ATTACHMENT A

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:	)	
	)	
Elsinore Valley Municipal Water District	)	Complaint No. R8-2012-0030
31315 Chaney Street	)	for
Lake Elsinore, CA 92530	)	Administrative Civil Liability
	)	
Attn: Ronald E. Young	)	

ELSINORE VALLEY MUNICIPAL WATER DISTRICT IS HEREBY GIVEN NOTICE THAT:

1. The Elsinore Valley Municipal Water District (hereinafter "EVMWD" or the "Discharger") is alleged to have violated California Water Code (hereinafter "CWC") §13385(a)(1) for unauthorized sanitary sewer overflows (hereinafter "SSOs") for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter "Regional Board"), may impose administrative civil liability, pursuant to CWC §13385(c). The Discharger also violated CWC §13267 by failing to submit reports and notification requirements within the time frames required under Order No. 2006-003-DWQ, "Statewide General Waste Discharge Requirements for Sanitary Sewer Systems" (hereinafter "SSO Order"). This Complaint addresses SSOs that discharged from EVMWD's Canyon Lake and Regional collection systems.

2. A hearing concerning this Complaint will be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint, unless, pursuant to CWC §13323, EVMWD waives its right to a hearing. Waiver procedures are specified in the attached Waiver Form. The hearing on this matter is scheduled for the Regional Board's regular meeting on October 26, 2012, to be held at the Irvine Ranch Water District located at 15600 Sand Canyon Avenue, Irvine, California. EVMWD, or its representative(s), will have the opportunity to appear and be heard and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.

3. If a hearing is held on this matter, the Regional Board will consider whether to affirm, reject, or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability. If this matter proceeds to hearing, the Prosecution Team reserves the right to seek an increase in the civil liability amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through hearing.

THIS COMPLAINT IS BASED ON THE FOLLOWING FACTORS:

4. The Discharger provides potable water, sewer, and reclamation services to the cities of Lake Elsinore, Canyon Lake, and portions of Murrieta, and some unincorporated areas of Riverside County. EVMWD provides services to a population over 100,000.

5. The Discharger's sanitary sewer service area is delineated into four separate collection systems. These are the Regional, Canyon Lake, Horsethief Canyon, and Southern collection systems.

6. The Canyon Lake collection system receives flows from the communities surrounding Canyon Lake. The collection system contains approximately 48 miles of gravity sewer mains up to 21 inches in diameter, 7 lift stations and 4.7 miles of pressure mains. Wastewater flows generated within the Canyon Lake collection system are treated at the Railroad Canyon Wastewater Reclamation Facility (hereinafter "WRF"). The Railroad Canyon WRF functions as a scalping plant that directs excess wastewater flows from the Canyon Lake area and all waste activated sludge from the WRF to the Regional WRF via the Regional collection system.

7. The Regional collection system receives wastewater flows from portions of the City of Lake Elsinore, unincorporated areas of Lakeland Village, Sedco Hills, and Wildomar, waste activated sludge from the Canyon Lake WRF, and excess wastewater flows from the Canyon Lake collection system. The collection system contains approximately 324 miles of gravity sewer mains up to 54 inches in diameter, 24 lift stations, and 14 miles of pressure mains. Wastewater flows generated within the Regional collection system are treated at the District operated Regional WRF.

<u>Waste Discharge Requirements:</u>

8. The Discharger is required to operate and maintain their sewage collection systems to prevent sewer overflows and spills in compliance with the requirements of the SSO Order. EVMWD obtained coverage under the SSO Order on November 3, 2006.

9. The SSO Order states: "SSOs often contain high levels of suspended solids, pathogenic organisms, toxic pollutants, nutrients, oxygen demanding organic compounds, oils and grease and other pollutants. SSOs may cause a public nuisance, particularly when raw untreated wastewater is discharged to areas with high public exposure, such as streets or surface waters used for drinking, fishing, or body contact recreation. SSOs may pollute surface or ground waters, threaten public health, adversely affect aquatic life, and impair the recreational use and aesthetic enjoyment of surface waters."

10. Provision D.1 of the SSO Order states, "The Enrollee must comply with all conditions of [the SSO Order]. Any noncompliance with [the SSO Order] constitutes a violation of the California Water Code and is grounds for enforcement action."

11. Prohibitions C.1 and C.2 of the SSO Order state, "any SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States…" and "any SSO that results in a discharge of untreated or partially treated wastewater that creates a nuisance... is prohibited."

12. Provision D.10 of the SSO Order states that enrollee's under the SSO Order shall provide adequate capacity to convey base flows and peak flows, including flows related to wet weather events…for all parts of the sanitary sewer system owned and operated by the enrollee.

13. Provision D.11 of the SSO Order states the enrollee shall develop and implement a written Sewer System Management Plan (hereinafter "SSMP"). The SSMP shall provide provisions to properly manage, operate, and maintain all parts of the sanitary sewer system. The goal of the SSMP is to reduce and prevent SSOs as well as mitigate any SSOs that do occur.

14. Provision D.6 of the SSO Order states the enrollee shall implement a process to identify and correct problems with the sanitary sewer system. Through proper implementation of the SSMP, discharges from the sanitary sewer system can be reasonably prevented by identifying and providing the following:

    A) Adequate treatment facilities, sanitary sewer system facilities, and/or components with an appropriate design capacity…;
    B) Preventative maintenance (including sewer main cleaning and fats, oils, and grease (FOG) control);
    C) Installation of adequate backup equipment; and
    D) Inflow and infiltration prevention and control to the extent practicable.

15. CWC §13243 states that the Regional Board may specify certain conditions or areas where the discharge of waste, or certain types of waste, will not be permitted. The Regional Board implements this section of the CWC by adopting and implementing the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan). The Basin Plan establishes the beneficial uses and water quality standards for the ground and surface waters for the Santa Ana Region, which must be met and maintained to protect those uses. The Basin Plan designates beneficial uses for waterbodies within the Region. Chapter 5 of the Basin Plan prohibits the discharge of untreated sewage to any surface water, natural or manmade, or to any drainage system intended to convey storm water runoff to surface waters.

16. The Federal Clean Water Act (33 U.S.C §1311) and CWC §13376 also prohibit the discharge of pollutants from a point source to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (NPDES) Permit.

17. Furthermore, CWC §13376 states, in part, "Any person discharging or proposing to discharge pollutants to the navigable waters of the United States within the jurisdiction of this state… shall file a report of the discharge in compliance with the procedures set forth in Section 13260…" and "The discharge of pollutants… by any person except as authorized by waste discharge requirements… is prohibited."

<u>Reporting Requirements:</u>

18. Provision D.5 of the SSO Order states, "All SSOs must be reported in accordance with Section G of the general WDRs." Where General Monitoring and Reporting Requirements G.4 of the SSO Order states, in part, "…any person who, without regard to intent or negligence, causes or permits any untreated wastewater or other waste to be discharged in or on any wasters of the State…as soon as that person has knowledge of the discharge, shall immediately notify the local health officer of the discharge…Any SSO greater than 1,000 gallons discharged in or on any waters of the State…shall also be reported to the Office of Emergency Services [California Emergency Management Agency, hereinafter "Cal EMA"] pursuant to California Water Code Section 13271."

19. Notification 1 of the Monitoring and Reporting Program No. 2006-0003-DWQ (As Revised by Order No. WQ 2008-0002-EXEC) of the SSO Order states, "For any discharges of sewage that results in a discharge to a drainage channel or a surface water, the Discharger shall, as soon as possible, but no later than two (2) hours after becoming aware of the discharge, notify the State Office of Emergency Services, the local health officer or directors of environmental health with jurisdiction over affected water bodies, and the appropriate Regional Water Quality Control Board."

20. Sanitary Sewer Overflow Reporting A.4 of the Monitoring and Reporting Program No. 2006-0003-DWQ (As Revised by Order No. WQ 2008-0002-EXEC) of the SSO Order states, in part, "Initial reporting of Category 1 SSOs must be reported to the Online SSO System as soon as possible but no later than 3 business days after the Enrollee is made aware of the SSO…"

SSOs Subject to Enforcement Action:

21. SSOs that resulted in the unauthorized discharge of untreated wastewater to waters of the United States are violations of the Federal Clean Water Act, CWC §13376, the Basin Plan and Prohibitions C.1 and C.2 of the SSO Order, and are, therefore, subject to enforcement action in accordance with CWC §13385and Provision D.1 of the SSO Order. The following unauthorized discharges are subject to enforcement action:

    A) On January 21, 2010, at approximately 12:15 p.m., sewage began overflowing from several manholes in the Railroad Canyon area, along Lakeshore Drive and Mission Trail, in the City of Lake Elsinore. EVMWD reported that the overflow occurred during a storm event that caused several manholes in the Railroad Canyon area to be submerged by high water level in the San Jacinto River. Inflow to the sanitary sewer system caused the downstream sewer system to surcharge and contributed to flows exceeding the capacity of the sanitary sewer collection system. During the surcharge event, EVMWD crews set up bypass pumping to relieve the surcharge of the sewer main. Despite efforts by EVMWD, untreated sewage overflowed from the collection system and discharged to Lake Elsinore. The overflow continued for approximately 2 hours, stopping at approximately 2:30 p.m. on January 21, 2010. EVMWD reported they completed their cleanup and response to the spill at 5:30 p.m. on January 22, 2010. The Discharger reported the total volume of the overflow was approximately 63,474 gallons, of which an estimated 56,000 gallons of untreated wastewater discharged to Lake Elsinore and another 7,474 gallons discharged to land. EVMWD reported none of the overflow from the collection system was recovered.

    B) On December 21, 2010, at approximately 2:30 a.m., sewage began overflowing from a manhole along San Joaquin Drive in the City of Canyon Lake. EVMWD reported the overflow occurred as a result of a storm that caused wet weather flows in the collection system to exceed the pumping capacity of the Vacation Lift Station. The overflow continued for approximately 11 hours, stopping at approximately 1:30 p.m. on December 21, 2010. EVMWD completed their cleanup and response to the spill at 2:00 p.m. on December 21, 2010. Untreated sewage overflowed from the collection system and discharged to Canyon Lake. The Discharger reported the total volume of the overflow was approximately 2,415 gallons, of which an estimated 2,340 gallons of wastewater discharged to Canyon Lake.

    C) On December 21, 2010, at approximately 10:30 a.m., sewage began overflowing from EVMWD's Lift Station A-1, located near the intersection of Riverside Drive and Strickland Avenue in the City of Lake Elsinore. EVMWD reported the overflow occurred when the lift station lost power during a power outage. The Discharger reported a portable emergency generator was

connected to the lift station to provide temporary emergency power and the overflow stopped at 12:42 p.m. on December 21, 2010. Spill response activities were completed by the Discharger at 1:30 p.m. on December 21, 2010. Untreated sewage overflowed from the collection system and discharged to Gunnerson Pond, a riparian and wetland area tributary to and adjacent to the Temescal Wash. The total volume of the overflow was approximately 3,923 gallons, of which an estimated 2,423 gallons of wastewater discharged to the Gunnerson Pond and 1,500 gallons was recovered by EVMWD and returned to the sewer system.

D) On December 21, 2010, at approximately 5:00 p.m., sewage again began overflowing from Lift Station A-1. EVMWD reported the overflow occurred as a result of mechanical problems with the lift station pumps and wet weather flows in the collection system that exceeded the pumping capacity of the lift station. On December 23, 2010, at 12:05 a.m., a pumper truck was dispatched to the wet well of the lift station to contain and stop the spill. Untreated sewage overflowed from the collection system and discharged to Gunnerson Pond. The Discharger reported the total volume of the overflow was approximately 16,281 gallons, of which an estimated 12,781 gallons of wastewater discharged to Gunnerson Pond and 3,500 gallons of wastewater was recovered by EVMWD and returned to the sewer system.

E) On December 22, 2010, at approximately 9:30 a.m., sewage began overflowing from several manholes along Lakeshore Drive near Elm Street in the City of Lake Elsinore. EVMWD reported the overflow occurred during a storm event that resulted in flows exceeding the capacity of the collection system. During the surcharge event, 10 pumper trucks were used to transport surcharge flows to a nearby 48-inch diameter sanitary sewer. The overflow continued for approximately 2.5 hours, stopping at approximately 12:00 p.m. on December 22, 2010. Spill response activities were completed by the Discharger at 2:30 p.m. on December 22, 2010. Untreated sewage overflowed from the collection system and discharged to the San Jacinto River, Lake Elsinore, and to land. The Discharger reported the total volume of the overflow was approximately 67,825 gallons, of which an estimated 52,825 gallons of wastewater discharged to the San Jacinto River at its mouth with Lake Elsinore, and approximately 15,000 gallons of wastewater discharged to land. EVMWD reported that none of the 67,825 gallons of untreated sewage that overflowed from the collection system was recovered.

<u>Reporting Violations Subject to Enforcement Action:</u>

22. The failure to comply with the notification requirements specified in Provisions D.5 of the SSO Order and/or the notification requirements specified in the Monitoring and Reporting Program of the SSO Order are violations for which the Regional Board may assess civil liability administratively per CWC §13268. The following reporting violations are subject to enforcement action:

A) EVMWD failed to comply with the notification requirements of the SSO Order by failing to notify the State Office of Emergency Services (OES) within two (2) hours of becoming aware of the following Category 1 SSOs (OES is now known as the California Emergency Management Agency, or Cal EMA):

SSO Location	SSO Date	CalEMA Control #	EVMWD Notified/Discovery Date/Time	CalEMA Notification Date/Time	CalEMA Notification Timeframe [1]
Lakeshore Dr. / Mission Trail	1/21/2010	10-0550	2010-01-21; 12:15pm	2010-01-21; 4:31pm	4 hours, 16 minutes
San Joaquin Dr.	12/21/2010	10-7735	2010-12-21; 2:30am	2010-12-22; 4:19am	25 hours, 49 minutes
Riverside Dr. (Lift Station A-1)	12/21/2010	10-7720	2010-12-21; 10:30am	2010-12-21; 3:19pm	4 hours, 49 minutes
Riverside Dr. (Lift Station A-1)	12/21/2010	10-7736	2010-12-21; 5:00pm	2010-12-22; 4:28am	11 hours, 28 minutes
Lakeshore Dr. / Elm St.	12/22/2010	10-7791	2010-12-22; 9:30am	2010-12-22; 4:17pm	6 hours, 47 minutes

[1] Time from when the Discharger became aware of spill to when CalEMA was notified

B) EVMWD failed to comply with the notification requirements of the SSO Order by also failing to notify the Regional Board within two (2) hours of becoming aware of the following Category 1 SSOs:

SSO Location	SSO Date	SSO Event ID	EVMWD Notified/Discovery Date/Time	Regional Board Notification Date/Time	Regional Board Notification Timeframe [1]
Lakeshore Dr. / Mission Trail	1/21/2010	748743	2010-01-21; 12:15pm	2010-01-21; 4:35pm	4 hours, 20 minutes
San Joaquin Dr.	12/21/2010	760108	2010-12-21; 2:30am	2010-12-21; 5:45am	3 hours, 15 minutes
Riverside Dr. (Lift Station A-1)	12/21/2010	760131	2010-12-21; 10:30am	2010-12-21; 3:30pm	5 hours
Riverside Dr. (Lift Station A-1)	12/21/2010	760135	2010-12-21; 5:00pm	2010-12-22; 5:45am	12 hours, 15 minutes
Lakeshore Dr. / Elm St.	12/22/2010	760136	2010-12-22; 9:30am	2010-12-23; 4:00pm	18 hours, 30 minutes

[1] Time from when the Discharger became aware of spill to when the Regional Board was notified.

C) EVMWD failed to comply with the reporting requirements of the SSO Order by failing to submit an initial draft spill report to the Online SSO System within three (3) business days from when the Discharger became aware of the following Category 1 SSOs:

SSO Location	SSO Date	SSO Event ID	EVMWD Notified/Discovery Date/Time	Online SSO Reporting, Initial Draft Report Submital Date	Draft SSO Report Reporting Timeframe [1]
San Joaquin Dr.	12/21/2010	760108	2010-12-21; 2:30am	1/3/2011	9 days
Riverside Dr. (Lift Station A-1)	12/21/2010	760131	2010-12-21; 10:30am	1/3/2011	9 days
Riverside Dr. (Lift Station A-1)	12/21/2010	760135	2010-12-21; 5:00pm	1/3/2011	9 days
Lakeshore Dr. / Elm St.	12/22/2010	760136	2010-12-22; 9:30am	1/6/2011	11 days

[1] Number of business days from when the Discharger became aware of the SSO to when the Discharger submitted an initial spill report to the Online SSO System.

Additional Findings

23. The Discharger has developed and approved Wastewater Master Plans (WWMPs), Capital Improvement Programs and SSMPs for the collection systems. The 2003 and 2008 WWMPs evaluated the existing capacity and projected peak wastewater flow capacity of the sanitary sewer collection system. Both of the WWMPs identified the Lakeshore Drive sewer line as an existing facility that was currently deficient on a capacity basis and required immediate improvements. For example, the 2008 WWMP identified the need to install a parallel 54" gravity main along North Lakeshore Drive, as "severe surcharging with potential for extended SSOs during a large storm" was identified.

24. On January 18, 2005, EVMWD submitted an SSO Report to the Regional Board for a 517,500 gallon SSO. Sewage overflowed from a manhole along the trunk line that flows from Railroad Canyon to the Lakeshore Drive sewer line. The Discharger stated in the report that inflow and infiltration to the Canyon Lake and Regional collection systems contributed to flows exceeding the capacity of the sewer system. The Discharger also reported high water level in the San Jacinto River submerged manholes along the sewer truck line in the Railroad Canyon. The report specified the Lakeshore Sewer and Regional Lift Station Project currently underway will address the capacity issue that contributed to the overflow.

25. On March 2, 2005, EVMWD submitted an SSO Report to the Regional Board for an SSO that discharged 10,400 gallons of sewage into Canyon Lake and 400,000

gallons of sewage into Lake Elsinore. The report stated that the Canyon Lake collection system has high infiltration rates during storm events. The report also stated that EVMWD has developed a number of measures to address infiltration, including rehabilitation of some of the existing sewer lines. EVMWD stated in the report that the cause of the SSO was a "bottle neck" in the Lakeshore Drive sewer line that caused the collection system to surcharge. The Discharger further stated that, "[t]he bottle neck within the system caused the system to back up and overflow at manholes…." On February 28, 2005, EVMWD's Engineering Department held a meeting for a "Request for Proposal" (RFP) for the design of the Lakeshore Trunk Sewer. The report specified "[c]onstruction for this trunk sewer is to be completed no later than December 2007." The RFP specified that "[d]ue to budget constraints, phasing of the Lakeshore Trunk Sewer will be required."

26. The 2008 WWMP used a 10-year, 24-hour storm event to evaluate the Peak Wet Weather Flow (hereinafter "PWWF") capacity of the sewer system. None of the storm events that immediately proceeded or occurred during the SSOs identified in this Complaint exceeded the design storm criteria. For example, the January 21, 2010 SSO was preceded with four days of measurable precipitation. The 24-hour precipitation accumulations for each of these days were determined to have an average precipitation recurrence interval of less than a 1-year, 24-hour precipitation frequency.

27. Following a rain event in 2009, EVMWD installed SmartCover® monitoring and alarm system manhole covers on manholes along the Lakeshore Drive sewer line and lines that feed into it. The SmartCovers® contain level sensors that transmit live data on liquid levels in the sewer line to EVMWD. The SmartCovers® were a means to generate real time measurements which would alert EVMWD if the system was in a state of surcharge. However, EVMWD staff indicated that this system was unreliable.

28. The 2003 WWMP identified the A-1 Lift Station as a temporary lift station. The master plan stated that if the lift station were to become a permanent lift station, the following improvements were recommended: a Motor Control Center (MCC); SCADA system; and, Stand-by-generator. The 2003 WWMP also specified that lift stations shall be capable of meeting the peak wet weather flow with the largest capacity pump serving as standby.

<u>Determination of Monetary Assessments for the Administrative Civil Liability:</u>

29. The SSOs described above resulted in the unpermitted discharge of untreated sewage to Lake Elsinore; Reach 1 of the San Jacinto River; Canyon Lake; and, Gunnerson Pond, a tributary to Reach 6 of Temescal Creek. The designated beneficial uses of these surface waters are as follows:

A) Lake Elsinore: (1) Municipal and domestic supply[1]; (2) Water contact recreation; (3) Non-contact water recreation; (4) Warm freshwater habitat; and (5) Wildlife habitat;
B) San Jacinto River, Reach 1: (1) Municipal and domestic supply[2]; (2) Agricultural supply[2]; (3) Groundwater recharge[2]; (4) Water contact recreation[2]; (5) Non-contact water recreation[2]; (6) Warm freshwater habitat[2]; and (7) Wildlife habitat[2];
C) Canyon Lake: (1) Municipal and domestic supply; (2) Agricultural supply; (3) Groundwater recharge; (4) Water contact recreation; (5) Non-contact water recreation; (6) Warm freshwater habitat; and (7) Wildlife habitat; and,
D) Temescal Creek, Reach 6: (1) Municipal and domestic supply[1]; (2) Groundwater recharge[2]; (3) Water contact recreation[2]; (4) Non-contact water recreation[2]; (5) Warm freshwater habitat[2]; and, Wildlife habitat[2].

30. The unauthorized discharges of untreated wastewater from the Discharger's sanitary sewer system to waters of the United States and/or tributaries to waters of the United States are violations of the SSO Order, Federal Clean Water Act, and CWC, for which civil liability may be assessed administratively in accordance with CWC §13385. Chapter 5.5 of the CWC incorporates the federal Clean Water Act which regulates discharges of wastes to surface waters. Section 13385 of the CWC includes provisions for assessing administrative civil liability for discharges of wastes to surface waters in violation of the federal Clean Water Act. The SSO Order is a waste discharge requirements and Section 13350 of the CWC addresses violations of waste discharge requirements. The discharge incidents described above were to surface waters for which liability could be assessed as per Section 13385 of the CWC. Based on the findings discussed above, the Division Chief has determined that it is appropriate to assess liability in accordance with Section 13385 of the CWC.

31. CWC §13385(c) states, in part, that the Regional Board may impose civil liability administratively for noncompliance with CWC §13376 on a daily basis at a maximum of ten thousand dollars ($10,000) for each day in which the violation occurs in accordance with CWC §13385(c)(1); and where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged, but not cleaned up, exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharge, but not cleaned up, exceeds 1,000 gallons; or both, CWC §13385(c)(2).

32. CWC §13385(e) specifies factors that the Regional Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (hereinafter "Policy") adopted by the State Water Resources Control Board on November 19, 2009, establishes a methodology for assessing administrative civil

[1] Excepted from MUN
[2] Intermittent Beneficial Use

liability pursuant to this statute. Use of methodology addresses the factors in CWC §13385(e). The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf]

33. Attachment A presents the administrative civil liability derived from the use of the penalty methodology in the Policy. In summary, this amount is based on the following:

A) For the discharge violations, the Policy requires a consideration of the potential for harm from the discharge and the deviation from requirements. In determining the appropriate adjustment factors, the Regional Board considered the following:

(I). As noted above in Finding 9, SSOs contain pollutants, create nuisance conditions and impair beneficial uses;

(II). The discharge of untreated sewage to surface waters can result in decrease dissolved oxygen levels, as untreated sewage is an oxygen-demanding pollutant. The discharge of untreated sewage to surface waters can also raise ammonia concentrations in the surface water, which is toxic to fish;

(III). SSOs contain pathogenic organisms that are harmful to public health. The discharge to surface waters will impair the recreational beneficial uses of the surface water and require temporary restrictions on recreational uses of the surface waters;

(IV). The discharge of untreated sewage to Canyon Lake, Lake Elsinore, San Jacinto River and Gunnerson Pond was unrecovered;

(V). These were raw sewage discharges that were diluted to some degree due to storm water inflows;

(VI). Using the above information, the following factors were assigned to potential for harm to beneficial uses (on a scale of 0 to 5, see page 12 of the Policy): a factor of 4 for discharges to Canyon Lake, 3 for discharges to Lake Elsinore, and 2 for discharges to Gunnerson Pond. A factor of 3 is assigned to physical/chemical characteristics for all discharges (on a scale of 0 to 4, see pages 12-13 of the Policy). A factor of 1 is assigned to susceptibility to cleanup for all discharges (a score of 1 is assigned for this factor if less than 50% of the discharge was susceptible to cleanup, see page 13 of the Policy). The potential for harm factors and final scores are summarized in Attachment A. These discharges occurred during storm events and are considered as moderate deviation from requirements. The discharge volume used to assess liability from the five unauthorized discharge events, as described under paragraph 21, above, is 121,369 gallons (126,369-5,000=121,369). From Tables 1 and 2 of the Policy (pages 14 and 15), using the above factors, the Per Gallon and Per Day Factors obtained ranged from 0.150 to 0.400. For high volume sewage spills, the Policy allows for the statutory maximum

per gallon factor of $10.00 to be reduced to $2.00 per gallon. The adjusted maximum per gallon factor of $2.00 was used to calculate the per gallon assessment for the Lakeshore Drive SSOs that occurred on January 21, 2010 and December 22, 2010. The maximum per gallon factor of $10.00 was used to calculate the per gallon assessment for the three other smaller volume SSOs. The assessed initial liability for the unauthorized discharge of 121,369 gallons to surface waters and six days of discharge violations is equal to $80,396.

B) The reporting violations were violations of the SSO Order. Notification 1 of Monitoring and Reporting Program No. 2006-0003-DWQ (As Revised by Order No. WQ 2008-0002-EXEC) requires that the Discharger notify the [Cal EMA] and the Regional Board within 2 hours of becoming aware of a Category 1 SSO. General Reporting Requirement G.4. requires the Discharger to submit an initial draft spill report to the Regional Board using the online SSO system within 3 business days of becoming aware of a Category 1 SSO. This information is a report collected pursuant to Water Code 13267. Dischargers that fail to comply with the notification requirements are in violation of the monitoring program reporting requirements of the SSO General Order, and are subject to penalties under Water Code 13268. In determining the appropriate adjustment factors, the Regional Board considered the following:

(I). The notification and reporting requirements of the SSO Order were rendered ineffective;

(II). Although the reporting violations are non-discharge violations that do not directly impact beneficial uses, failing to comply with the reporting requirements of the SSO Order undermines the objective of the self-monitoring requirements of the Federal Clean Water Act and CWC, and prevents other government agencies, such as the Regional Board and the county public health department from ensuring that appropriate action is taken to protect public health and safety, the environment, and drinking water supplies;

(III). For the five SSOs identified in this Complaint, EVMWD notified Cal EMA and the Regional Board, on average, more than 8 hours after becoming aware of, or were notified of, the SSOs;

(IV). Considering the above information, and that the SSOs discharged to surface waters, a potential harm of “moderate” is selected. As noted above, in Finding 29, the surface waters impacted by the SSOs have designated beneficial uses that include “municipal and domestic supply” and “water contact recreation.” A deviation from requirement of “major” is selected since notification and reporting requirements were rendered ineffective; and,

(V). With these considerations and using the factors obtained from Table 3 of the Policy, the initial liability amount for the non-discharge violations is $7,700.

C) The total initial liability amount for the discharge and the non-discharge violations is equal to $88,096 ($80,396 + $7,700 = $88,096).

D) This initial liability amount is then adjusted based on the Discharger's culpability, cleanup effort and cooperation, and history of violations. In determining the appropriate factors, the Regional Board considered the following:

(I). For culpability, the following factors were considered:
(a) The Discharger evaluated the collection system's capacity, management, and operation by preparing WWMPs, CIPs and a SSMP for the collection systems;
(b) Through diligent implementation of the WWMPs and CIPs, the Discharger could have reduced the occurrence of sewer overflows and improve compliance;
(c) The SSOs identified in this Complaint demonstrate the Discharger has not implemented an effective program to prevent sanitary sewer overflows in the Regional and Canyon Lake collection systems;
(d) The manholes installed on the sewer line in Railroad Canyon, that parallels the San Jacinto River, were designed without consideration for protection from moderate storm flow conditions in the River. During storm flow conditions, the San Jacinto River submerged several of the manholes along the sewer line. EVMWD failed to install manholes that prevented and/or reduced the risk of inflow to the sanitary sewer collection system;
(e) Delays in construction of the parallel sewer line along Lakeshore Drive increased the risk of sewer overflows during storm events. The sewer line was not constructed by December 2007, as stated in the EVMWD's March 2, 2005 SSO report to the Regional Board. The failure to provide adequate capacity to convey sewage flow to the Regional WRP contributed to the SSOs that occurred during the storm events in January and December 2010;
(f) The Discharger has not effectively reduced inflow and infiltration to the Canyon Lake and Regional collection systems;
(g) The use of SmartCover® manhole covers may have intermittently assisted with identifying surcharge conditions prior to an overflow, but are reactive measures. The use of SmartCover® manhole covers does not provide additional capacity or reduction in inflow and infiltration to the sewer system;
(h) The December 21 and 22, 2010 SSOs at the A-1 Lift Station occurred as a result of equipment failure, lack of backup power and

flows exceeding the pumping capacity. The Discharger failed to install necessary backup power at the A-1 Lift Station, failed to reduce inflow and infiltration, and provide adequate pumping capacity to convey Peak Wet Weather Flows (PWWF).

(II). EVMWD failed to implement the reporting requirements of the SSO Order and failed to comply with its own written procedures. For example, EVMWD's 2008 SSMP, Section 3.4, Chain of Communication for Reporting SSOs, states, "in the event of a confirmed SSO that results in a discharge to a drainage channel or surface water, the following regulatory agencies must be notified as soon as possible, but no later than two hours after becoming aware of the discharge: Appropriate Regional Water Quality Control Board (RWQCB), depending on location of spill; State OES (Cal EMA); and, Appropriate County Health Agency." As noted above, EVMWD failed to comply with the required notification procedures specified in the SSO Order, as well as the written procedures identified in their SSMP.

Based on these factors a culpability factor of 1.3 (on a 0.5 to 1.5 scale, see page 17 of the Policy) is assigned for the SSOs that occurred along Lakeshore Drive in January and December 2010 and a factor of 1.2 is assigned for the SSOs that occurred along San Joaquin Drive and Riverside Drive.

(III). For cleanup effort and cooperation, the following factors were considered:

(a) The Discharger made an attempt to capture sewage overflows and was partially successful. For example, the Discharger developed a Standard Operating Procedure (SOP) for by-pass pumping when the Lakeshore Drive and Tuscany Hills sewer lines were in the process of surcharging (the Discharger reported that the SOP was implemented during the January 21, 2010 SSO); the Discharger also used vacuum and combination trucks to transport surcharge flows to nearby sanitary sewer lines (the Discharger reported pumper trucks were used to capture surcharge flows during the December 22, 2010 SSO along Lakeshore Drive and a combination truck was used to capture surcharge flows from the A-1 Lift Station during the overflows that occurred on December 21 to December 23, 2010); and,

(b) The Discharger has also reported a parallel 54 inch diameter sewer line along Lakeshore Drive is being constructed. The new sewer line will remove the "bottle neck" that has caused flows in the system to back up and overflow from the collection system.

Based on these factors, a cleanup and cooperation factor of 1.0 (on a 0.75 to 1.5 scale, see page 17 of the Policy) is appropriate.

(IV). A factor of 1.1 was selected to represent the Discharger's history of SSO violations (described in Findings 24 and 25).

(V). Using these factors, the total assessed liability is equal to $110,663.

E) The Regional Board has no information to indicate that the Discharger does not have the ability to pay the proposed liability or how payment of the proposed liability would affect the Discharger's ability to provide essential services. It is not anticipated that the proposed liability would cause a financial hardship for the Discharger.

F) The cost of investigation and enforcement incurred by the Regional Board Prosecution staff are considered as "other factors as justice may require". This amount has been included in the liability assessed, to reflect investigation costs of $33,000 (220 hours at $150 per hour). After addition of the staff costs, the total liability is $143,663 ($110,663 + 33,000 = $143,663).

G) CWC §13385(e) and the Policy also require consideration of economic benefit or savings, if any, resulting from the violations and other matters as justice may require. EVMWD delayed implementing improvements to the Lakeshore Trunk Sewer (North Reach), as identified by their own analysis. The June 2003 WWMP identified the section of the sewer line as deficient and required immediate improvements. Following the SSOs that occurred in January and March 2005, as noted above in Findings 23 and 24, EVMWD reported to the Regional Board that a new parallel sewer line would be constructed by no later than December 2007. The construction of the sewer line was delayed and was not completed until November 26, 2011, approximately four years later than originally proposed. Money saved in delaying the capital improvement costs may have been used for other revenue-producing activities. Delaying the construction of the pipeline also avoids annually recurring costs of operating and maintaining the system. Based on the United States Environmental Protection Agency's BEN Model, EVMWD saved approximately $6,580,000 by delaying the cost for constructing, operating and maintaining the new sewer pipeline. The Policy requires that the proposed liability assessment be at least 10% higher than the economic benefit or savings received. In the March 2, 2005 SSO Report to the Regional Board, EVMWD reported the estimated cost for implementing the Lakeshore Trunk Sewer Project would be $23 million. Although, EVMWD reported in their 2009 Comprehensive Annual Financial Report that the cost of the Lakeshore Trunk Sewer (North Reach) Project was now estimated at $30 million. Regional Board staff has determined that the increase in construction cost, of approximately $7 million, exceeds the estimated economic benefit for delaying the construction of the sewer pipeline project. Based on these factors, it appears that the Discharger did not have any significant economic benefits by delaying the sewer project. Therefore, the Regional Board is not including an economic benefit amount in the assessment of the civil liability.

34. After consideration of the factors in accordance with the CWC §13327 and §13385(e), and the Policy, the Division Chief proposes that civil liability be imposed on EVMWD in the amount of two hundred fifty-three thousand twenty-four dollars (**$143,663)** for discharging pollutants in violation of the California Water Code.

WAIVER OF HEARING

Dischargers may waive their right to a hearing. If Dischargers choose to do so, please sign the attached Waiver Form and return it, together with a check for $143,663 payable to the State Water Pollution Cleanup and Abatement Account, in the enclosed preprinted envelope. If Dischargers waive their right to a hearing and pay the assessed amount, the Regional Board may not hold a hearing regarding this Complaint.

If you have any questions, please contact Stephen D. Mayville at (951) 782-4992 or Kirk Larkin at (951) 320-2182.

_____ _____
Date Michael J. Adackapara
Division Chief
Regional Board Prosecution Team