CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
East Bay Municipal Utility District	)	**Order No. R2-2012-0008**
	)	
Administrative Civil Liability Complaint No. R2-2011-0005	)	**Settlement Agreement and Stipulation for Entry of Order; Order**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Order (Stipulation) is entered into by and between the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) Prosecution staff (Prosecution Team), and East Bay Municipal Utility District (Discharger) (collectively 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 (the Order). This Stipulation and the Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2011-0005, dated February 18, 2011 (the Complaint) (Attachment A).

Section II: RECITALS

1. The Discharger is the owner and operator of a domestic drinking water supply system (the East Bay Water System) serving approximately 1.3 million people in a 331-square-mile area in Alameda and Contra Costa Counties extending from Crockett on the north, southward to San Lorenzo (encompassing the major cities of Oakland and Berkeley), eastward from San Francisco to Walnut Creek, and south through the San Ramon Valley.

2. Like all such systems, the East Bay Water System from time to time has planned and unplanned discharges of chlorinated potable water. Planned discharges are associated with (a) repair and replacement of pipes and related elements of the system and (b) adjusting reservoir levels. Unplanned discharges are associated with unanticipated breaks in pipes and related elements of the system.

3. Also like all such systems, the East Bay Water System is required to use anti-bacterial agents to assure the drinking water is safe for human consumption. These agents can harm aquatic life if and when the drinking water is discharged to surface waters. The Discharger has developed and implements a best management practices (BMPs) protocol in an effort to protect against such harm.

4. The Complaint recommends imposing an administrative civil liability totaling $76,600 for Discharger's alleged failure to implement adequate BMPs and the discharging of pollutants from a point source to surface water without an NPDES permit. Specifically, the Complaint alleges the following violations for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385: (1) planned discharges from August 3 through 5, 2010 into Sausal Creek; and (2) an unplanned discharge from January 13 through 15, 2010 into Reliez Valley Creek (collectively, "Alleged ACL Violations"). The proposed civil liability includes staff costs estimated at $12,000.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the Alleged ACL Violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the Alleged ACL Violations except as provided in this Stipulation and that this Stipulation is in the best interest of the public. The Parties enter into this settlement by way of compromise and out of recognition of the costs, risks and uncertainties associated with litigating their respective allegations.

6. To resolve by consent and without further administrative proceedings the Alleged ACL Violations, the Parties have agreed that Discharger shall pay a total of $72,000 to the State Water Resources Control Board Cleanup and Abatement Account.

Section III: STIPULATIONS

The Parties stipulate to the following:

7. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling $72,000 as set forth in Paragraph 6 of Section II herein. Within thirty (30) days of the Effective Date, defined below, the Discharger agrees to pay a total of $72,000 to the State Water Resources Control Board Cleanup and Abatement Account.

8. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation and the Order and/or compliance with the terms of this Stipulation and the Order is not a substitute for compliance with applicable laws, and that the Regional Water Board alleges that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.

9. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Keith Lichten, P.E.
Senior Engineer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
KLichten@waterboards.ca.gov
Phone: (510) 622-2380
Fax: (510) 688-2460

For the Discharger:

Veronica Fauntleroy
Assistant General Counsel
East Bay Municipal Utility District
375 11th Street
Oakland, CA 94607-4240
Phone: (510) 287-0176
Fax: (510) 287-2159
veronica@ebmud.com

10. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

11. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the Alleged ACL Violations and all claims, violations or causes of action that could have been asserted against the Discharger as of the date of this Stipulation based on the specific facts alleged in the Complaint or this Stipulation ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability.

12. **Public Notice:** The Discharger understands that this Stipulation and the Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board. In the event objections are raised during the public comment period for this Stipulation and the Order, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding this Stipulation and the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulation as necessary or advisable under the circumstances.

13. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation and review of this

Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

14. **No Waiver of Right to Enforce**: The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulation and the Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulation and the Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and the Order.

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

16. **Modification:** This Stipulation 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.

17. **If Order Does Not Take Effect:** In the event that this Stipulation does not take effect because the Order incorporating the terms of this Stipulation is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged 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 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.

18. **No Admission of Liability:** In settling this matter, the Discharger does not admit to any of the findings in the Complaint, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance , with the

understanding that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327.

19. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323 (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

20. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order as written 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.

21. **Covenant Not to Sue**: Except for claims based on the Regional Water Board's alleged failure to issue the Discharger an NPDES permit for discharges of drinking water from the East Bay Water System, 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 Covered Matter.

22. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Discharger (or an implementing party where applicable) its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.

23. **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.

24. **No Third Party Beneficiaries:** This Stipulation is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

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

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

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: _____
Thomas Mumley, Assistant Executive Officer

Date: December 13, 2011

Approved as to form: By: _____
Yvonne West, Senior Staff Counsel
State Water Resources Control Board,
Office of Enforcement

East Bay Municipal Utility District

By: _____
Michael J. Wallis, Director of Operations and Maintenance

Date: _____, 2011

Approved as to form: By: _____
Veronica Y. Fauntleroy, Esq.,
Assistant General Counsel

Order of the Regional Water Board

27. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 26 above, by this reference, as if set forth fully herein.

28. The Regional Water Board finds that the Recitals set forth herein in Section II are true.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: _____
Thomas Mumley, Assistant Executive Officer

Date: _____, 2011

Approved as to form: By: _____
Yvonne West, Senior Staff Counsel
State Water Resources Control Board,
Office of Enforcement

East Bay Municipal Utility District

By: _____
Michael J. Wallis, Director of Operations and Maintenance

Date: Dec 9, 2011

Approved as to form: By: _____
Veronica Y. Fauntleroy, Esq.,
Assistant General Counsel

Order of the Regional Water Board

27. The Regional Water Board incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 26 above, by this reference, as if set forth fully herein.

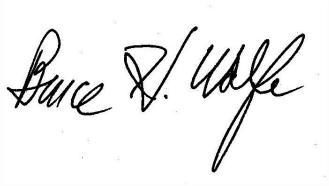
28. The Regional Water Board finds that the Recitals set forth herein in Section II are true.

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

30. In adopting this Stipulated Order, the Regional Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The consideration of these factors is based upon information and comments obtained by the Regional Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter and recovers the economic benefit derived from the acts that constitute the violations, in accordance with Water Code section 13385(e).

31. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations. The Regional Water Board also finds that this action is an "action under a State law comparable to this subsection" within the meaning of 33 USC §1319(g)(6)(A).

Pursuant to CWC sections 13323 and 13385 and Government Code section 11415.60, IT IS HEREBY ORDERED on behalf of the California San Francisco Bay Regional Water Quality Control Board.



Digitally signed by Bruce Wolfe
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Date: _____

Bruce H. Wolfe
Executive Officer