

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:)
)
Elsinore Valley Municipal Water District) **Order No. R8-2012-0049**
31315 Chaney Street)
Lake Elsinore, CA 92530) **Settlement Agreement and Stipulation for**
) **Entry of Administrative Civil Liability Order:**
Attn: Ronald E. Young) **Order**

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Division Chief of the Santa Ana Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Staff ("Prosecution Staff") and the Elsinore Valley Municipal Water District (EVMWD or Discharger) (the Regional Water Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order settles administrative penalties identified in a negotiated Administrative Civil Liability Complaint, herein incorporated as Attachment A.

Section II: Recitals

1. 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. The Discharger is required to operate and maintain their sanitary sewer collection system in compliance with the requirements of the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Water Quality Order No. 2006-003-DWQ (hereinafter "SSO Order").
2. The Discharger is required to operate and maintain their sanitary sewer collection system to prevent sewer overflows and spills. Prohibition C.1 of the SSO Order prohibits the discharge of untreated or partially treated sanitary sewer overflows (SSOs) to waters of the United States. Similarly, the Federal Clean Water Act (33 U.S.C §1311) and California Water Code (Water Code) §13376 also prohibit the discharge of pollutants to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit. The Discharger violated Water Code §13260 by discharging untreated sewage to waters of the United States without filing a report of waste discharge. The Discharger also violated Water Code §13267 by failing to submit reports and by failing to provide timely notification as required by the SSO Order. On August 10, 2012, the Division Chief issued a draft Complaint that notified EVMWD of alleged violations of provisions of the Water Code by discharging pollutants to waters of the United States without an NPDES permit and failing to submit reports and notifications in accordance with the SSO Order. The August 10, 2012 draft Complaint recommended an administrative civil liability of \$253,024.

3. Based on additional information provided by the Discharger, Regional Water Board staff revised the August 10, 2012 draft Complaint and reissued a new draft Complaint on September 14, 2012. The September 14, 2012 draft Complaint recommended imposing an administrative civil liability of \$143,663, including: \$101,148 in discretionary civil liability for violation of Water Code §13376 by allegedly discharging a total of 121,369 gallons of untreated sewage to Canyon Lake, the San Jacinto River, Lake Elsinore, and/or Gunnerson Pond (a tributary to Temescal Creek) without an NPDES permit; \$9,515 for violations of Water Code §13267 for allegedly failing to submit reports and notifications to the California Emergency Management Agency (Cal EMA), the Regional Water Board and California Integrated Water Quality System (CIWQS) SSO Database; and staff costs of \$33,000. A final version of the September 14, 2012 Complaint is included as Attachment A.
4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board or its delegee for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the violations alleged in the draft Complaint is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning those except as provided in this Stipulated Order and that this Order is in the best interest of the public.
5. To resolve the violations alleged in the draft Complaint by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$143,663 in civil liability against the Discharger. The Discharger shall pay a total of \$88,663 to the State Water Resources Control Board. The remaining \$55,000 shall be suspended upon completion of the Supplemental Environmental Project ("SEP") as set forth in this Stipulated Order. This agreement meets the requirements of the State Water Resources Control Board Policy on Supplemental Environmental Projects ("SEP Policy").

Section III: Stipulations

The Parties stipulate to the following.

6. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling \$143,663 as set forth in Paragraph 5 of Section II herein. Within 30 days of the issuance this Order, the Discharger agrees to pay a total of \$88,663 to the State Water Resources Control Board. Further, the Parties agree that \$55,000 of the imposed administrative liability shall be suspended ("Suspended Liability") pending completion of the SEP, as set forth in Paragraphs 7 through 17 of Section III herein and Exhibit B attached hereto and incorporated by this reference.
7. **SEP Description:** The Parties agree that this resolution includes the performance of a SEP as provided for as follows:

The Orange County Coastkeeper (Implementing Party) will implement a project to evaluate treatment control measures at scrap metal facilities through the use of commercially available advanced stormwater treatment systems. The project will document pollutant removal efficiencies of the Storminator, Stormwater Rx, Stormwater Systems, and American Stormwater Filtration advanced treatment systems. The project will collect stormwater samples from six (6) representative scrap metal facilities located in the Santa Ana

Watershed. The samples will be collected by trained staff at the inlet and outlet of the advanced treatment systems during storm events over the 2012-2013 wet season. A minimum of eight (8) samples and one (1) quality control sample will be collected from each of the six (6) participating scrap metal facilities during selected representative storm events, for a project total of fifty-four (54) samples. The parameters to be monitored include oil and grease (HEM), total suspended solids (TSS), chemical oxygen demand (COD), total hardness, total metals (aluminum, copper, iron and zinc) and dissolved metals (copper, lead and zinc), pH and conductivity. Each sample will be composited from a minimum of 12 discreet 100-ml samples from a constant flow (as documented by a flow meter or bucket test) representing 75% or more of the hydrograph of the storm event, except for oil and grease, which will be sampled in a separate bottle. Conductivity and pH samples will be taken from a subset of the composite sample and measured in the field using portable meters. The Orange County Coastkeeper will develop a Quality Assurance Project Plan (QAPP) that will be implemented during the project. All water sampling personnel will be trained in sample collection methods and safety protocol. The data developed by the project will provide critical information on the cost and effectiveness of these systems. The project will provide regional as well as statewide benefits by identifying viable stormwater treatment systems for scrap metal facilities. Additional details of the SEP project are included in Exhibit B.

8. **SEP Completion Date:** The SEP shall be implemented in its entirety and a final report shall be submitted by **October 31, 2013**, per the schedules specified in Exhibit B.
9. **Agreement of Discharger to Fund the SEP:** The Discharger represents that: (1) it will fund the SEP in the amount as described in Paragraph 6 of this Stipulated Order; (2) it will remain liable for the Suspended Liability until the SEP is completed and accepted by the Regional Water Board or its delegee in accordance with the terms of this Stipulated Order; (3) the Regional Water Board has the right to require an audit of the funds expended by the Implementing Party to implement the SEP at the Implementing Party's expense; (4) it shall provide a check to the Regional Water Board made payable to Orange County Coastkeeper for \$55,000 within 30 days of execution of this Order; (5) if it fails to fund the SEP, the full Suspended Liability amount becomes immediately due and payable to the State Water Resources Control Board for deposit into the Water Pollution Cleanup and Abatement Account.
10. **Agreement of Orange County Coastkeeper to Accept SEP Funds and Implement the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulated Order, the Implementing Party represents that: (1) it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule set forth in Exhibit B; (2) it understands that its promise to implement the SEP in accordance with the schedule is a material condition of this settlement of liability between the Discharger and the Water Board; (3) it agrees that the Regional Water Board has the right to require the Implementing Party to implement the SEP in accordance with the terms of this Stipulated Order if it has received funds for that purpose from the Discharger; (4) it agrees to submit to the jurisdiction of the Regional Water Board to enforce the terms of this Stipulated Order and the implementation of the SEP; (5) it will provide certifications and written reports to the Regional Water Board consistent with the terms of this Stipulated Order that detail the implementation and completion of the SEP; (6) it will guarantee implementation of the SEP identified in Exhibit B; (7) the Regional Water Board has the right to require an audit of the

funds expended by the Implementing Party to implement the SEP at the Implementing Party's expense.

11. **SEP Oversight:** The Discharger shall reimburse the Regional Water Board for its costs in overseeing the implementation of the SEPs. The Discharger shall pay the Cleanup and Abatement Account the amount for these costs within thirty (30) days of receipt of a statement from the Regional Water Board indicating the amount of oversight costs it has incurred. The oversight costs will be billed at the rate of \$150 per hour. Further, the Discharger and the Implementing Party shall allow Regional Water Board staff to enter and/or inspect the SEP during normal business hours (i.e., 8 a.m. through 5 p.m.). At this time, Regional Water Board staff does not anticipate any significant costs for overseeing this SEP project.
12. **Final Report and Certification of Completion of SEP:** The Implementing Party shall provide a final report and a Certificate of Completion¹ as per the schedule provided in Exhibit B.
13. **Third Party Financial Audit of SEP:** At the written request of Regional Water Board staff, the Implementing Party, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies)' professional opinion that the Implementing Party has expended money in the amounts claimed by it. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to the Discharger/Implementing Party of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
14. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. This letter shall terminate any further SEP obligations of the Discharger and result in the permanent stay of the Suspended Liability.
15. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire Suspended Liability has been spent to complete the components of the SEP for which the Discharger is financially responsible, the Discharger shall pay the difference between the Suspended Liability and the amount the Discharger/Implementing Party can demonstrate was actually spent on the SEP. The Discharger shall pay this amount within 30 days of its receipt of notice of the Regional Water Board's determination that the Discharger/Implementing Party has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.
16. **Failure to Complete the SEP:** If the SEP is not fully implemented by the dates specified in Exhibit B, Regional Water Board staff shall issue a Notice of Violation. As a consequence, the Discharger shall be liable to pay the unexpended portion of the Suspended Liability or, the Discharger and/or the Implementing Party may be compelled to complete the SEP.

¹ Certificate of Completion shall be on Exhibit C, which is hereby incorporated into this Order.

17. **Publicity:** Should the Discharger, the Implementing Party, or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the project is being partially funded as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
18. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the draft Complaint may subject them to further enforcement, including additional administrative civil liability.
19. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
20. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the draft Complaint. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 6 and the Discharger's and/or Implementing Party's full satisfaction of the SEP obligations described herein.
21. **Public Notice:** Federal law mandates that any settlement will not become final until after a 30-day public notice and comment period expires. (40 CFR 123.27.) The draft Complaint, the SEP proposal and this Stipulated Order were publicly noticed at least for 30 days. All public comments received during that public notice period have been considered and responded to.
22. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
23. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
24. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.
25. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be

admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

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

26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and has waived its right to a hearing before the Regional Water Board prior to the adoption of the Order.
27. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
28. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
29. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter covered by this Order.
30. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
31. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

32. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.

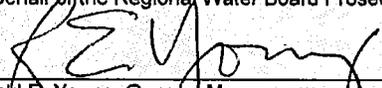
33. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED. ²



Michael J. Adackapara, Division Chief
On Behalf of the Regional Water Board Prosecution Staff

10-15-12
Date



Ronald E. Young, General Manager
For the Elsinore Valley Municipal Water District

10/15/12
Date



Ray Hierstra, Associate Director
For the Orange County Coastkeeper

10-15-12
Date

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² The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, IT IS HEREBY ORDERED THAT:

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Stipulated Order, the Executive Officer has considered all the factors prescribed in California Water Code section 13385(e) and 13327. The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.
3. The foregoing Stipulation is incorporated into this Order.

Pursuant to section 13323 of the California Water Code and section 11415.60 of the California Government Code, the Executive Officer hereby adopts this Order.

Kurt V. Berchtold
Executive Officer

Date