

**Settlement Agreement and Stipulation for Entry of Order [Proposed]
Order No R6V-2011-00XX [PROPOSED]**

Response to Comments

**Prepared by California Regional Water Quality Control Board,
Lahontan Region Prosecution Team**

March 8, 2012

Background

On February 1, 2012, the Lahontan Water Board Prosecution Team circulated for public comment a proposed Settlement Agreement with Pacific Gas and Electric Company (PG&E) concerning alleged violations of the Regional Water Board's Cleanup and Abatement Order (CAO) No. R6V-2008-0002. Order paragraph 3 of the CAO directed PG&E, in part, to contain the hexavalent chromium plume. The Prosecution Team alleges that PG&E failed to do so for a period of 1,093 days. The Water Board Prosecution Team is not recommending any changes to the February 1, 2012 Settlement Agreement. The Prosecution Team, including attorneys from the Office of the Attorney General, negotiated the terms of this Settlement Agreement and believes this is an appropriate resolution.

The proposed Settlement Agreement was available for a public comment period of 30 days, consistent with State Water Board policy. The Prosecution Team held a public meeting in Hinkley on February 16, 2012, to describe the Settlement Agreement and to receive written and oral comments.

A total of 15 comment letters were received during the 30 day comment period from February 1 to March 1, 2012. Staff has reviewed all comments received, including oral comments from the February 16, 2012 public meeting. The following table summarizes all the comments and contains responses from the Prosecution Team. Copies of each comment letter are included in the appendix. Comment letters are numbered to correspond with the number noted in the second column of the table.

Response Reference	Comment Letter #	Comment	Response
A	1, 8, 13, 16	The State should not get 50 percent of the money.	California Water Code statutes that govern the Water Board require that administrative civil liabilities (similar to fines) collected pursuant to section 13350 shall go to the State Waste Discharge Permit Fund. However, if the parties settle before going to an evidentiary hearing, part of the settlement may include a Supplemental Environmental Project (SEP) for up to 50% of the money according to the State Board Enforcement Policy. In this matter, the parties have settled without going to hearing, allowing for half of the \$3.6 million to be used for PG&E to complete a SEP to provide water to the school, and only half of the money going to the State fund. If the parties had gone to hearing before the Water Board who may have issued a fine, 100% of the fine would go to the State fund. Note that the money in the Waste Discharge Permit Fund is used to assist in cleaning up waste or abating the effects of waste on waters for the state.
B	1, 13	If replacement water project comes in under budget, the remaining money should be used to help the community, and not go to the State.	See Response A. In the event that the replacement water project comes in under budget, PG&E shall pay the difference between the \$1.8 million and what was spent on the SEP to the State Waste Discharge Permit Fund. It is anticipated that PG&E will spend the entire \$1.8 million on installing the infrastructure and equipment, and for the appropriate permits in completing the project.
C	2	New water should be disinfected with UV or hydrogen peroxide, not toxic chlorine.	The SEP proposal does not specify a particular process for disinfection. The water will be disinfected in a manner that meets all the county and/or State Department of Health requirements.
D	3, 13	How is PG&E going to replace the water they are extracting?	<p>If the extraction is completed as planned, there will be no need to replace the water extracted from a location north of Thompson Road. The Settlement Agreement contains alternatives should the extraction become more harmful than helpful. The Water Board will require PG&E to monitor changes to the water table caused by pumping from extraction wells for plume containment. If such actions cause too much lowering of the water table, PG&E will be required to conduct actions to mitigate potential adverse effects, such as decrease pumping amount.</p> <p>For the Supplemental Environmental Project replacement water to the school, the clean water will originate from PG&E's water supply wells south</p>

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			of the Compressor Station. Those supply wells are less than one mile from the Mojave River, which has ample water supply. PG&E will pump water at an amount allowed by the Mojave Water Agency. No replacement water is needed for restoring the aquifer in regards to supplying replacement water to the school.
E	4	PG&E should be forced to provide clean drinking water to what's left of the school children. Eventually the school district will die out.	The Settlement Agreement provides for PG&E to supply clean drinking water to the Hinkley School. On February 10, 2012, the Barstow Unified School District Board unanimously supported the SEP. See Comment Letter 9.
F	4, 13	\$3.6 million should not be the final settlement. The Water Board should be able to continue penalizing PG&E if they continue to violate or fail to clean up. PG&E should also be forced to reimburse and/or pay damage they caused due to destroying the community of Hinkley.	The Settlement Agreement amount of \$3.6 million addresses specific violations of Paragraph 3 in Cleanup and Abatement Order (CAO) R6V-2008-0002, pursuant to which PG&E is directed to contain the plume. The Settlement Agreement covers the period of the time between December 2008 and December 2011 (1,093 days total). The Settlement Agreement does not excuse any potential future violations of any Water Board orders, including the amended 2008 CAO. If PG&E were to violate any directives in the amended 2008 CAO or other orders, the Water Board may issue civil liabilities for those violations as well. This legal action is between the State and PG&E, and is not to replace or supplement any individual lawsuit brought by a member of the Hinkley community. The Water Board is not authorized or allowed to direct dischargers to reimburse or pay damages to a community.
G	5, 13	Why is the school being singled out for the PG&E project, why isn't the neighborhood surrounding the school receiving water?	The Hinkley School is particularly suited for the SEP because it is the largest user of domestic water supply within the Hinkley Valley. Further, the aquifer below the school is very thin and has limited water supply. In addition, the school water contains fairly high levels of total dissolved solids (salts), but within the drinking water standards. PG&E's proposed project will pipe drinking water to the school that is of better water quality than current drinking water. The project increases the amount of water supply below the school available for other users in the area, instead of the school using it. PG&E's proposal indicates that the cost to complete the project for the school will use all of the \$1.8 million available for a supplemental

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			environmental project.
H	6,13	It is not fair that the state receives \$1.8 million sooner than the school receiving the water.	California Water Code section 13323 requires a discharger to pay an administrative civil liability within 30 days of the Water Board issuing an order. There is no similar section requiring immediate payment for a SEP. The State Board's enforcement program is designed to deter violations by the regulated community (e.g., PG&E), and to encourage the regulated community to correct violations. Requiring immediate payment of the liability is intended to have a punitive or punishment effect. The school will receive the benefit of the settlement as quickly as PG&E is able to construct the pipeline and infrastructure.
I	6	PG&E is getting off the hook (regarding the Settlement Agreement) and the community is suffering.	The Prosecution Team advocates that the settlement amount is appropriate within the confines of Water Code section 13350 and the State Board Enforcement Policy. The Settlement Agreement states that PG&E has agreed to imposition of \$3.6 million in administrative civil liabilities. This amount is within the range of civil liabilities that the Water Board can impose for violation of a cleanup and abatement order. The Water Code section that allows the Water Board to impose penalties (section 13350) requires the Water Board to consider factors that could lower the fine amount from the calculated maximum. Attachment B to the Settlement Agreement contains an extensive evaluation of the factors. The final paragraph explains the \$3.6 million was reached "for purposes of early resolution considering the risks of litigation that include mitigating circumstances (e.g. stipulating to amending Cleanup and Abatement Order R6V-2008-0002 for injunctive terms)." Also see Responses A and F. This legal action between the State and PG&E covers a narrow set of violations for violating a portion of a Water Board Order. If PG&E violates other portions of the 2008 CAO or other Water Board orders, additional enforcement may occur.
J	7	CAO R6V-2008-0002 is a bad idea between the Water Board and PG&E. It is against Hinkley, it is a clear cut "get out of jail card" for PG&E. It squashes the 2008 CAO	Cleanup and Abatement Order R6V-2008-0002 directs PG&E to clean up and abate the chromium plume in groundwater to background levels, and to contain the chromium plume. This Settlement Agreement alleges violations of the directives on containment of the plume, and provides new containment criteria through an amendment to the 2008 CAO. The Settlement Agreement keeps all cleanup directives in the 2008 CAO in

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			effect. Only the plume containment directive is being revised in an amended order. The 2008 CAO remains in effect.
K	7	It changes and enlarges the boundaries for PG&E from 3.1 ppb to 10 ppb on the behalf of PG&E.	The amended 2008 CAO will provide new containment requirements. The Settlement Agreement states that the plume containment requirements in the 2008 CAO will be modified to require hydraulic capture based on a line defined by a set of specified well pairs/triplets, and the evaluation of groundwater elevations. The amended 2008 CAO will also require new extraction and remediation actions in at least one area north of Thompson Road where chromium concentrations are at or above 10 ppb. Future cleanup and abatement orders will address additional remediation of groundwater north of Thompson Road as permissible in advance of certifying an environmental impact report, and again following the certification of the environmental impact report.
L	7	It stops penalties against PG&E. Trade-off our community. All of these things are using the school and school board as pawns.	The Settlement Agreement addresses the alleged violations of failing to maintain plume containment for 1,093 days from December 2008 through December 2011. The amendment to the 2008 CAO plume containment language addresses the specific alleged violations. See Response K. All the cleanup and remediation requirements in the 2008 CAO remain in effect, along with all other orders of the Water Board. Any future violations will be subject to enforcement, including civil liabilities. When a new cleanup and abatement order is issued, new deadlines will take effect that require additional actions by PG&E. The supplemental environmental project (SEP) that PG&E proposed benefits the school directly and the surrounding neighborhood that will have an increased amount of groundwater available. See Response G.
M	7	Keep the original mandate of the 2008 [CAO] in place!	See Responses F, K and L.
N	8	Strongly support settlement agreement. Hinkley School is only K-8 school in the Barstow Unified School District, and is a California Distinguished School which serves not only local	No response needed.

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		students but those who have requested to attend from other areas of the district.	
O	8, 13, 15, 16	All the money should be used on projects within the community. If all the \$1.8 million is not completely expended on the replacement water, the remainder should be used on other projects within Hinkley, rather than going to the State.	See Response B.
P	9	Pleased to see replacement water for the Hinkley School is proposed as part of the settlement agreement.	No response needed.
Q	9	School Board unanimously supports the replacement water project, and is committed to coordinating with PG&E on its implementation efforts.	No response needed.
R	9	If additional funds from the settlement agreement become available for use in the community, request that funds be considered to support other school priorities and water-related projects.	See Response B.

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S	9	Express appreciation to PG&E and Lahontan Water Board for recognition and consideration of the Hinkley school and community.	No response needed.
T	10, 13	The State Water Board should only impose punitive penalty on PG&E of \$3.6 million, and receive such punitive amount within 30 days, absent of any stipulations and settlement agreements.	By the Water Board entering into this Settlement Agreement, the community benefits with up to 50 percent of the fine against the discharger staying in the community for the SEP.
U	10	In absence of quash/strike of said Order/Settlement Agreement, all administrative remedy will be declared as exhausted and The People of Hinkley will commence litigations in the Judicial Venues.	If the Water Board rejects the Settlement Agreement, the Prosecution Team and PG&E may continue settlement negotiations or proceed to a contested evidentiary hearing on the alleged violations. If there is a contested hearing before the Water Board, the Water Board members will decide whether the violations occurred or not, and whether to impose administrative civil liability or not. If the Water Board imposes administrative civil liability after a contested evidentiary hearing, then PG&E and interested parties may petition the result to the State Board. Another alternative is that the Water Board may refer the enforcement matter to the California Attorney General for civil prosecution.
V Questions 1.A.-C.	11	A. Is it the intent that the Settlement directly amends the 2008 CAO or will the Prosecution Team be proposing a separate proposed order to accomplish this amendment and if so, B.	The Settlement Agreement contemplates that, should the Water Board approve the Settlement, it will also adopt amendments to the 2008 CAO at the same time. The Prosecution Team has proposed draft amendments, which closely track Paragraphs 9 and 10 of the Settlement Agreement. For the reasons suggested in the questions, the proposed amendments will not be a verbatim adoption of Paragraphs 9 and 10.

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		<p>when?</p> <p>B. Is it the intent of the Settlement that Paragraphs 9 and 10 be included verbatim into an amended CAO? Our concern is that Paragraphs 10.a., 10.b., and 10.c. of the Settlement include language that both Parties must agree to a modification of certain requirements. This language is not appropriate in an order adopted by the Water Board as it limits the Water Board's ability to later modify or amend portions of an order. Additionally, the Settlement uses the term "Settling Respondent" to refer to PG&E while the 2008 CAO uses Discharger to refer to PG&E and refers to "this Settlement Agreement and Stipulation," which would be out of context in the 2008 CAO. If it is not the intent to include Paragraphs 9 and 10 verbatim, please provide specific language for the Water Board's consideration.</p> <p>C. Paragraph 23 of the Settlement indicates the Settling Respondent waives its right to petition the Water Board</p>	<p>The Prosecution Team has worked with PG&E to assure the terms of the amendments to the 2008 CAO are consistent with the negotiated agreement between the Parties. Therefore, it is not necessary to extend the provisions of Paragraph 23 to the amendments to the 2008 CAO.</p> <p>Further, the Prosecution Team believes a challenge to the agreed upon modifications of the 2008 CAO would effectively nullify the Settlement Agreement.</p>

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		adoption of the Order. We believe this refers to the Settlement and Stipulation for Entry of Order. Should this waiver also refer to the amended CAO?	
V Question 1.D.	11	If, in the future, the Water Board determines that an amendment to the CAO that incorporates the requirements of Paragraphs 9 and 10 of the Settlement is needed for any reason, do the Parties intend that the Settlement Agreement limits the ability of the Water Board to unilaterally modify requirements in a manner that may not be consistent with the Settlement (e.g. more specific capture requirements for area north of Thompson Road or imposition of final cleanup requirements)? If not, we believe the Settlement should explicitly provide for that possibility.	<p>The Settlement Agreement does not limit the authority of the Water Board to modify the requirements of the 2008 CAO or take any other action that would otherwise be within its authority. The Prosecution Team believes that the Water Board's authority is adequately protected by Paragraph 11 of the Settlement Agreement.</p> <p>However, in any challenge to a subsequent modification by the Water Board, the State Board or a court might infer that the Water Board made a good faith commitment to give the alternative containment requirements specified in the Settlement Agreement an opportunity to work. The State Board or court may then evaluate whether the modifications were inconsistent with such a commitment.</p>
V Question 2.	11	What is the Water Board's authority under the Water Code to subject PG&E to civil liability for violations of the Settlement Agreement and Stipulation? (Note: We acknowledge that if provisions of the Settlement are made part of an amended	The Settlement Agreement provision regarding liability under the Water Code pertains primarily to the settlement terms adopted into the amendments to the 2008 CAO. There are separate, effective enforcement provisions for failure to complete the Supplemental Environmental Project (SEP) (see Paragraphs 12.i. and 12.j.)

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		CAO, violations of the CAO would subject PG&E to enforcement under the California Water Code.)	
V Questions 3.A.-B.	11	<p>A. How does the Water Board ensure that the project goal of reducing pumping in the area is met if PG&E's obligations under the SEP end when construction of the pipeline and other appurtenant facilities are complete or earlier if the \$1.8M is expended? How does the Water Board ensure that PG&E continues to provide water to the Hinkley School for the 20 year duration?</p> <p>B. If the goal of the project funded by the \$1.8M is intended to reduce pumping, as described in the Settlement, and not just to construct or partially construct the infrastructure to support the Project, how does the criteria in Paragraph 14 of Attachment A for assessing project success adequately determine if the Project goal of reducing pumping in the area of the Hinkley School is being met? How are the requirements in the SEP Policy for tracking and reporting whether "expected</p>	<p>The project goal for the SEP is to make a reliable, high quality water supply available to the Hinkley School for up to twenty years. Any failure by PG&E to provide water (other than the school no longer wanting the water) in that period would be a violation of the SEP and enforceable as a breach of contract. The statement in Paragraph 9 of the SEP document that PG&E's obligations under the SEP expire on December 13, 2017 does not apply to PG&E's obligation to provide replacement water. Reducing pumping in the vicinity of the Hinkley School is a secondary benefit, not the primary goal of the SEP. The Prosecution Team believes the stated criteria for success precisely measure whether PG&E meets the primary goal, and adequately assures the secondary benefit of reduced demand is realized.</p> <p>Paragraph 12 (c) describes the SEP: "The project will provide a new permanent water supply at the school." Paragraph 12 (d) states: "The Settling Respondent understands that it is agreeing to implement the SEP in its entirety . . ." If PG&E decides to stop the project before completion, whether based on exhausting the \$1.8 million or any other reason, it runs substantial risks under the terms of Settlement Agreement. Under Paragraph 12 (j), if the SEP is not fully implemented within the Completion Period, PG&E is responsible to pay up to the entire amount of the SEP as determined by the Executive Officer. Under Paragraph 16, resolution of the Alleged Violations is conditioned upon PG&E's "full satisfaction of the obligations described in Paragraph 12." If the failure to complete the SEP results from PG&E's conduct, it runs the risk of losing the benefit of the release of liability from the Settlement Agreement.</p>

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		outcome(s) or performance standard(s)" are met -when the criteria used to determine the project's success is "timely implementation of Project components" and not assessment of reduced pumping from the area?	
V Question 3.C.	11	Has the School District agreed to take the water?	Yes. See Comment Letter 9.
V Question 3.D.	11	How are the goals of the SEP met if the School District decides to not take the water? (See Paragraph 8 of Attachment A of the Settlement, stating that PG&E shall provide water for 20 years or until the School District chooses alternative water supply.) Could an "alternative water supply" be the existing Hinkley School wells and if so, how does this achieve the Project goals?	The SEP will have achieved its goal if the School District has the option of taking cleaner, safer water for as long as the District wants that water for a period of 20 years. The Settlement Agreement terms cannot control for all contingencies. The Prosecution Team believes that making the cleaner water available to the Hinkley School for however long the School District wants the water up to 20 years accomplishes the project's goal.
V Question 4	11	If replacement water is required to be provided to the Hinkley School under the provisions of R6V-2011-000SA1, how would the Parties reconcile the completion schedule in the SEP with the compliance schedule in Water Board Order No. R6V-2011-000SA1 for providing replacement water (not bottled	The Prosecution Team believes it is unlikely that the water in the Hinkley School wells will exceed the trigger requirements in the 2011 CAO. Should the trigger be exceeded before the replacement water infrastructure is completed, the Executive Officer (or the Executive Officer's delegate) will determine whether it is appropriate to give SEP credit to PG&E and, if so, how much SEP credit. (See Paragraph 12.j.) Once the project is operational, it will be much less likely that the 2011 CAO trigger levels are exceeded at the Hinkley School, and less relevant for water replacement purposes provided PG&E maintains the water quality standards required under the Settlement Agreement.

Response Reference	Comment Letter #	Comment	Response
		water)?	The Project Goal for the SEP is to provide replacement water to the school for as long as the School District wants that water, up to twenty years. Any failure by PG&E to provide water in that period would be a violation of the SEP and enforceable as a breach of contract. The statement in Paragraph 9 of the SEP document that PG&E's obligations under the SEP expire on December 13, 2017 does not apply to PG&E's obligation to provide replacement water.
V Question 5.	11	How do the Parties intend that this Settlement Agreement, particularly Paragraphs 9 and 10, will limit the Water Board's discretion in setting final cleanup requirements?	The Settlement Agreement will not limit the Water Board's discretion in setting final cleanup levels. The containment requirements to be adopted in the amendments to the 2008 CAO are intended to be interim measures until a new CAO is issued. The Parties understand that final cleanup requirements may consider data collected under these interim measures.
V Question 6.	11	Please confirm that the Settlement contemplates that PG&E is required to fully implement the SEP even if costs exceed \$1.8M. If this is accurate, we believe it is appropriate and necessary to include specific language to that effect in the Settlement and clarifying that the Settlement language supersedes that in Attachment A to the Settlement if there are conflicts.	Section 9 of the SEP indicates that PG&E has discretion to stop construction of the SEP project on December 31, 2017 or after spending \$1.8 million. However, should PG&E exercise that discretion and fail to complete the project, it would be frustrating the intent of the Parties and breaching the terms of the Settlement Agreement. The Executive Officer might determine that it is not appropriate to give SEP credit. Further, such failure might reopen the Alleged Violations resolved under the Settlement Agreement. Also, the Executive Officer has discretion under Paragraph 11 (j) to address the consequences "if the SEP is not fully implemented."
V Question 7.	11	Please explain how the goal of the SEP will be met (see Section H.3. of the State Water Board SEP Policy) if PG&E does not complete the SEP and why it should be credited for any portion of the SEP Amount if the goal is not met.	Whether PG&E would be entitled to any SEP credit if it does not complete the SEP would depend on the particular circumstances and why PG&E did not complete the project.

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V Question 8.	11	Please clarify if the Parties intend that the Settlement only require that capture be maintained rather than first be achieved by a future date and then be maintained.	The requirement is for PG&E to achieve hydraulic capture <i>and</i> maintain hydraulic capture. The Prosecution Team contends that capture in the sense of Paragraph 9.a. has been achieved except for possibly during winter when fields do not generally receive much water. The requirement to maintain capture is operative regardless whether it has already been achieved.
V Question 9.A.	11	Do the terms "well pair metrics" in Paragraph 9.c.1. and "capture metrics" in Paragraph 9.c.2. mean the same thing and, if so, shouldn't they be phrased identically?	No, the term "well pairs metrics" in 9.c.1. refers to well pairs, whereas "capture metrics" in 9.c.2. refer to plume capture demonstrated by inward gradient of groundwater flow using well pairs and well triplets.
V Question 9.B.	11	Should the term "well pair metrics" in Paragraph 9.c.1. refer to both well pairs and well triplets?	Yes.
V Question 9.C.	11	Does the "three consecutive month" standard in Paragraph 9.c.1. apply when any well pair/triplet does not meet control limits in three consecutive months or only when the same well pair/triplet does not meet control limits in three consecutive months?	The statement "three consecutive months" in 9.c.1. applies to the same well pair or well triplet that does not meet control limits for three consecutive months, regardless of how many months of monitoring have been conducted.
V Question 9.D.	11	Same issue as raised in question 9.C. above applied to Paragraph 9.c.2.	In 9.c.2., "capture metrics" refers to an inward gradient of groundwater flow between well pairs or well triplets.
V Question 9.E.	11	Is it appropriate to interpret Paragraph 9.c.2. such that PG&E is out of compliance once three non-consecutive months demonstrate that control limits are not met, or is	PG&E would be out of compliance as soon as any three months of non-compliance out of twelve consecutive months were complete.

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		non-compliance only triggered when a full 12 months of data evaluation is complete?	
V Question 9.F.	11	Is the one year (July 2012 through July 2013) reference a moving 12 month period or is it specific to July of one year through June of the following year?	It is based on a moving year.
V Question 9.G.	11	Is the requirement in Paragraph 9.d. to submit a contingency plan triggered when the numeric criteria in paragraphs 9.c.1. and 2. are exceeded or only when the Water Board makes an explicit finding that PG&E is out of compliance, in accordance with Paragraph 9.c ("Regional Water Board may find the Settling Respondent out of compliance ...")?	PG&E's obligation to submit a contingency plan would be triggered as soon as the criteria in 9.c.1. or 9.c.2. were exceeded, without prior notification by the Water Board.
V Question 9.H.	11	In Table A-1 in Attachment D to the Settlement, in the well triplet column on the row that begins with MW-82s, should there be a third well location specified?	There is no third well meant for this well metric. Instead, the row listing "MW-82S, new piezometer near EX-29/30" was supposed to go under the column for "Well Pairs," with MW-82S under the "Outer Well" column and "new piezometer near EX-29/30 (Location 5 on Figure 1)" to go under column for "Inner Well."
V Question 10.A.	11	What criteria will be used to determine if PG&E has "maximized extraction and chromium removal" as specified in Paragraph 10.a?	Paragraph 10 essentially requires PG&E to make its best efforts given the constraint of needing to maintain containment south of Thompson Road. Regional Board staff would evaluate PG&E's compliance based on all of the circumstances, including by comparing the pumping rate of the new extraction well to the pumping rates of other nearby extraction wells, and using elevation data in monitoring wells to determine the extent of drawdown.

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V Question 10.B.	11	What criteria will be used to determine if "additional extraction is needed" as specified in Paragraph 10.b?	See Response V Question 10.A. Regional Board staff would evaluate PG&E's compliance based on all of the circumstances, including water quality data and whether additional extraction is needed based on the pumping rate of the new extraction well compared to other nearby extraction wells and the estimated areal extent of drawdown.
V Question 10.C.	11	If criteria are not specified for Paragraphs 10.a. and b., how will the Water Board be able to determine if PG&E has complied with these requirements?	See Response V Question 10.A. Regional Board staff would evaluate PG&E's compliance based on all of the circumstances, including extraction well pumping rates, water elevations in monitoring wells, and any change in chromium detected in down gradient domestic wells.
V Question 11.A.	11	Can the \$1.8 million be used for planning, design, environmental review, and permitting (both construction and water system operation)?	Yes.
V Question 11.B.	11	What maintenance activities are contemplated by the phrase "The SEP includes construction and maintenance of new facilities through the SEP Completion Date of December 31,2017" in Paragraph 12.c. of the Settlement?	The Prosecution Team anticipates the terms of the Settlement Agreement include those maintenance activities that would accompany similar construction projects, and the initial start-up and operations of the water supply system.
V Question 11.C.	11	Please clarify the intent of the phrase"... but does not include plans for long-term maintenance, except for maintenance of equipment on Settling Respondent's property" as this appears to allow PG&E to fund maintenance of equipment on its property from the \$1.8M after December 31,	After December 31, 2017, PG&E must perform all needed maintenance of equipment on its property at its own expense.

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		2017?	
V Question 11.D.	11	Is this pipeline intended to be used to deliver water for uses other than at the Hinkley School and, if so, how are costs that can be charged against the SEP Amount and those associated with the other use to be determined? Specifically, will costs be assigned based on straight percentages or on incremental costs	The Prosecution Team understands that PG&E currently has a north-south distribution line in place as part of its remediation efforts. The SEP requires PG&E to construct an east-west pipeline dedicated solely to providing water to the Hinkley School. Accordingly, the Prosecution Team does not anticipate a need to allocate construction costs. Prior to December 31, 2017, PG&E may charge to the SEP-allocated funds those costs associated with bringing water to the surface and treating that water. How such costs would be prorated or assigned will be determined based on the circumstances.
V Question 11.E.	11	Please justify the four plus years for project construction as identified in the timetable in Paragraph 12 of Attachment A to the Settlement (portions of calendar year 2013 and calendar years 2014 through 2017).	The schedule allows time for the CEQA process and other permit and typical construction delays.
V Question 11.F.	11	The Settlement requires PG&E to provide water to the Hinkley School that meets drinking water standards. Are the Prosecution Team and PG&E willing to specify a maximum level of hexavalent chromium that will be provided to the Hinkley School if an MCL for hexavalent chromium has not been established when the project is complete?	No; this concern was addressed by specifying existing wells as the source and assuring current water quality standards in those existing wells is maintained.

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V Question 12.	11	Would PG&E be willing to indemnify and defend the Water Board for any CEQA challenge related to approval of this Order?	An indemnification provision was not part of the agreement between the Prosecution Team and PG&E. Further, the Prosecution Team does not anticipate that the Water Board will necessarily be the lead agency for construction of the project.
W	12	If the Board agrees to this settlement then it will be selling out not only yourselves but the people of Hinkley.	See Response I.
X	12	The Board knows that PG&E lies, hides evidence and even commits fraud.	No response needed.
Y	12, 13	PG&E needs to be held to the original order (i.e., CAO R6V-2008-0002) on plume expansion.	See Responses J, K and L.
Z	12, 13	It is time for PG&E to pay the entire fine, not a lesser amount.	See Responses A, I and T.
AA	12, 13	The original Order needs to stay in place as far as plume migration is concerned and continue to fine them every day PG&E is out of compliance.	See Responses J, K and L.
BB	12	I have been a strong advocate of Lahontan but enough is enough, stop allowing PG&E to continue the lie.	No response needed.

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CC	12	The way this is being handled is a travesty of justice.	All actions propose in the Settlement Agreement comply with State laws, regulations, and policies. Moreover, the public comment period and public hearing are designed to ensure public involvement in the settlement, and a complete airing of any issues regarding the settlement.
DD	12, 13	The school is losing more students and will lose many more; in the next few years it will not be open, so allowing PG&E to provide the school water is waste and another scam.	Comments submitted to the Water Board by the Barstow Unified School District supports the proposed project to bring water supply to the Hinkley School and does not state or imply future plans to close the school.
EE	13	New water system is not needed at the school; bottled water supplied by PG&E is good enough.	Bottled water being supplied to the Hinkley School is a good interim action that PG&E has been doing voluntarily. Piping in water avoids some of the environmental drawbacks of bottled water. Further, bringing replacement water to faucets and taps within the school, including the outdoor drinking faucets that are currently turned off, provides additional health benefits to the students and school community.
FF	12	People say levels (of chromium) are safe and below the State standard, but this does not comfort me when I give my son a shower or expose him to this known poison.	No response is needed in regards to the Settlement Agreement. However, the Public Health Goal for hexavalent chromium of 0.02 ppb adopted by the State in July 2011 indicates that this is a safe level for a person exposed over a lifetime (i.e., 70 years). The California Drinking Water Standard of 50 ppb for total chromium is outdated and does not take into consideration new science for hexavalent chromium. The State Department of Public Health is overseeing the development of a new standard for total chromium that takes into consideration more recently known health effects of hexavalent chromium. The new standard will likely be released in about three years.
GG	12	No one can tell us what hexavalent chromium does to a person at low levels, because there is no research to tell us.	No response is needed in regards to the Settlement Agreement. However, the Public Health Goal for hexavalent chromium indicates that a concentration of 0.02 ppb is safe for public health. The PHG is a level of drinking water contaminant at which adverse health effects are not expected to occur from a lifetime of exposure. The science used to set the PHG showed that hexavalent chromium is a carcinogen in animals and a

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			suspected carcinogen in humans at levels above the PHG. Other health information about hexavalent chromium can be obtained at the Office of Environmental Health Hazard Assessment website at www.oehha.ca.gov .
HH	12	My levels were at non-detect and they continue to rise with every test, as does my in-laws, we are in the plume.	No response needed for the Settlement Agreement. See http://www.waterboards.ca.gov/lahtan/water_issues/projects/pge/index.shtml#wbo , the Cleanup Orders section in particular.
II	12	Someone needs to hold PG&E completely liable in every way or at least hold them to the orders and penalties that have already been justifiably given.	In the proposed Settlement Agreement, PG&E agrees to civil liabilities of \$3.6 million with regards to violations of the one plume containment requirement of Cleanup and Abatement Order R6V-2008-0002. Water Board staff will continue to require PG&E to follow all existing and future orders and requirements.
JJ	12	Please move the plume out to its real line.	Water Board prosecution staff is unclear what is meant by 'real line'. The chromium plume line is being addressed in the review of the 2007 Background Chromium Study and future Water Board orders.
KK	13	PG&E should be required to maintain the new school water supply project forever, or as long as the plume remains in groundwater, instead of the 20 years stated in the Settlement Agreement.	The Settlement Agreement states that PG&E will maintain the new school water for up to 20 years. It is unreasonable to foresee the viable future of the Hinkley School beyond this period.
LL	13	Disagree with re-setting the chromium plume containment number from 4 ppb to 10 ppb; then PG&E would push for future cleanup to only the 10 ppb line.	The new containment requirements in the Settlement Agreement and the amendments to the 2008 CAO do not in any way change PG&E's long-term cleanup obligations. The 2008 CAO requires PG&E to develop and implement a long-term cleanup program, which must ultimately return the chromium concentrations to background levels, and to contain the chromium plume in the interim. The Prosecution Team alleges that the chromium plume has expanded since the 2008 CAO, and the new containment requirements are therefore more realistic until the Water Board adopts a new comprehensive cleanup and abatement order.

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MM	12, 13	It is wrong to allow the 10 ppb line to move farther north, shame on the Board if that passes.	See Response LL.
NN	13	Extracting water from pumping wells north and south of Thompson Road might adversely affect the water table in nearby domestic wells.	See Response D.
OO	13, 15	Dubious about the proposed cost of implementing the SEP, especially since it involves laying only ½ mile of pipeline	The Settlement Agreement states that if PG&E has not fully spent the amount of money claimed to complete the SEP, the Water Board may require PG&E to submit a report/audit by an independent third party about expended money claimed. If PG&E is not able to demonstrate to the reasonable satisfaction of Board staff that it has spent the entire SEP amount, the difference between the \$1.8 million suspended for the SEP and the demonstrated reasonable amount spent on the SEP shall be paid to the State Waste Discharge Permit Fund.
PP	13	Supports Settlement Agreement.	No response needed.
QQ	14	Request that all negotiations (between PG&E and Water Board) cease and desist until the CAC can meet and negotiate a settlement.	The Community Advisory Committee (CAC) is not a party to this legal action between the State and PG&E, and therefore is not allowed to participate in settlement negotiations. All members of the community are encouraged to participate in the public comment period and at the public meeting on March 14, 2012 where the Board Members will decide whether to accept or reject the Settlement Agreement
RR	15	No objection to fine amount or water replacement project, but concerns about PG&E implementing project.	Paragraph 12 and its sub-paragraphs in the Settlement Agreement describe the SEP and process should PG&E not complete the SEP. PG&E is agreeing to certify its expenditures and work performance, and subject itself to a third party audit. If the SEP is not completed or is finished under

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			budget, PG&E is to pay the difference of \$1.8 million minus actual reasonable costs to the State Waste Discharge Permit Fund. See Response OO.
SS	15	The time allowed for project operation of four and one-half years is excessive. Water Board should reduce project operation time to at least half the current proposal, if not sooner.	If the SEP results in a material failure to satisfy a milestone requirement, the Water Board may hold PG&E liable to pay the entire SEP amount or some portion thereof less the amount of adequately completed work, prior to the SEP completion date of December 31, 2017. The schedule allows time for the CEQA process and other permit and typical construction delays. See Responses OO and RR.
TT	15	Costs seem excessive - Caltrans or the Architect's Office should conduct a review or audit of PG&E's costs.	If the costs appear unreasonable, the Water Board may request a third-party audit. See Responses OO, RR and SS.
UU	15	PG&E should not be allowed to profit (through interest earned on delaying expenditures). Request the Water Board add a requirement to Settlement Agreement that PG&E must provide an annual accounting for project money spent versus money remaining so the interest can be calculated to go back to the project or the State. I think it unlawful to "loan" PG&E money without accruing interest.	Interest on the liability amount suspended for the SEP was not a term negotiated by the parties, but is in fact an incentive for a discharger to propose a SEP instead of paying an entire liability amount. Comment noted. If the costs appear unreasonable, the Water Board may request a third-party audit. See Responses OO, RR, and SS.
VV	15	The term "alleged violations" seems ridiculous in the Settlement Agreement. PG&E	The Prosecution Team firmly believes that these violations occurred. PG&E contests there were violations. The term "alleged violations" is used in the Settlement Agreement because the alleged violations have not been

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		was found to be in violation and the word “alleged” should not be used.	adjudicated; a trying body has not heard the facts and evidence and made a ruling (i.e. the Water Board did not hold a contested evidentiary hearing nor make any rulings on whether the violations occurred). The Water Board members have not found PG&E to be in violation.
WW	16	PG&E has reached out to the community in many different ways that we all appreciate and thank them for. On the other hand, the state of California has not helped us other than to provide you as the regulators, and even you are paid by PG&E. To date, you and the state have done nothing to really help those that are hurting in the community. No money has been spent by you in Hinkley to help the people of this community cope with the situation that they wake up to everyday . . .	Since 1987, the Water Board has required PG&E to: define the boundaries of waste chromium in groundwater, sample domestic wells, conduct a background study, implement cleanup actions, provide an independent consultant for the community, and provide bottled water; and, soon, whole household replacement water to some Hinkley residents. The Board staff has also issued fact sheets and held numerous public meetings to keep residents up to date on plume and clean up status. The Water Board continues to hold PG&E accountable to clean up its waste chromium in Hinkley.
XX	16	The replacement water project should be modified to give all money to Hinkley, for Community Center, Ball Fields, and additional improvements to Elementary School.	See Response B.
YY	16	Settlement Agreement wording (referring to term “suspended”) is bothersome. Seems to indicate that if the replacement	The Settlement Agreement states that unused funds at project completion must be submitted to the State Waste Discharge Permit Fund. PG&E will spend at least \$3.6 million in administrative civil liability and the SEP – no less.

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		water project can be completed for less than \$1.8 million that the rest of the fine would be done away with.	
ZZ	16	This agreement does not fully address the Injured Party issue and allows for further governmental misdirection of funds.	This enforcement action is between the State and PG&E; individual people are not party to this enforcement action. In this enforcement action, the State is the injured party. Therefore, the administrative civil liability is directed to the State Waste Discharge Permit Fund to assist in cleaning up waste or abating the effects of waste on waters of the state. By entering into the Settlement Agreement, up to \$1.8 million may be directed to the SEP to provide replacement water to the school, a task that is above and beyond what PG&E is required to complete. See Response F.