional Water Quality Control Board.

9. Within seven days of execution of this Agreement by UAIC and the Assistant Executive Officer, the Assistant Executive Officer shall publish the availability of the Agreement for the purpose of accepting public comments on the Agreement for a period of 30 days. If the Assistant Executive Officer receives significant new information that reasonably affects the propriety of entering into this Agreement, the Assistant Executive Officer may unilaterally declare this Agreement void. Otherwise, within seven days of the close of the public comment period the Assistant Executive Officer will certify that the public comment period has closed, that all comments have been considered, and that the Assistant Executive Officer has determined that the Agreement is in the best interests of the people of the State of California. UAIC agrees that it may not rescind or otherwise withdraw their approvals of the Agreement. The Agreement becomes effective immediately upon the Assistant Executive Officer's certification.

10. The Parties intend that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Agreement, will be adequate. In the event procedural objections are raised prior to this settlement 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.

11. In the event that this Agreement does not take effect, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing for the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, except this Agreement, will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to, 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 Board Members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting the contested evidentiary hearing.

12. Neither this Agreement nor any payment pursuant to the Agreement shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this Agreement and/or any actions or payment pursuant to the Agreement may constitute evidence in actions seeking compliance with this Agreement. This Agreement may be used as evidence of a settlement in any future actions by the Regional Water Board.

13. Each person executing this Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.

14. This Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Agreement and any uncertainty and ambiguity shall not be interpreted against any one party.

15. If any portion of this Agreement is ultimately determined not to be enforceable, the entire Agreement shall become null and void.

16. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.

17. Each party to this Agreement shall bear all attorneys' fees and costs arising from that party's own counsel in connection with the matters referred to herein.

18. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

19. This Agreement may be executed as duplicate originals, each of which shall be deemed an original Agreement, and all of which shall constitute one agreement.

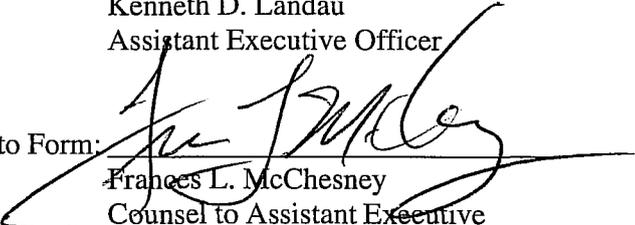
20. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

**For the Regional Water Board Assistant Executive Officer:**

Date: 1-31-2007

By:   
Kenneth D. Landau  
Assistant Executive Officer

Approved as to Form:   
Frances L. McChesney  
Counsel to Assistant Executive Officer

**For United Auburn Indian Community:**

Date: 1-30-07

By:   
Jessica Tavares, Chairperson

Approved as to Form:   
Jane G. Zerbi  
Counsel to UAIC

**CERTIFICATION**

I, Kenneth D. Landau, hereby certify that notice of this Settlement Agreement has been provided to the public. The public has received no less than thirty days to comment on this Settlement Agreement. I have considered all comments that have been received, and I have determined that this Settlement Agreement is in the best interests of the people of the State of California. This Settlement Agreement is hereby effective immediately.

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

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

Kenneth D. Landau  
Assistant Executive Officer

Note: Any person aggrieved by this Action has thirty days to file a petition for review with the State Water Resources Control Board. Information regarding filing petitions for review is available at [www.waterboards.ca.gov](http://www.waterboards.ca.gov).

# **SUPPLEMENTAL ENVIRONMENTAL PROJECT FOR THE JOHN D. VINCENT VERNAL POOL PRESERVE**

## **INTRODUCTION**

This supplemental environmental project is intended to improve water quality at the John D. Vincent Vernal Pool Preserve. These improvements to water quality include riparian enhancement as described in this document. The supplemental environmental project is being conducted as the result of the settlement of an enforcement action taken by the Regional Water Quality Control Board, Central Valley Region, for alleged violations associated with the treatment facility at Thunder Valley Casino, Placer County, California. The Thunder Valley Casino is located on Athens Road between Fiddymont Road and Industrial Avenue, west of Highway 65, in the City of Lincoln.

## **SUPPLEMENTAL ENVIRONMENTAL PROJECT**

Wildlands, Inc. owns the John D. Vincent Vernal Pool Preserve (Preserve) which is a 321-acre property located southwest of the city of Lincoln, in the County of Placer, California (Figures 1 and 2). The Preserve is a U.S. Army Corps of Engineers and U.S. Fish and Wildlife Service approved mitigation area currently under a conservation easement held by Wildlife Heritage Foundation. The Preserve and the Thunder Valley Casino are located within the same watershed: the Lower Sacramento River Watershed. King Slough runs through the Preserve and terminates at the confluence of the East Main Drain and the Natomas Cross Canal. Auburn Ravine is located within a half mile of the Preserve and also flows into the confluence of the East Main Drain and the Natomas Cross Canal. The Preserve contains several wetland features including perennial drainage, perennial marsh, seasonal drainage, seasonal marsh, seasonal wetlands, and vernal pools/swales. The channel on the Preserve is fed by runoff from upstream agricultural and urban areas. Wildlands proposes to enhance the seasonal marsh, perennial marsh, and drainage in order to improve the quality of the water exiting the Preserve. This proposed plan

includes the following components:

- Excavate areas within the seasonal marsh and perennial marsh to create settling ponds.
- Enhance the drainage connecting the first settling basin to the second.
- Plant riparian vegetation along the connecting drainage.

The proposed plan has been designed to achieve the following goals:

- To increase residency time of water on the Preserve in order to allow sediment and other pollutants to settle out.
- To increase the amount of riparian and emergent marsh vegetation on the Preserve in order to increase nutrient absorption.
- To ultimately improve the quality of all the water exiting the Preserve.

### ***Proposed Plan***

In order to improve water quality on the Preserve, portions of the seasonal marsh and the perennial marsh will be excavated to create settling areas for water entering the Preserve from offsite sources. The seasonal marsh on the Preserve is dominated by Italian ryegrass (*Lolium multiflorum*), curly dock (*Rumex crispus*), Bermuda grass (*Cynodon dactylon*), common spikerush (*Eleocharis macrostachya*), and medusa head grass (*Taeniatherum caput-medusea*). The perennial marsh is dominated by cattails (*Typha latifolia*) with a few scattered willow trees interspersed along exposed earthen berms. The first settling basin will be located on the eastern edge of the Preserve where the drainage enters the Preserve. The second settling basin will be located in the approximate center of the site. These settling areas will increase residency time for the water allowing sediment and other pollutants to be filtered out. Due to the increased residency time, more of the nutrients can be re-absorbed into the functioning wetland system on the Preserve.

In addition to the settling basins, the drainage connecting the first basin to the second will be enhanced and planted with riparian vegetation to assist with nutrient absorption. Enhancements along the drainage will include laying back the bank along the drainage in order to create benches of emergent marsh vegetation in unconstrained uplands bordering the channel. In order to create riparian wetland along the drainage, approximately 350 riparian plantings will be

installed along the drainage. Riparian plantings shall include Fremont cottonwood (*Populus Fremonii*), black willow (*Salix gooddingii*), sandbar willow (*Salix exigua*), red willow (*Salix laevigata*), arroyo willow (*Salix lasiolepis*), and dogwood (*Cornus* sp.). Water control structures will be placed within the drainage just before the second settling basin in order to control the flow of water on the site and to retain water along the drainage to further increase residency time.

The project will be monitored by Wildlands, Inc. personnel. The monitoring will consist of surveys to confirm hydrology and surveys to determine survival of riparian plantings and emergent marsh establishment throughout the enhanced areas. The hydrology surveys will be conducted the first year following construction by observing flows through the enhanced areas during times of high flow (rainy season) and low flow (dry season). If remedial actions are determined to be necessary following hydrology monitoring, remedial actions will be implemented, and an additional hydrology survey will be conducted in year two following construction.

Vegetation monitoring to determine survival of riparian plantings will be conducted in the first growing season following construction. If the riparian planting survival survey identifies less than 60 percent survival, remedial actions will be taken and riparian plantings will be added to ensure a survival rate of at least 60 percent of the original number planted. Surveys to determine the establishment of emergent marsh will be conducted in the second growing season following construction. If emergent marsh growth is determined to be negligible, the marsh area will be remediated with supplemental plantings. Annual reports will be prepared by Wildlands, Inc. and submitted to the Regional Water Quality Control Board by December 31 of each monitored year.

### ***PROJECT PERSONNEL***

Julie Mentzer, Associate Conservation Planner with Wildlands, will serve as Project Manager for the project. Ms. Mentzer has ten years experience in environmental consulting, project management, agency consultation, and regulatory permitting. She has managed numerous projects including biological sections of EIRs, Habitat Mitigation and Monitoring Proposals, complex permitting packages, wetland delineations, and biological surveys.

Carl Jensen, Design – Build Director with Wildlands, will serve as the lead for the design and construction of the project. Mr. Jensen has over seven years experience and as leader of the

Wildlands, Inc. design-build team, oversees all habitat restoration design and construction projects for Wildlands.

Matt Gause, Vice President of Ecological Services with Wildlands, will act as Principal in Charge for the project and will oversee all aspects of the project. Mr. Gause is responsible for the management and monitoring of preserved, restored, and created habitats throughout California, providing oversight to ensure that habitats are functioning properly.

## **SCHEDULE AND COST**

The enhancement plan will be implemented in 2007 by Wildlands, Inc. for a cost of \$150,000 including planning, design, labor, materials, and monitoring. Refer to Table 1 for a detailed project budget.

<b>TABLE 1. Project Budget</b>	
<b>Task/Item</b>	<b>Total Cost</b>
Construction	
Earthwork	48,500.00
Structures	10,000.00
Planting material	7,500.00
Erosion control	5,000.00
Seeding	6,000.00
Permitting/Compliance	15,000.00
Monitoring	8,000.00
Design drawings	17,000.00
Admin	12,000.00
Maintenance	15,000.00
Topographic Survey	6,000.00
<b>TOTAL PROJECT COST</b>	<b>150,000.00</b>

Table 2 contains a project schedule which includes the estimated timeframes for preparation of construction drawings, submittal of permit applications, construction activities, monitoring, and annual reporting.

## **CONCLUSIONS**

Enhancements will be made to the seasonal marsh, perennial marsh, and connecting drainage on the John D. Vincent Vernal Pool Preserve which will increase the residency time of the water entering the site and increase the absorption of nutrients. These enhancements will improve water quality within the Lower Sacramento River Watershed and improve the habitat value of the Preserve.

**TABLE 2. PROJECT SCHEDULE**

<b>TASK</b>	<b>DESCRIPTION</b>	<b>TIMELINE</b>
PERMITTING	Submit applications for all applicable federal, state, and local permits (including 404 authorization, 401 certification, streambed alteration agreement, grading permit, etc.).	April 30, 2007
CONSTRUCTION DESIGN DRAWINGS	Prepare construction design drawings and submit them to Regional Board staff for review.	May 31, 2007
CONSTRUCTION Mobilization Clearing and grubbing Rough grading Finish grading Planting Site stabilization and erosion control	Construct project as depicted on final design drawings. Stabilize construction site.	Summer/Fall 2007
CONSTRUCTION COMPLETION	Completion of construction activities including planting and seeding.	November 15, 2007
DOCUMENTATION OF MONEY SPENT	Itemized invoice of money spent to date.	January 31, 2008
MONITORING	Hydrology Monitoring (once during the rainy season and once during the dry season)	First year after construction
	Vegetation Monitoring	First growing season (riparian plantings) Second growing season (emergent marsh establishment)
MONITORING REPORT	Prepare annual report and submit to Regional Water Quality Control Board.	By December 31 of the year monitoring occurred

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ORDER NO. R5-2007-XXXX  
ASSESSING  
ADMINISTRATIVE CIVIL LIABILITY  
AND MANDATORY PENALTY  
IN THE MATTER OF

UNITED AUBURN INDIAN COMMUNITY,  
AUBURN RANCHERIA CASINO WASTEWATER TREATMENT PLANT  
PLACER COUNTY

This order for Administrative Civil Liability (hereafter Order) is issued to United Auburn Indian Community (hereafter referred to as UAIC or Discharger) based on violations of Waste Discharge Requirements (WDR) Order No. 5-01-068 and Order No. R5-2005-0032 (NPDES No. CA0084697), pursuant to California Water Code (CWC) Section 13385, which authorizes the imposition of Administrative Civil Liability.

The California Regional Water Quality Control Board, Central Valley Region ("Regional Water Board") finds:

1. The Regional Water Board's Assistant Executive Officer, while serving as Acting Executive Officer, issued Administrative Civil Liability Complaint No. R5-2006-0502 (Complaint) to the United Auburn Indian Community and HydroScience Operations, Inc. (the "Operator") based on a finding of violations of Waste Discharge Requirements (WDR) Order No. 5-01-068, and Order No. R5-2005-0032 (NPDES No. CA0084697), pursuant to California Water Code (CWC) Section 13385, and CWC Section 13323, which authorizes the Executive Officer to issue the Complaint.
2. The Complaint alleged that UAIC owns the Auburn Rancheria Casino Wastewater Treatment Plant (WWTP), which provides sewerage service to the Auburn Rancheria Casino. HydroScience Operations, Inc., operates the WWTP on behalf of the Discharger. Treated domestic wastewater is discharged to an unnamed tributary of Orchard Creek, a water of the United States, and tributary to Orchard Creek, Auburn Ravine, the East Side Canal, and the Sacramento River. The Complaint alleged that, according to the Discharger's self-monitoring reports, the Discharger committed 166 violations of the effluent limitations contained in Order No. 5-01-068 and Order No. R5-2005-032 during the period beginning 1 June 2003 and ending 31 January 2005. The Complaint assessed a total amount of four hundred thirty-five thousand dollars (\$435,000) in mandatory minimum penalties based on 145 of the 166 cited effluent violations as detailed in the Complaint.
3. Subsequent to the issuance of the Complaint and the Discharger's objections thereto, representatives of the United Auburn Indian Community, HydroScience Operations, Inc. and the Assistant Executive Officer (collectively, the "Parties") entered into settlement negotiations because of a desire to resolve this matter and settle the allegations described herein without a formal hearing. Without the admission of liability or any fact or claim by the United Auburn Indian Community or HydroScience Operations, Inc., or the adjudication of any claim in this matter, the Parties have requested that the Regional Water Board adopt this Order to facilitate conversion of the Parties' settlement into a judgment pursuant to California Water Code section 13328.

4. This Order resolves violations of the NPDES Permits and California Water Code related to the discharge up to November 30, 2006, as follows:
  - a. **Total Coliform Violations.** As the result of a breakdown of membranes in the treatment facility, and mechanical problems with and possible inadequate redundancy in the design of the ultraviolet light disinfection system, reported coliform levels in the wastewater effluent exceeded Total Coliform Effluent limitations on a number of days. In issuance of the Complaint, the Assistant Executive Officer interpreted the 7-Day Median Total Coliform Effluent Limitation as a running average, thereby alleging a total of 110 7-Day Median violations in the Complaint. Through settlement discussions, it was concluded that the text of the NPDES Permits do not clearly state that the 7-Day Median limitation is a running average, so, for purposes of this settlement, the Total Coliform 7-Day Median effluent limitation is interpreted to be on a calendar week basis, reducing the number of Median violations from 110 to 13. This Order contains no change to the number of violations of the Maximum Total Coliform effluent limitation alleged in the Complaint; however, during negotiations with the Discharger, it was determined that two Maximum Total Coliform effluent limitation violations were incorrectly determined to be chronic violations subject to Mandatory Minimum Penalty. The change in method of calculation of the 7-day medians and elimination of two chronic violations reduces the total Mandatory Minimum Penalty for all effluent limitation violations addressed in the Complaint from \$435,000 to \$165,000.
  - b. **Ammonia Violations.** Four violations of ammonia effluent limitations were alleged in the Complaint and included in the Mandatory Minimum Penalty calculation. This Order contains no change to the number of ammonia violations alleged in the Complaint.
  - c. **Failure to Report Chlorine Residual Violations.** To try to eliminate effluent Total Coliform violations, the Operator began using chlorine for disinfection. Effluent chlorine residual analyzers recorded effluent chlorine residual violations frequently in excess of effluent limitations for nearly a year, but the recorded violations were not reported to the Regional Water Board until after the Regional Water Board staff found the potential chlorine residual violations during an inspection related to the coliform violations. The Operator submitted technical documentation demonstrating that problems existed with the chlorine residual analyzer resulting in false reporting of high chlorine concentrations. Regional Water Board staff concurred that the chlorine residual analyzer was reporting false positive chlorine residuals, but review of plant records showed manual testing for chlorine in effluent and receiving waters by Operator staff, and mechanical failures of the chlorine disinfection system indicate that some chlorine residual violations did occur and that the Operator was aware of the monitoring results indicating effluent chlorine violations. The Complaint did not include any mandatory minimum penalty for effluent chlorine residual violations because there was no clear documentation of effluent limitation violations. This Order does include consideration of alleged failure to provide and maintain proper effluent monitoring equipment for chlorine residual monitoring and alleged failure to report potential violations of the chlorine residual effluent limits.

- d. Failure to Undertake Cleanup Activities. The NPDES Permits require that the Discharger take all reasonable steps to minimize any adverse effects to waters of the State or users of those waters resulting from any discharge in violation of the Permit. For disinfection violations, the Operator would normally immediately notify both the Regional Water Board and County Health Officer of a potential discharge of pathogens and confer with them on appropriate response measures, including notification of downstream users and posting locations of possible public exposure. (In this instance, although numerous total coliform violations occurred, the magnitude of the violations was relatively small so public health was probably not compromised, but failure to immediately contact the Regional Water Board upon determining that maximum Total Coliform effluent limitations had been violated resulted in delayed assessment of potential public health impacts and could have delayed implementation of possible response measures.) Similarly, for any chlorine residual violations, the Regional Water Board and Department of Fish and Game staffs, if notified, would work with the Discharger to assess and mitigate any environmental impacts from the chlorine discharge. (In this instance, the Regional Water Board is not able to determine with certainty whether or not effluent chlorine violations actually occurred, and the extent of any impact on the aquatic environment if chlorine violations did occur since immediate notice was not provided and no receiving water investigation was conducted.) This Order includes consideration of alleged failure to undertake timely and appropriate notification and follow up activities to alleged effluent violations.
- e. Failure to Report Significant Changes to the Wastewater Treatment Facilities. The Report of Waste Discharge for the treatment facilities included a dechlorination system, which has never been built. A properly designed and operated dechlorination system might have prevented any effluent chlorine residual violations.
- f. The following NPDES Permit compliance issues have occurred subsequent to issuance of the Complaint. These matters are included in this Order.
  - i. Boron Effluent Limit Violations. In April and May 2006 Boron concentrations in the effluent exceeded the Boron effluent limitation. These exceedances are not subject to mandatory minimum penalties under the terms of Cease and Desist Order R5-2005-033. The Discharger changed the water supply for the Casino and the Boron violations were resolved.
  - ii. Biochemical Oxygen Demand (BOD) Data Not Submitted. The effluent sample result for BOD collected on 23 September 2005 was not reported due to problems at the contract laboratory. Samples collected on 22 and 24 September showed compliance with BOD effluent limits, and other constituents monitored on 23 September showed full compliance. The omission of this data point was fully explained in the Discharger's monitoring report.
  - iii. Pesticide Effluent Limit Violations. Detectable concentrations of Delta-BHC and Endrin Aldehyde were reported in the effluent on 24 May 2005. Detection of these pesticides in the effluent violates the effluent limit requiring no detectable Persistent Chlorinate Hydrocarbon Pesticides in the effluent. This violation does not result in a Mandatory Minimum Penalty because explicit numeric effluent limitations are not prescribed in the Permit. Subsequent sampling has not detected the pesticides in the effluent.

5. The proposed settlement of the above alleged violations supports the assessment of administrative civil liability in the amount of \$300,000, including a \$150,000 Supplemental Environmental Project, for the alleged violations and is in the public interest. The \$300,000 exceeds the \$165,000 amount which would be the Mandatory Minimum Penalty for the effluent violations detailed in Attachment A (attached hereto and made part of this Order). This Order and assessment of administrative civil liability provides for the full and final resolution of each of the alleged violations addressed by this Order.
6. Public Notice of the Parties' settlement agreement was published on [date] initiating a 30-day period for the public to comment on the settlement agreement. The Assistant Executive Officer considered all public comments before executing the settlement agreement. Because this is a proposed settlement between the Parties, the Regional Water Board did not conduct an adjudicative hearing on this matter.
7. In adopting this Order, the Regional Water Board has considered each of the factors prescribed in California Water Code section 13385(e). The Regional Water Board's consideration of these factors is based upon information and comments provided by the Parties and members of the public. This Order recovers the costs incurred by the staff of the Regional Water Board in evaluating the violations and preparing the Complaint and related documents and the economic benefit, if any, as described in Finding 8 of this Order, and it exceeds the amount of the mandatory minimum penalties required to be assessed pursuant to California Water Code section 13385(i) and (j) as described in Finding 4 of this Order.
8. Water Code section 13385(e) requires the Regional Water Board to recover the economic benefit, if any, derived from the acts that constitute the violation. The estimated economic benefit to the Discharger is approximately \$11,900, which is fully recovered by the \$300,000 Administrative Civil Liability. The Discharger expended sums far in excess of the economic benefit in responding to the violations, however, the State Water Resources Control Board *Water Quality Enforcement Policy* [Section F (f)] directs that the Regional Water Board should not adjust the economic benefit for expenditures by the Discharger to abate the effects of the discharge. The following were considered in determining the economic benefit to the Discharger:
  - a. The underlying cause of the alleged violations was mechanical failure of treatment system membranes allowing a relative small increase in wastewater turbidity that resulted in disinfection problems. The membranes were part of new, advanced wastewater treatment technology employed by the Discharger. The membrane failures were not reasonably foreseeable. The Discharger derived no economic benefit relative to the membranes.
  - b. The two ultraviolet disinfection systems originally installed by the Discharger proved inadequate to treat the effluent with increased turbidity concentrations. A third ultraviolet disinfection system was rented and successfully used to disinfect the effluent. The Discharger derived economic benefit from not having a third ultraviolet disinfection system in place at all times during plant upset. All infrastructure costs for installation of the third unit were expended.

The economic benefit for failure to provide the third ultraviolet disinfection unit is the rental value of that unit, estimated to be \$11,900 (7.9 months at \$1500/month rental

- cost). There are additional power and operation and maintenance costs associated with the third disinfection unit, which have not been estimated.
- c. Installation of permanent dechlorination facilities and a functioning chlorine residual analyzer may have reduced or eliminated possible effluent chlorine violations. However, it is unclear whether or not chlorine residual violations occurred, and provision of adequate ultraviolet disinfection facilities would have eliminated the need for use of chlorine for disinfection, so no economic benefit is assigned relative to alleged possible effluent chlorine residual violations.
9. The proposed settlement supports the assessment of administrative civil liability in the amount of \$300,000, including a \$150,000 Supplemental Environmental Project, for the alleged violations and is in the public interest. This Order and assessment of administrative civil liability provides for the full and final resolution of each of the alleged violations addressed by this Order. Neither the Executive Officer nor the Regional Water Board has made any determinations regarding any rights of contribution that the Discharger may assert.
10. 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, Chapter 3, Title 14, California Code of Regulations.

IT IS HEREBY ORDERED that:

1. Pursuant to the settlement agreement executed by the Assistant Executive Officer and United Auburn Indian Community, administrative civil liability under California Water Code § 13385(c) is imposed upon United Auburn Indian Community in the amount of \$300,000 less the total of any amount already paid to Cleanup and Abatement Account and the value to the public of the work already performed by United Auburn Indian Community toward completing the SEP as determined by the Assistant Executive Officer if the Assistant Executive Officer determines the failure to perform the SEP was beyond the reasonable control of United Auburn Indian Community and its agents.
2. Within 30 calendar days of adoption of this Order, United Auburn Indian Community shall pay \$300,000 less the total of any amount already paid to the Cleanup and Abatement Account and the value to the public of the work already performed by United Auburn Indian Community toward completing the SEP as determined by the Assistant Executive Officer if the Assistant Executive Officer determines the failure to perform the SEP was beyond the reasonable control of United Auburn Indian Community and its agents to the State Water Resources Control Board for deposit in the Cleanup and Abatement Account.

ATTACHMENT A TO ACL ORDER R5-2007-XXXX

*Effluent Limitation Violations Requiring Mandatory Minimum Penalties*

#	Violation Date*	Constituent	Units	Limitation Period	Limit	Result/ Avg/ Median	% Over Limit	Pollutant Group	Date 180 Days Prior	Effluent Violations in Past 180 Days	Serious** Violation?	Mandatory Fine?	Penalty
1	9-Jun-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	110.0	378	OEV	4-Jul-2003	0	No	No	Startup
2	10-Jun-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	170.0	639	OEV	4-Jul-2003	0	No	No	Startup
3	10-Jun-2003	Ammonia	mg//	Daily	9.64	18.00	87	I	4-Jul-2003	0	Yes	Yes	Startup
4	11-Jun-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	170.0	639	OEV	4-Jul-2003	0	No	No	Startup
5	26-Jun-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	4-Jul-2003	0	No	No	Startup
6	30-Jun-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	4-Jul-2003	0	No	No	Startup
7	1-Jul-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	4-Jul-2003	0	No	No	Startup
8	2-Jul-2003	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	13.0	491	OEV	4-Jul-2003	0	No	No	Startup
9	3-Jul-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	4-Jul-2003	0	No	No	Startup
10	25-Sep-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	240.0	943	OEV	4-Jul-2003	0	No	No	\$0
11	31-Oct-2003	Total Coliform Organisms	MPN/100 m/	Daily	23	110.0	378	OEV	4-Jul-2003	1	No	No	\$0
12	7-Jan-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	170.0	639	OEV	11-Jul-2003	2	No	No	\$0
13	24-Jun-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	40	74	OEV	27-Dec-2003	0	No	No	\$0
14	17-Aug-2004	Ammonia	mg//	Daily	13.3	24.00	80	I	19-Feb-2004	1	Yes	Yes	\$3,000
15	18-Aug-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	4.0	82	OEV	20-Feb-2004	2	No	No	\$0
16	18-Aug-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30	30	OEV	20-Feb-2004	3	No	No	\$0
17	18-Aug-2004	Ammonia	mg//	Daily	15.3	16	5	I	20-Feb-2004	4	No	Yes	\$3,000
18	21-Aug-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30	30	OEV	23-Feb-2004	5	No	Yes	\$3,000
19	25-Aug-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	8.0	264	OEV	27-Feb-2004	6	No	Yes	\$3,000
20	25-Aug-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	27-Feb-2004	7	No	Yes	\$3,000
21	26-Aug-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	130.0	465	OEV	28-Feb-2004	8	No	Yes	\$3,000
22	30-Aug-2004	Ammonia	mg//	Monthly	1.47	4.09	178	I	3-Mar-2004	9	Yes	Yes	\$3,000
23	1-Sep-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	8.0	264	OEV	5-Mar-2004	10	No	Yes	\$3,000
24	1-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	220.0	857	OEV	5-Mar-2004	11	No	Yes	\$3,000
25	2-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	80.0	248	OEV	6-Mar-2004	12	No	Yes	\$3,000
26	3-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	60.0	161	OEV	7-Mar-2004	13	No	Yes	\$3,000
27	8-Sep-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	11.0	400	OEV	12-Mar-2004	14	No	Yes	\$3,000
28	17-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	500.0	2074	OEV	21-Mar-2004	15	No	Yes	\$3,000
29	18-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	300.0	1204	OEV	22-Mar-2004	16	No	Yes	\$3,000
30	19-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	300.0	1204	OEV	23-Mar-2004	17	No	Yes	\$3,000
31	22-Sep-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	300.0	13536	OEV	26-Mar-2004	18	No	Yes	\$3,000
32	22-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	900.0	3813	OEV	26-Mar-2004	19	No	Yes	\$3,000
33	23-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	240.0	943	OEV	27-Mar-2004	20	No	Yes	\$3,000
34	24-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	130.0	465	OEV	28-Mar-2004	21	No	Yes	\$3,000
35	25-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	240.0	943	OEV	29-Mar-2004	22	No	Yes	\$3,000
36	26-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	130.0	465	OEV	30-Mar-2004	23	No	Yes	\$3,000
37	28-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	1-Apr-2004	24	No	Yes	\$3,000
38	29-Sep-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	130.0	5809	OEV	2-Apr-2004	25	No	Yes	\$3,000
39	29-Sep-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	2-Apr-2004	26	No	Yes	\$3,000
40	2-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	5-Apr-2004	27	No	Yes	\$3,000
41	5-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	300.0	1204	OEV	8-Apr-2004	28	No	Yes	\$3,000
42	7-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	10-Apr-2004	29	No	Yes	\$3,000
43	8-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	240.0	943	OEV	11-Apr-2004	30	No	Yes	\$3,000
44	9-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	170.0	639	OEV	12-Apr-2004	31	No	Yes	\$3,000

45	10-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	1600.0	6857	OEV	13-Apr-2004	32	No	Yes	\$3,000
46	12-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	15-Apr-2004	33	No	Yes	\$3,000
47	13-Oct-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	50.0	2173	OEV	16-Apr-2004	34	No	Yes	\$3,000
48	14-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	70.0	204	OEV	17-Apr-2004	35	No	Yes	\$3,000
49	15-Oct-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	70.0	204	OEV	18-Apr-2004	36	No	Yes	\$3,000
50	20-Oct-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	13.0	491	OEV	23-Apr-2004	37	No	Yes	\$3,000
51	1-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	4-Jun-2004	38	No	Yes	\$3,000
52	4-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	110.0	378	OEV	7-Jun-2004	39	No	Yes	\$3,000
53	5-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	1600.0	6857	OEV	8-Jun-2004	40	No	Yes	\$3,000
54	8-Dec-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2	17	673	OEV	11-Jun-2004	41	No	Yes	\$3,000
55	9-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	12-Jun-2004	42	No	Yes	\$3,000
56	11-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	110.0	378	OEV	14-Jun-2004	43	No	Yes	\$3,000
57	12-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	80.0	248	OEV	15-Jun-2004	44	No	Yes	\$3,000
58	14-Dec-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	50	2173	OEV	17-Jun-2004	45	No	Yes	\$3,000
59	14-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	17-Jun-2004	46	No	Yes	\$3,000
60	15-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	18-Jun-2004	47	No	Yes	\$3,000
61	16-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	19-Jun-2004	48	No	Yes	\$3,000
62	22-Dec-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	11	400	OEV	25-Jun-2004	48	No	Yes	\$3,000
63	23-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	130.0	465	OEV	26-Jun-2004	49	No	Yes	\$3,000
64	24-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	27-Jun-2004	50	No	Yes	\$3,000
65	28-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	1600.0	6857	OEV	1-Jul-2004	51	No	Yes	\$3,000
66	29-Dec-2004	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	23	945	OEV	2-Jul-2004	52	No	Yes	\$3,000
67	30-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	3-Jul-2004	53	No	Yes	\$3,000
68	31-Dec-2004	Total Coliform Organisms	MPN/100 m/	Daily	23	50.0	117	OEV	4-Jul-2004	54	No	Yes	\$3,000
69	1-Jan-2005	Total Coliform Organisms	MPN/100 m/	Daily	23	30.0	30	OEV	5-Jul-2004	55	No	Yes	\$3,000
70	5-Jan-2005	Total Coliform Organisms	MPN/100 m/	7-Day	2.2	13	491	OEV	9-Jul-2004	56	No	Yes	\$3,000

Total MMP: \$165,000

- \* Violation occurs on sample date or last date of averaging period.
- \*\* For Group I pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 40%.  
For Group II pollutants, a violation is serious when the limitation for the parameter of concern is exceeded by more than 20%.
- ^ Mandatory penalties effective 1 January 2000.