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May 28, 2014

Michael Adackapara  
Division Chief  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501

**Subject: Proposed Settlement Agreement in the Matter of Riverside County Flood Control and Water Conservation District for Administrative Civil Liability**

Dear Mr. Adackapara:

Eastern Municipal Water District is pleased to provide the enclosed copy of Order No. R-2014-0036, which represents a proposed settlement agreement between the Riverside County Flood Control and Water Conservation District, the Eastern Municipal Water District (EMWD) and the Santa Ana Regional Water Quality Control Board (Board).

A copy of the full settlement agreement is attached, including seven (7) signature pages executed by both Kevin Jeffries, Vice Chairman of the Riverside County Board of Supervisors, for Riverside County Flood Control and Water Conservation District and Paul Jones, General Manager of Eastern Municipal Water District.

If you have any questions, please feel free to call me at (951) 928-3777, extension 4323, or contact me by e-mail at [wrightb@emwd.org](mailto:wrightb@emwd.org).

Sincerely,

Bonnie Wright  
Grants & Loans Administrator

BW:slh

Encl.

C: Mr. Jason Uhley, Riverside County Flood Control and Water Conservation District

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

IN THE MATTER OF: )  
)  
Riverside County Flood Control and )  
Water Conservation District )  
1995 Market Street ) Settlement Agreement and Stipulations For  
Riverside, CA 92501 ) Adoption of Order No. R8-2014-0036  
Attn: Jason Uhley )

**A. INTRODUCTION:**

1. This Settlement Agreement and Stipulation for Adoption of proposed Order No. R8-2014-0036 ("Settlement Agreement") is presented to the Executive Officer of the Regional Water Quality Control Board, Santa Ana Region, for consideration in accordance with Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Riverside County Flood Control and Water Conservation District for violations of California Water Code (CWC) section 13376 as set forth in the proposed Administrative Civil Liability Complaint R8-2013-0050, dated March 21, 2014 (the "Complaint", herein incorporated as Attachment A).

**B. PARTIES TO THIS AGREEMENT**

1. Regional Water Quality Control Board's (Regional Board) Prosecution Team, represented by Michael J. Adackapara, Division Chief.
2. Riverside County Flood Control and Water Conservation District (the District or the Discharger), as represented by Marion Ashley, Chairman of the District's Board of Supervisors.
3. Eastern Municipal Water District (SEP<sup>1</sup> Proponent) represented by Paul D. Jones II, General Manager.

(The Regional Board's Prosecution Team, the District and the SEP Proponent are collectively referred to as the "Parties.")

**C. RECITALS**

1. Whereas, as of November 1, 2011 all dischargers of aquatic pesticides to waters of the U.S. were required to obtain coverage under the Statewide General

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<sup>1</sup> SEP=Supplemental Environmental Project

National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Aquatic Pesticides for Aquatic Weed Control in Waters of the United States (hereinafter 2004 General Permit).

2. Whereas, the Complaint alleges that between November 1, 2011 and October 29, 2012 the Discharger violated CWC section 13376 when it applied aquatic pesticides to waters of the U.S. without an NPDES Permit and without obtaining coverage under the 2004 General Permit.
3. Whereas, CWC section 13385 imposes administrative liability of up to \$10,000 per day for each day of violation.
4. Whereas, on September 10, 2013, the Prosecution Team issued a draft Administrative Civil Liability Complaint (ACLC), No. R8-2013-0050, pursuant to CWC section 13323 for the alleged violations of CWC section 13376.
5. Whereas, following settlement discussions on December 3, 2013, the Prosecution Team amended the Complaint (Attachment A) proposing to assess a penalty of three hundred fifty-one thousand, six hundred dollars (\$351,600) for violations of CWC section 13376.
6. Whereas, the Prosecution Team and the Discharger agree to settle the proposed administrative civil liability recommended in the Complaint without administrative proceedings or civil litigation, and hereby, along with the SEP Proponent, present this Settlement Agreement to the Regional Board's Executive Officer for adoption as an Order by settlement under Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the Complaint except as provided in this Settlement Agreement, and that this Settlement Agreement is in the best interest of the public.

#### **D. JURISDICTION**

1. The Parties agree that the Santa Ana Regional Water Quality Control Board has subject matter jurisdiction over the matters alleged in the Complaint and personal jurisdiction over the Parties to this Settlement Agreement.

#### **E. ADMINISTRATIVE CIVIL LIABILITY BEING SETTLED**

1. This Settlement Agreement settles Administrative Civil Liabilities assessed as identified in the Complaint, which alleges:
  - a. The Discharger failed to obtain coverage under the 2004 General Permit and applied aquatic pesticides to waters of the U.S. from November 1, 2011 to October 29, 2012 without an NPDES Permit, a violation of CWC

section 13376. There were 293 such violations which, under CWC section 13385(c)(1), are subject to a maximum administrative civil penalty of \$10,000 per day of violation. The details of the violations and the penalty calculations are discussed in the Complaint and are further set forth on Attachments 4, 5 and 6 thereto.

2. The Discharger shall be subject to administrative liability in the total amount of three hundred fifty-one thousand six hundred dollars (\$351,600.00).

#### **F. PROPOSED SETTLEMENT**

1. The proposed settlement includes a payment of one hundred seventy-five thousand eight hundred dollars (\$175,800) to the Cleanup and Abatement Account and the balance of \$175,800 to Eastern Municipal Water District for a Supplemental Environmental Project (SEP). The Discharger will participate in the Quail Valley Water Quality Improvement Project as its SEP project. The SEP Proponent has agreed that the SEP money will be exclusively used for the SEP project, as detailed in Attachment B. Payment of the \$351,600 administrative civil liability constitutes final and complete payment of all monies due for the violations alleged in the Complaint and this Settlement Agreement.

#### **G. LEGAL AUTHORITY**

1. CWC section 13385 subdivision (c) authorizes the Regional Board to impose an administrative civil liability of:
  - a. A maximum of ten thousand dollars (\$10,000) for each day in which the violation occurs.
  - b. Where there is a discharge, any portion of which is not susceptible to clean 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 discharged but not cleaned up exceeds 1,000 gallons.
2. The State Water Resources Control Board's (State Board) February 3, 2009 Policy on Supplemental Environmental Projects provides discretionary authority for the State and Regional Boards to allow a discharger to satisfy part of the monetary assessment imposed in an ACLC<sup>2</sup> by completing or funding one or more SEPs. SEPs are projects that enhance the beneficial uses of the waters of the State, that provide a benefit to the public at large and that, at the time they are included in the resolution of an ACLC action; are not otherwise required of the discharger. In the absence of other statutory authority in the Water Code regarding the use of SEPs, Government Code section 11415.60 has been

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<sup>2</sup> ACLC=Administrative Civil Liability Complaint

interpreted by the Office of Chief Counsel to allow the imposition of SEPs as part of the settlement of an ACLC.

#### H. VIOLATIONS BEING SETTLED

1. This Settlement Agreement only resolves the 293 violations listed in Attachment 4 of the Complaint that are subject to Administrative Civil Liability and the allegations set forth in the Complaint.

#### I. TERMS AND CONDITIONS

1. The Discharger hereby agrees to the imposition of an Administrative Civil Liability totaling three hundred fifty-one thousand six hundred dollars (\$351,600) as set forth in Paragraph E.2, above. Within thirty (30) days of adoption of Order No. R8-2014-0036 (Order), the Discharger shall remit, by check, one hundred seventy-five thousand eight hundred dollars (\$175,800) payable to the *State Water Resources Control Board* to the following address (“*Order No. R8-2014-0036*” shall be indicated on the check):

State Water Resources Control Board  
Division of Administrative Services, Accounting  
Attn: ACL Payment  
PO Box 1888  
Sacramento, CA 95812-1888

A copy of the check shall also be mailed to the following address:

Chuck Griffin  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

2. Further, the Parties agree that one hundred seventy-five thousand eight hundred dollars (\$175,800) of the Administrative Civil Liability shall be suspended upon completion of the Supplemental Environmental Project (“SEP Project”) as set forth below in this Settlement Agreement. This Settlement Agreement meets the requirements of the State Board Policy on Supplemental Environmental Projects (“SEP Policy”)
3. **Supplemental Environmental Project:** The parties agree that this resolution includes the following:

The Discharger shall pay one hundred seventy-five thousand eight hundred dollars (\$175,800) to the SEP project, which is the Quail Valley Water Quality Improvement Project. This is the suspended liability payment and is also due within thirty (30) days of adoption of the Order. A check in that amount, made payable to the Eastern Municipal Water District, shall be mailed to the Regional Board office at:

Chuck Griffin  
Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

- a. The Regional Board shall forward the check to the SEP Proponent with a fully executed copy of this Settlement Agreement and the Order. This suspended liability payment shall be deemed satisfied upon completion of the SEP project in accordance with the schedule proposed in the attached SEP proposal (Attachment B).
  - b. The SEP Proponent shall ensure that the SEP allocation of one hundred seventy-five thousand eight hundred dollars (\$175,800) is used as per the proposed budget in accordance with the schedule included in Attachment B of this Order and set forth below.
  - c. **Description of the SEP:** See Attachment B.
  - d. **Deliverable Products from SEP:** See Attachment B.
  - e. **Budget and Milestones:** See Attachment B.
  - f. The Discharger is ultimately responsible to ensure that the SEP is completed as per Attachment B.
4. **Representations and Agreements by the SEP Proponent:** As a material consideration for the Executive Officer's adoption of the Order, the SEP Proponent represents and agrees that it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule in Attachment B. The SEP Proponent understands that its promise to implement the SEP as described in Attachment B, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Board. The SEP Proponent agrees that the Regional Board has the right to require the SEP Proponent to implement the SEP in accordance with the terms of this Settlement Agreement if it has received funds for that purpose from the Discharger by way of the Regional Board. The SEP Proponent agrees to submit to the jurisdiction of the Regional Board to enforce the terms of this Order for purposes of implementation of the SEP.
5. **Publicity:** Wherever the Discharger or its subcontractors or agents or the SEP Proponent or its agents or subcontractors publicize one or more elements of the SEP project, they shall state in a **prominent manner** that the project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Discharger.
6. **Regional Board Staff Oversight Costs:** Regional Board staff does not anticipate any staff oversight costs for the proposed SEP.

7. **SEP Program Audit:** The SEP Proponent shall allow Regional Board staff to audit the SEP project during normal business hours.
8. **Certification and Reports:** The SEP Proponent represents to the Parties that the SEP Proponent will provide a certified, written report to Regional Board staff consistent with the terms of this Order detailing the implementation of the SEP. The SEP Proponent agrees that Regional Board staff has the right to require an audit of the funds provided to it by the Discharger and expended by it to implement the SEP. The SEP Proponent shall submit certified statements by responsible officials representing the SEP Proponent documenting the respective expenditures by the SEP Proponent to implement and to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. The SEP Proponent shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify the SEP Proponent's SEP expenditures. The final report shall include a certification by the Principal Investigator, under penalty of perjury, stating that the SEP has been completed in accordance with Attachment B and any agreed upon written changes between the authorized representatives of the SEP Proponent and the Regional Board and the applicable provisions of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the SEP Proponent.
9. **Third Party Audit:** If the Designated Regional Board Representative<sup>3</sup> obtains information that causes the representative to reasonably believe that the SEP Proponent has not expended money in the amounts claimed by the SEP Proponent, or has not adequately completed any of the work in the SEP proposal, as described in Attachment B, the Designated Regional Board Representative may require, and the SEP Proponent shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Regional Board providing such party(ies)'s professional opinion that the SEP Proponent has expended money in the amounts claimed by the SEP Proponent. In the event of such an audit, the SEP Proponent agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Water Board Representative within three (3) months of the completion of the SEP Proponent's SEP obligations.
10. **Failure to Expend All Suspended Liability on the Approved SEP Project:** In the event that the SEP Proponent is not able to demonstrate to the reasonable satisfaction of the Designated Regional Board Representative that it has spent the entire SEP amount for the completed SEP, the SEP Proponent shall pay the difference between the SEP funds and the actual amount expended to the State Board.
11. **Failure to Complete the SEP:** If the SEP is not fully implemented, the SEP Proponent shall be liable to pay the entire SEP funds or, some portion thereof

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<sup>3</sup> Designated Regional Board Representative for this SEP Project is: Chuck Griffin, chuck.griffin@waterboards.ca.gov

less the value of the completion of any requirements. In addition, the SEP Proponent shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the suspended liability amount will satisfy the SEP Proponent's obligations to implement the SEP.

12. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Order.
13. **Timely Payment:** Failure by the Discharger to make timely payment of the one hundred seventy-five thousand eight hundred dollars (\$175,800) set forth in Paragraph I.1, above, to the State Board within thirty (30) days of the adoption of the Order shall cancel the SEP provisions for suspended penalty and that suspended penalty amount will be immediately due and payable.
14. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Board against the Discharger.
15. **Release and Covenant not to Sue the Discharger:** Upon the full payment of both the one hundred seventy-five thousand eight hundred dollars (\$175,800) as required in Paragraph I.1 above, and the one hundred seventy-five thousand eight hundred dollars (\$175,800) for the suspended penalty for the SEP project, as required in Paragraph I.3 above, including completion of the SEP, the Regional Board shall and does release, discharge, and covenant not to sue the Discharger, including its officers, elected board members, agents, directors, employees, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or cause of action, including for civil penalties or administrative oversight costs, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
16. **Release and Covenant not to Sue Regional Board:** Upon the effective date of this Order, the Discharger and the SEP Proponent shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, board members, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
17. **Public Notice:** The Parties agree that the Settlement Agreement, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented

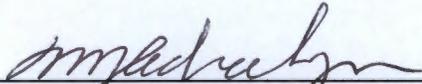
to the Regional Board, or its delegee, for adoption in the Order. In the event objections are raised during the public review and comment period, the Regional Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In that event, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement prior to its adoption in the Order.

18. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement. It may however, include a change and/or redistribution of the total settlement amount allocated between the State Board and the SEP project.
19. **Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Regional Board's Executive Officer, or is vacated in whole or in part by the State Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In the event of the Order being vacated by the State Board or a court, unless waived by the Discharger in writing, the Regional Board and the SEP Proponent shall each refund to the Discharger, within thirty (30) days of the effective date of such vacation, the sum of one hundred seventy-five thousand eight hundred dollars (\$175,800), provided that the Discharger had paid the amount as per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:
  - a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Regional Board in any such subsequent administrative or judicial proceeding or hearing; or
  - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

20. **Appeals:** Upon adoption of this Order, the Discharger and the SEP Proponent waive their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger or the SEP Proponent from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
21. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
22. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or the SEP Proponent or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the Regional Board, its members, or staff be held as parties to or guarantors of any contract entered into by Discharger or the SEP Proponent, or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.
23. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Agreement shall be construed to relieve any Party regarding matters covered in this Agreement. This Agreement relates only to the subjective matter hereof, including administrative civil liability for the 293 violations listed in the Complaint. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Settlement Agreement.
24. **Regulatory Changes:** Nothing in this Settlement Agreement shall excuse Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
25. **Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
26. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.

27. **Integration:** This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Settlement Agreement.
28. **Modification:** Neither this Settlement Agreement nor the proposed Order shall be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Board or its Executive Officer and/or, where applicable, by the SEP Proponent.
29. **Interpretation:** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
30. **Third Party Claims:** Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
31. **Extensions:** The Executive Officer may extend any of the due dates in this Settlement Agreement upon the joint request of the Parties. Such extensions must be in writing.
32. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Executive Officer.
32. **Disputes:** In the event of a dispute, the Discharger and/or the SEP Proponent, as appropriate, shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Board and Discharger and/or SEP Proponent shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Board and the Discharger and/or SEP Proponent are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.
33. **Counterpart Signatures:** This Settlement Agreement 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.
34. **Incorporated Attachments:** Attachment s A, B, 1, 2, 3, 4, 5, and 6 are incorporated by reference and are made fully a part of this Settlement Agreement as though set forth herein.

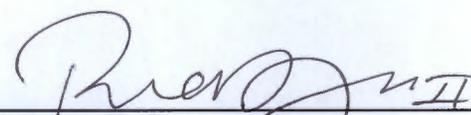
**IT IS SO STIPULATED<sup>4</sup>:**

  
\_\_\_\_\_  
Michael Adackapara, Division Chief  
For the Santa Ana Regional Water Quality Control Board, Prosecution Team

5-29-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Kevin Jeffries, Vice Chairman, Board of Supervisors  
For Riverside County Flood Control and Water Conservation District

5-20-14  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Paul D. Jones II, General Manager  
For Eastern Municipal Water District

5.27.14  
\_\_\_\_\_  
Date

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<sup>4</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

**PROPOSED ORDER**

**HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:**

1. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with CWC section 13385(c) and the Enforcement Policy.

2. The SEP Project set forth in the Settlement Agreement is consistent with the State Water Resources Control Board's Policy on Supplemental Environmental Projects because: (1) Its scope and parameters are defined at this time; and (2) There is a nexus between the Quail Valley Water Quality Improvement Project and the nature of the violations alleged in the ACLC, as well as a geographic nexus between the SEP Project and the location of the violations.

3. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

**PURSUANT TO SECTION 13385 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

(Attachment A to Order No. R8-2014-0036)

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

IN THE MATTER OF:	)	
	)	
Riverside County Flood Control and	)	Complaint No. R8-2013-0050
Water Conservation District	)	for
1995 Market Street	)	Administrative Civil Liability
Riverside, CA 92501	)	(Proposed)
Attn: Jason Uhley	)	

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT IS HEREBY GIVEN NOTICE THAT:**

1. The Riverside County Flood Control and Water Conservation District (hereinafter "District" or the "Discharger") is alleged to have violated California Water Code (hereinafter "CWC") §13376 for unauthorized discharges of wastes for which the District is subject to civil liability as specified in CWC§13385(a)(1). 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 violated CWC §13376 by failing to submit a report of waste discharge and notification requirements within the time frames required under Order No. 2004-0009-DWQ, "Statewide General National Pollutant Discharge Elimination System (NPDES) Permit for the Discharge of Aquatic Pesticides for Aquatic Weed Control in Waters of the United States (herein 2004 General Permit). This Complaint addresses violations from application of aquatic pesticides for weed control without first obtaining coverage under the 2004 General Permit.
2. CWC section 13323 authorizes the Executive Officer of the Regional Board to issue this Administrative Civil Liability Complaint ("Complaint").
3. The District was created by the California State Legislature in 1945 and is the regional flood manager for the western part of Riverside County and was created to provide for the control and conservation of flood and storm waters and for the protection of watercourses, watersheds, public highways, life and property in the District from damage or destruction from such waters; to prevent the waste of water or the diminution of the water supply in, or the exportation of water from the District, and to import water into the District and to obtain, retain, and reclaim

drainage, storm, flood and other waters, and to save and conserve all or any of such waters for beneficial use in the District<sup>1</sup>.

4. As part of the District's operations, the District employs various maintenance staff to deploy aquatic pesticides into waters of the United States. Some of these waters are identified in Attachment 1 of the Complaint.
5. Pursuant to the 2004 General Permit, which governs the discharge of aquatic pesticides into waters of the United States, a discharger must submit a completed Notice of Intent to comply with the terms of the permit, a vicinity map, and the appropriate fee to the Regional Board prior to any discharge.

### **General Permit / Background**

6. As part of the registration process of pesticides for use in California, U.S. EPA and the California Department of Pesticide Regulation (DPR) evaluate data submitted by registrants to ensure that a product used according to label instructions will cause no harm or adverse impact on non-target organisms that cannot be reduced or mitigated with protective measures or use restrictions. The Clean Water Act (CWA) section 301(a) broadly prohibits the discharge of any pollutant to waters of the United States, except in compliance with an NPDES permit. Residual pesticides<sup>2</sup> discharged into surface waters constitute pollutants within the meaning of the CWA even if the discharge is in compliance with the registration requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, coverage under an NPDES permit is required.
7. Pesticide formulations may include "active ingredients" and "inert ingredients,"<sup>3</sup> and adjuvants<sup>4</sup> or surfactants may be added to the ingredients in the application equipment used in delivery of the pesticide.
8. The discharge of aquatic pesticides and their residues to surface waters for algae and aquatic weed control throughout the State of California may pose a threat to existing and potential beneficial uses of waters of the United States if not properly controlled and regulated.
9. On March 12, 2001, the Ninth Circuit Court of Appeals held that discharges of pollutants from the use of aquatic pesticides to waters of the United States

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<sup>1</sup> Water Code App. Section 48-9 (WEST)

<sup>2</sup> Residual algaecide and aquatic herbicide are those portions of the pesticides that remain in the water after the application and its intended purpose (injury or elimination of targeted pests) have been completed.

<sup>3</sup> Inert ingredients are additional ingredients and are often trade secrets; therefore, they are not always disclosed by the manufacturer.

<sup>4</sup> Adjuvants are ingredients that are mixed with herbicides prior to an application event and are often trade secrets. These ingredients are chosen by the Discharger, based on site characteristics, and typically increase the effectiveness of pesticides on target organisms.

require coverage under an NPDES permit (Headwaters, Inc. v. Talent Irrigation District<sup>5</sup>).

10. Because of the serious public health, safety, and economic implications of delaying pesticide applications, in 2001, the State Water Resources Control Board (hereinafter "State Water Board") adopted Water Quality Order No. 2001-12-DWQ, Statewide General NPDES Permit for Discharges of Aquatic Pesticides to Waters of the United States (2001 General Permit) on an emergency basis to provide immediate NPDES permit coverage for broad categories of aquatic pesticide use in California.
11. The Discharger applied for coverage under the 2001 General Permit on March 2, 2002.
12. On January 31, 2004, the 2001 General Permit expired and permit coverage ended under the 2001 General Permit for the Discharger.
13. On May 20, 2004, the State Water Board adopted the 2004 General Permit.
14. After significant legal proceedings, including three years of stay of the deadline to obtain coverage, the 2004 General Permit and its requirements went into effect on November 1, 2011.
15. As of November 1, 2011 any discharge of aquatic pesticides into waters of the United States within California required that the discharger be enrolled under the 2004 General Permit.
16. The District discharged aquatic pesticides, and their accompanying pollutants, in over 290 instances in 89 different water bodies within the Santa Ana Region that qualify as waters of the United States from November 1, 2011 until October 29, 2012. During this period of time, the Discharger did not have coverage under the 2004 General Permit.
17. On August 1, 2013, the Discharger filed for coverage under the 2004 General Permit.

**Alleged Violations Subject to Enforcement:**

18. The discharge of pollutants from a point source without a Report of Waste Discharge is a Violation of the California Water Code CWC §13376.
19. The State Water Board provided notice on its website that as of November 1, 2011, all discharges of aquatic pesticides required enrollment under the 2004 General Permit.

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<sup>5</sup> Headwaters, Inc. v. Talent Irrigation District, (9<sup>th</sup> Cir. 2001) 243 F.3d 526.

20. The following is a summary of events that led to the discovery of the 293 violations within 89 water bodies that are waters of the United States. In particular, an October 11, 2012 incident led to the discovery of the 293 violations as a result of the incident investigation:

- A) On October 15, 2012, Regional Board staff received a complaint from Brett Mills (a biologist for the Santa Ana Watershed Association) that Sunnyslope Creek in the section of Louis Rubidoux Nature Center in the County of Riverside was observed to have un-natural blue color prior to its confluence with the Santa Ana River. This blue color was observed to last several hours on October 11, 2012.
- B) On November 6, 2012, Regional Board staff met with Sherry Chandler (Riverside Regional Park and Open Space Supervisor). Ms. Chandler stated that she and her staff, as well as a tour group of elementary students and parents, observed an un-natural blue color in Sunnyslope Creek. Ms. Chandler stated that the District-maintained Sunnyslope Channel that is just upstream of the Nature Center had blue water flowing through it and that the plants at the end of the District's right of way were dyed blue and the blue water was entering the reach of Sunnyslope Creek under the control of the Regional Park. Ms. Chandler noted that the surface of the water in the Creek had a "slick almost oily consistency". Ms. Chandler stated that she had observed this blue colored water when she observed the District applying herbicides adjacent to the Nature Center in past years. Ms. Chandler emphasized that during the October 2012 incident the blue color was more intense and the water was opaque (see Attachment 2). Ms. Chandler stated that she called Brett Mills to observe the Creek.
- C) On November 30, 2012, Regional Board staff met with Brett Mills. Mr. Mills stated that he arrived at Sunnyslope Creek on October 11, 2012 at approximately 11:00 a.m. and noted that it was raining. Mr. Mills stated that he observed extreme discoloration of the Creek and that he took pictures around 11:26 a.m. Mr. Mills left the site at 2:00 p.m. and observed that the Creek was still blue although not as vivid. (See Attachment 3).
- D) On December 6, 2012, Regional Board staff met with District maintenance staff and confirmed that District staff applied aquatic pesticide to Sunnyslope Channel and Rubidoux Channel on October 11, 2012. Both Rubidoux Channel and Sunnyslope Channel are tributary to Sunnyslope Creek and the Santa Ana River. District staff stated that they observed the marker for the pesticide (a blue dye) entering the flow in Sunnyslope Creek. District staff stated that colored runoff as a result of the application is normal. District staff provided documentation of the application of aquatic pesticide which consisted of 12 gallons of AquaMaster (the active ingredient), 60 ounces of

BullsEye marker (the blue dye) and 6 gallons Pro-Spreader surfactant mixed with 600 gallons of water as an application mixture.

- E) On November 8, 2012, District staff and Regional Board staff met. Regional Board staff reiterated that spraying aquatic pesticides into surface waters, designated as waters of the United States, requires coverage under the 2004 General Permit.
- F) On January 7, 2013, State Water Board Office of Enforcement requested documents from the District related to the application of aquatic pesticides within the Santa Ana Water Board's jurisdiction. On February 13, 2013 Regional Board staff received documents associated with the request. As a result of reviewing the documents provided in response to the document request, it was revealed that the District applied the aquatic herbicide 293 times to water bodies that are tributary to, or are waters of the United States. These incidents occurred from November 1, 2011 to October 29, 2012. Attachment 4 provides details of these incidents.
21. The discharge of pollutants associated with the application of aquatic pesticide to waters of the United States should be regulated under an NPDES permit. Section 13376 of the CWC requires that a report of waste discharge be filed in accordance with Section 13260. Coverage under the 2004 General Permit, effective upon the filing of the Notice of Intent (NOI), constitutes a report of waste discharge.
22. On January 7, 2013, a Notice of Violation (NOV) was issued to the District as the Regional Board had not received the District's application for coverage under the 2004 General Permit. The NOV requested that the District obtain coverage under the 2004 General Permit for application of pesticides to waters of the United States and to cease all pesticide applications until coverage was obtained, an approved pesticide application and monitoring plan was developed and appropriate training was provided to pesticide applicators. The District had already ceased all aquatic pesticide applications as of October 29, 2012.
23. The District applied aquatic pesticide 293 times without filing the NOI for coverage under the 2004 General Permit. Therefore, there were 293 violations of CWC § 13376 for the period beginning November 1, 2011 to October 29, 2012. These 293 violations are subject to administrative civil liability pursuant to CWC section 13385.

### Legal Authority

24. CWC §13243 states that the Regional Board may specify certain conditions or areas where the discharge of wastes, or certain types of wastes, 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 objectives 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 water bodies within the Region. Chapter 5 of the Basin Plan prohibits the discharge of pollutants to any surface water, natural or manmade, or to any drainage system intended to convey storm water runoff to surface waters.

25. The Federal Clean Water Act (33 U.S.C §1311) and CWC §13376 prohibit the discharge of pollutants from a point source to waters of the United States, unless authorized by an NPDES Permit.
26. 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."
27. The unauthorized discharges of aquatic pesticides from the Discharger's pesticide application to waters of the United States and/or tributaries to waters of the United States are violations of the 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 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.
28. CWC §13385(c) states, in part, that the Regional Board may impose civil liability administratively for noncompliance with CWC §13376 for each day of violation at a maximum of ten thousand dollars (\$10,000) per day 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 discharged, but not cleaned up, exceeds 1,000 gallons; or both, CWC §13385(c)(2).

**Factors Considered in Determining Administrative Civil Liability**

29. Pursuant to CWC section 13385, subdivision (e), and section 13327, in determining the amount of any civil liability, the Regional Board is required to take into account the nature, circumstances, extent, and gravity of the violations,

whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.

30. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision (e), and section 13327. The entire Enforcement Policy can be found at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

31. The discharges described above resulted in the unpermitted discharge of aquatic pesticide formulations to 89 water bodies throughout western Riverside County. All 89 water bodies are waters of the United States and the discharge of pollutants in the form of aquatic pesticides and the corresponding residue had the potential to negatively impact the designated beneficial uses of these waters.
32. After the October 11, 2012 Sunnyslope incident, Regional Board staff met with the Discharger to discuss the incident. At that time, Regional Board staff informed the Discharger that a permit was required as of November 1, 2011 to apply aquatic pesticides to any water of the United States. The permit specifically states, flood channels are included as waters of the United States.
33. After issuance of the January 7, 2013 NOV, it was discovered that the District discontinued aquatic pesticide applications on October 29, 2012.
34. Because the Discharger failed to enroll under the 2004 General Permit from November 1, 2011 to October 29, 2012, it has essentially avoided all costs associated with permit compliance including development of an Aquatic Pesticide Application Plan, monitoring and reporting and mitigation of discharges that impact beneficial uses.
35. While other entities in the Region had enrolled under the permit and were subject to its terms, the Discharger avoided all permit fees and certain monitoring costs associated with complying with the permit and made it impossible to determine the full extent of the damage potentially done.

36. The required facts, including Finding 29 through 35, above, have been considered for the violations alleged herein using the discretionary penalty assessment methodology in the Enforcement Policy, as explained in detail in Attachment 5 and 6 (Penalty Calculation), which are incorporated herein and made a part of this Complaint.

### **Maximum Administrative Civil Liability**

Pursuant to CWC section 13385, the total maximum administrative civil liability that may be imposed for the violations alleged in this complaint is \$2,930,000. This is based on assessment of the maximum per day violation amount of \$10,000 multiplied by 293 violations.

### **Minimum Administrative Civil Liability the Regional Board Must Assess**

The Enforcement Policy requires that the minimum liability for non-mandatory minimum penalties imposed must be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations.

The economic benefit of non-compliance for the Discharger's violations in this matter total \$35,943. Accounting for the 10% markup, the minimum liability that must be assessed for violations set forth above is \$39,537.

Regional Board staff reserves the right to seek all allowable staff costs associated with enforcement against the Discharger in this matter.

### **Proposed Administrative Civil Liability**

After consideration of the factors in accordance with the CWC §13385(e), and the Enforcement Policy, the Division Chief proposes that civil liability be imposed on the District in the amount of three hundred fifty-one thousand six hundred dollars (\$351,600). The specific factors considered in this penalty are detailed in Attachments 5 and 6.

Notwithstanding the issuance of this Complaint, the Regional Water Quality Control Board, Santa Ana Region, retains the authority to assess additional penalties or an amount greater than the proposed amount set forth above.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Issuance of this Complaint is an enforcement action and is, therefore, exempt from the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.), pursuant to title 13, California Code of Regulations, section 15321, subsection (a)(2).

**THE DISCHARGER IS HEREBY GIVEN NOTICE THAT:**

1. The Division Chief of the Regional Board proposes that the Discharger be assessed three hundred fifty-one thousand six hundred dollars (\$351,600) for violations of CWC section 13376 as set forth in Attachment 6.
2. CWC section 13323(b) provides that a hearing concerning this Complaint will be held before the Regional Board within ninety (90) days of the date of issuance of this Complaint. Such a hearing shall be held unless the Discharger chooses either of the following two options:
  - a. Waive the Right to a Hearing before the Regional Board and pays the proposed penalty of \$351,600 in full; or
  - b. Waives the right to a Hearing before the Regional Board within 90 days after service of this Complaint to engage the Regional Board Prosecution Team in settlement discussions. Waiver of the right to a Hearing before the Regional Board within 90 days does not preclude the Regional Board Prosecution Team from proceeding to a Hearing within 90 days.
3. If the Discharger chooses the option in paragraph 2.a, above, an authorized representative must sign the enclosed waiver and return it along with a check for the full amount of the proposed liability, made payable to the "State Water Pollution Cleanup and Abatement Account" within thirty (30) days of the date of this Complaint. Payment will be deemed settlement of this Complaint, but the settlement shall not become final until thirty (30) days from the date of Public Notice to allow the public and other interested persons to comment on this action. The waiver must be mailed to:

Santa Ana Water Board (Enforcement Section)  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348

The payment must be mailed to:

The State Water Resources Control Board  
Division of Administrative Services (Accounting)  
1001 "I" Street, 18<sup>th</sup> Floor  
Sacramento, CA 95814

4. If the Discharger chooses the option in paragraph 2.b, above, an authorized representative must sign the enclosed waiver and submit it within thirty (30) days of this Complaint. The Discharger must also submit a settlement proposal to the Regional Board within thirty (30) days of this Complaint. The waiver and settlement proposal must be mailed to the Regional Board address listed above.

5. 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 assessed amount to cover the costs of enforcement incurred subsequent to the issuance of this Complaint through Hearing.

If you have any questions, please contact Chuck Griffin at (951) 782-4996.

March 21, 2014  
Date

(PROPOSED)  
Michael J. Adackapara  
Division Chief  
Regional Board Prosecution Team

**Attachment B**  
CALIFORNIA REGIONAL WATER QUALITY CONTROL  
BOARD  
SANTA AN REGION  
(Region 8)

**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**  
**Application Form**

The following information is provided for consideration of funding under the SEP program and to request inclusion of this project to the list of SEP projects for the Region.

- I. **Name of the Entity Requesting Funding:** Eastern Municipal Water District  
**Address:** 2270 Trumble Road, Perris CA 92570  
**Contact Name:** Jayne Joy  
**Phone number:** 951-928-3777 **Fax:** 951-928-6177  
**E-mail address:** JoyJ@emwd.org
- II. **Name of Project:** Quail Valley Water Quality Improvement Project

**Project Summary: (include scope of work, methods and materials, water quality/environmental benefits from the project, work products... You may attach the details on a separate sheet)** The Quail Valley Water Quality Improvement Project will provide the sewer collection system necessary to connect the Quail Valley area currently using septic systems to EMWD's Perris Valley Regional Water Reclamation Facility and a small area of Quail Valley will connect to EMWD's treatment facility. Failing septic systems in Quail Valley have resulted in polluted water surfacing in the community and into Canyon Lake, a potable water supply reservoir for Elsinore Valley Municipal Water District. Installation of the sewer system will eliminate the need for septic systems. As homes are converted from septic systems, the polluted water that currently ponds in the community or runs off into Canyon Lake will be eliminated; thereby, improving the water quality of Canyon Lake and protecting the health and safety of the community. Total cost are estimated at \$60 M for the construction of the sewer system. EMWD is implementing a phased approach to construct the collection system as funding becomes available. See Attached Map – Sub-Area 9 Phase 1

**Location of Project (include watershed or waterbody, location maps, etc.):**  
See Attachment Map (590127 Quail Valley Overall)

**Project Schedule (include start date, expected end date, interim and final report dates):**  
See Attached Map of Sub Area 9 Phase 1 Schedule

**III. Amount of SEP Money Requested: (include a breakdown of project costs such as overhead/project management, design/consultation, construction/implementation, sample collection/analysis, report preparation; indicate other funding sources, if any)**

EMWD is requesting \$175,800 and the balance will be funded by grants and future contributions.

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**IV. Name of Project Proponent (if different from the applicant):** The project proponent is the same as the applicant

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**Contact information for Project Proponent: (name, phone number, e-mail address)**

Jayne Joy, Director, Environmental & Regulatory Compliance

2270 Trumble Road

Perris, CA 92570-8300

Phone: (951) 928-3777 Ext., 6241

Fax: (951) 928-6152

Email: JoyJ@emwd.org

**V. Nexus: (The connection between water quality improvements or other benefits from the SEP project and any impact from the discharge)**

The elimination of pollutants from entering Canyon Lake will directly benefit surface water quality within Canyon Lake as well as tributary downstream areas.



Waterbody Tally	12/21/2011	Date	
		Waterbody	
	1	Bly Channel	
	1	Jurupa Basin	
	2.5	Aquamaster (gal) Aquatic Herbicide	
	40	Bullseye Dye (oz)	
	2	Surfactant Agri-Dex-Reg (gal)	

	1/23/2012	Date
		Waterbody
	1	North Norco Channel
		Chemicals
	5	Aquamaster (gal) Aquatic Herbicide
	40	Bullseye Dye (oz)
	2.5	Surfactant (Pro-Spreader) (gal)
		Surflan (gal)

WaterBody Tally

1

1

Date	Waterbody	Crestmore Channel	Day Creek Channel	Field Stream	Hall Ave	Leach Canyon Channel	Chemicals	Aquamaster (gal) Aquatic Herbicide	Bullseye Dye (oz)	Landmark (lbs)	Roundup-Pro (gal)	Surfactant (Pro-Spreader) (gal)
2/7/2012			.1					10	40			5
2/15/2012			1					10	40			5
2/21/2012		1				1*		5	120	45	7.5	2.5
2/22/2012				1	1			2	20		1	

Waterbody Tally

5	1	2	1	1
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Date	Waterbody	3rd St Channel	Arizona Channel	Arlington Channel	Bly Channel	Bradley Rd Basin	Chandler St. Channel	Corona Drains Outlet	Corson Outlet	Harrison Dam	Jurupa Basin	Jurupa Channel	La Serra Channel	North Main St Channel	North Norco Channel	South Norco Channel	Perris Valley Lateral B	San Sevaime Channel	Santa Ana River	Sunnyslope Channel	Temscal Creek Channel	Wineville Basin	Chemicals	Aquamaster (gal) Aquatic Herbicide	Bullseye Dye (oz)	Landmark (lbs)	No-Foam Fighter (qt)
4/3/2012													2											30	120		
4/4/2012							1														2			20	140		
4/5/2012																				1				5	40		
4/9/2012																				1				15	120		1
4/10/2012			1																1*					5	120		
4/16/2012					1	3								2								2	1	35	280	22.5	
4/17/2012											1	1												10	40		
4/18/2012						2		1																16	60	22.5	
4/19/2012				1						1														14	75		
4/20/2012																											
4/24/2012																		2*						24	260		
4/25/2012		1														2								14.5	140		
4/30/2012				1												2	3							17.5	125		

Waterbody Tally

26	1	1	3	1	2	1	1	1	1	2	1	1	1	1	1	2	1	0	1	2	1	1
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ATTACHMENT 4  
ACLC-R8-2013-0050

Date	Quest (gal)	Roundup-Pro (gal)	Surfactant (Pro-Spreader) (gal)
4/3/2012			15
4/4/2012		7.5	10
4/5/2012			2.5
4/9/2012		5	7.5
4/10/2012		10	2.5
4/16/2012		15	17.5
4/17/2012			5
4/18/2012	1.25		8.5
4/19/2012			7.5
4/20/2012			
4/24/2012		2.5	13.5
4/25/2012		1.5	8
4/30/2012		6.25	9

Waterbody Tally

ATTACHMENT 4  
 ACLC-R8-2013-0050

Date	Waterbody	Anza Channel	Arlington Channel	Bradley Rd Basin	Crestmore Channel	Elsinore Outlet	Jurupa Channel	La Serra Channel	North Norco Channel	South Norco Channel	Perris Channel	Perris Lateral A	Perris Lateral B	Perris Valley Channel	Perris Valley Lateral B	Salt Creek	Temscal Creek Channel	Town Gate Basin	Chemicals	Aquamaster (gal) Aquatic Herbicide	Bullseye Dye (oz)	No-Foam Fighter (qt)	Quest (gal)	Roundup-Pro (gal)	Surfactant (Pro-Spreader) (gal)
5/1/2012						2				3		1								23	85		1.25		12
5/2/2012															1					5			1.25		2.5
5/3/2012			1			1			2	2										21	115	1			11.5
5/7/2012									1											4	40			2	2
5/14/2012		3						3			2				1					28	80			16	14
5/15/2012													1	2						27.5				3.125	15
5/17/2012														1						15			2.5		5
5/21/2012													1+2							37.5	320	2	5		15
5/22/2012												1	2							40			1.25		15
5/23/2012												1								17.5			2.5		5
5/24/2012				1																10			2.5		5
5/29/2012				1	2													2		15	60			5	7.5
5/30/2012		4			3		4							1		2	3	1		52	140			5	26
5/31/2012															1					10	320			2.5	5
Waterbody Tally	30	2	1	2	2	2	1	1	2	2	1	1	2	4	2	2	2	1							



ATTACHMENT 4  
 ACLC-R8-2013-0050

Date	Temscal Creek Channel	West Pershing Channel	Wineville Basin	Chemicals	Aquamaster (gal)	Aquatic Herbicide	Bullseye Dye (oz)	No-Foam Fighter (qt)	Nutrasol (lbs)	Quest (gal)	Oust (oz)	Roundup-Pro (gal)	Surfactant Agri-Dex-Reg (gal)	Surfactant (Pro-Spreader) (gal)
6/4/2012					10									5
6/5/2012					15	40				1.25				7.5
6/6/2012					5							1.25		2.5
6/7/2012					5					1.25				2.5
6/11/2012					5							2.5		3
6/12/2012					10							6.25		5
6/13/2012					30	80						8.75		15
6/14/2012			1		25	160						16.25		12.5
6/18/2012					15	40	1			1.25		15		2.5
6/19/2012	4				35	100						7.5		17.5
6/20/2012					20	40						1.25		10
6/21/2012					25	40						1.25		12.5
6/25/2012	1				35	200						16.25		22.5
6/26/2012	1				45	480				1.25				22.5
6/27/2012					15	120	1					1.25		17.5
6/28/2012		2			32	64				1.25				16

Waterbody Tally

3	1	1
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ATTACHMENT 4  
 ACLC-R8-2013-0050

Date	Wineville Basin	Chemicals	Aquamaster (gal)	Aquatic Herbicide	Bullseye Dye (oz)	Quest (gal)	Roundup-Pro (gal)	Surfactant Agri-Dex-Reg (gal)	Surfactant (Pro-Spreader) (gal)
7/2/2012			60	120		2.5	2.5		25
7/3/2012			64	440			2.5		27
7/8/2012			10				2.5		5
7/9/2012			42.5	460			3.75		17.5
7/10/2012			44	180	2.25				22.5
7/11/2012			10				2.5		5
7/12/2012			5				1.25		2.5
7/13/2012			5		1.25				2.5
7/16/2012			5				1.25		2.5
7/17/2012			26	100			1.25		13
7/18/2012			8	40				4	
7/19/2012			9	20	1.25	4.5			2
7/23/2012			15				2.5		5
7/24/2012			17.5	20			2.5		7.5
7/25/2012			34	390			2.25		34.5
7/26/2012			25	40			5		10
7/30/2012			15				6		7.5
7/31/2012	1		27	60	1.25				13.5

Waterbody Tally 1



ATTACHMENT 4  
 ACLC-R8-2013-0050

Date	Sunnymead Channel	Temscal Creek Channel	Woodcrest Dam	Chemicals	Aquamaster (gal)	Aquatic Herbicide	Bullseye Dye (oz)	No-Foam Fighter (qt)	Quest (gal)	Oust (oz)	Roundup-Pro (gal)	Surfactant (Pro-Spreader) (gal)
8/1/2012					16	80					4.5	8
8/2/2012					11	60						5.5
8/6/2012	2				17	60	2	1.25			3	8.5
8/7/2012			1		10	60				10	1.25	5
8/9/2012					19	60					5.5	9.5
8/12/2012					10	40						5
8/13/2012					18	380	2	1.25			27	6.5
8/14/2012					5			1.25				2.5
8/15/2012					18	45	1	1.25			6	10
8/16/2012					15	120						7.5
8/20/2012					15	100						7.5
8/21/2012					14	75						7
8/22/2012												
8/23/2012					21.5	100						12.5
8/27/2012					23	60					5	10
8/28/2012		1			24	140					8	12
8/29/2012												
8/30/2012					25	90	1				13.5	12.5

Waterbody Tally

1	1	1
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Date	Waterbody	
9/4/2012	Anza Channel	1
9/5/2012	Arizona Channel	1*
9/6/2012	Arlington Channel	1
9/10/2012	Brown Cyn Channel	1*
9/11/2012	Bautista Creek Channel	2
9/12/2012	Bly Channel	3
9/13/2012	Crestmore Channel	1
9/17/2012	Corona Drains Outlet	1
9/18/2012	El Cerrito Channel	1
9/19/2012	Hemet Channel	2
9/20/2012	Leroy Rd Outlet	2*
9/24/2012	Lincoln St Channel	2
9/25/2012	Main St Dam	2
9/26/2012	Mary St Dam	2
9/27/2012	Monroe Channel	1
	Montecito Ranch Levy	2
	North Main St Channel	1_?
	Nason Basin	2
	North Norco Channel	1_? 1*
	South Norco Channel	1
	Perris Lateral A	2
	Perris Lateral B	2
	Perris Valley Channel	2_3
	Perris Valley Channel	2
	Pyrite St Channel	1*
	Old San Sevaine	1*
	Santa Ana River	1*
	Sunnyslope Channel	1

Waterbody Tally 39 1 1 1 1 1 1 1 2 1 1 2 2 0 2 1 1 1 1 1 1 4 2 1 1 1 1 0 0 1 4

ATTACHMENT 4  
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Date	Temscal Creek Channel	Chemicals	Aquamaster (gal) Aquatic Herbicide	Bullseye Dye (oz)	No-Foam Fighter (qt)	Roundup-Pro (gal)	Surfactant (Pro-Spreader) (gal)
9/4/2012			8	60		4	4
9/5/2012	1		25	80			12.5
9/6/2012			4	40		4	2
9/10/2012			10	80	1	2	5
9/11/2012			12	80			6
9/12/2012			26	160		2	13
9/13/2012			20	100			12
9/17/2012			22	80		4	11
9/18/2012			15	420			6.5
9/19/2012			13	60		4	6.5
9/20/2012	2		46	200		16.5	21
9/24/2012	1		10.5	60	1	4	6.5
9/25/2012			13	140		5	7
9/26/2012			30	140			15
9/27/2012			25	390		7	16

Waterbody Tally



ATTACHMENT 4  
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Date	Nutrasol (lbs)	Roundup-Pro (gal)	Surfactant (Pro-Spreader) (gal)	Surflan (gal)
10/1/2012	4	10	15.5	
10/2/2012		5	15	
10/3/2012		12.5	15	
10/4/2012			8	
10/9/2012			21	
10/10/2012			17.75	
10/11/2012			11	
10/15/2012			11.25	
10/16/2012			7.5	
10/17/2012			2.5	
10/18/2012			2.25	
10/22/2012				5
10/24/2012				1.25
10/25/2012				3.75
10/29/2012				2.5

Waterbody Tally

ATTACHMENT 4  
ACLC-R8-2013-0050

Oct-12	40
Sep-12	39
Aug-12	38
Jul-12	47
Jun-12	52
May-12	30
Apr-12	26
Mar-12	6
Feb-12	5
Jan-12	1
Dec-11	2
Nov-11	7
	293

## ENFORCEMENT POLICY

The following is a discussion of how the penalty calculation methodology in the Enforcement Policy has been applied to each of the violations alleged in Administrative Civil Liability Complaint No. R8-2013-0050.

Pursuant to CWC 13385(e), the proposed liability takes into account such factors as: nature, circumstances, extent and gravity of the violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge and, with respect to the Discharger, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any economic benefit, and other factors as justice may require.

### Step 1: Potential for Harm for Discharge Violations

Step 1 looks at the nature, circumstances, extent and gravity of the violation. It is the sum of the Harm or Potential Harm to Beneficial Uses; Physical, Chemical or Thermal Characteristics of the Discharge; and Susceptibility to Cleanup or Abatement.

Harm or Potential Harm to Beneficial Uses: **Assigned score=2** (on a scale of 0 to 5)

The discharge was given a score of 2 (below moderate). A below moderate score was given as the discharge resulted in a below moderate threat to beneficial uses. The discharged material was observed to have some immediate impacts on the beneficial uses (fish kill) possibly due to the adjuvants and/or over-application, but the impacts attenuated in a short time period. Information contained in the USEPA's Reregistration Eligibility Decision for the active ingredient (Glyphosate) indicates that it is a relatively non-toxic substance.

Physical, Chemical, Biological or Thermal Characteristics of the Discharge: **Assigned score=2** (Scale: 0-4)

The use of aquatic pesticides is regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the U.S. EPA, the Department of Pesticide Regulations (DPR) and the County Agricultural Commissioners (CAC). The pesticides used are those approved by the U.S. EPA and DPR and are expected to have minimal impacts on non-target organisms. According to the Talent decision, aquatic pesticides that are applied to application areas within waters of the U.S. in accordance with FIFRA label requirements and use permit restrictions are not considered pollutants. However, over-application and misdirected application of pesticide products could adversely impact the beneficial uses in the receiving waters. A moderate score was given because the discharged material had some level of toxicity to non-target organisms.

Susceptibility to Cleanup or Abatement: **Assigned score=1** (Scale: 0 or 1)

A score of 1 was given because less than 50% of the discharge is susceptible to cleanup or abatement.

Summing the score given for the above factors, the Potential for Harm score is 5.

### **Step 2: Per Day Assessments for Discharge Violations**

Because the Discharger failed to monitor and report the 293 discharges that occurred from November 1, 2011 to October 31, 2012, the total amount of gallons of water affected by the discharge could not be ascertained with any accuracy. As such, no per gallon penalty was assessed and we have applied a per day assessment for the violations in this matter.

Table 2 in the Policy is then used to determine the Per Day Factor based on the Potential for Harm and Deviation from Applicable Requirements.

- a. Deviation from Applicable Requirements is determined to be “moderate.” The Enforcement Policy defines a “moderate” Deviation from Requirement as follows:

*Moderate-The intended effectiveness of the requirement has been partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement is only partially achieved).*

Using these two criteria and Table 2, we get a Per Day Factor of **0.10**.

### **Step 3: Initial Amount of Liability**

Maximum amount of liability based on 293 violations = \$2,930,000 (293 violationsX\$10,000/violation).

Applying the Per Day Factor of 0.10, the liability = \$2,930,000X0.10= \$293,000

### **Step 4: Adjustment Factors—Violator’s Conduct Factors**

#### **A. Adjustment for Violator’s Culpability**

For the violator’s culpability factor, the Enforcement Policy provides a factor between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior.

In this case, the Discharger should have known about the need to get coverage under the 2004 General Permit. The Discharger did have coverage under the 2001 General Permit. After adoption of the 2004 General Permit, there were significant legal proceedings that impacted the applicability of the Permit. However, as of November 1, 2011, it was determined that coverage under the 2004 General Permit was required for aquatic pesticide applications. The Discharger failed to obtain coverage from November 1, 2011 to August 1, 2013 (pesticide applications were suspended from October 29, 2012). The Discharger's failure to obtain coverage resulted in 293 incidents of aquatic pesticide applications without permit coverage. Other public entities enrolled under the 2004 General Permit. In discussions with the Discharger, it was indicated that the Discharger did not get permit coverage as the various court rulings had created some confusion about the need for permit coverage.

Based on these circumstances, a culpability factor of **1.2** has been selected for failing to enroll in and comply with the 2004 General Permit and the discharge of pollutants into Waters of the United States.

#### B. Adjustment for Cleanup and Cooperation

The Policy provides a range between 0.75 and 1.5 for this factor. The Policy explains that a lower multiplier is appropriate for situations where there is a high degree of cleanup and/or cooperation and a higher multiplier is appropriate for situations where cleanup and/or cooperation is minimal or absent. Once the discharge reached the receiving waters, it was not practical to clean up the discharge and no attempt was made to clean it up. In this case, a Cleanup and Cooperation multiplier of **1.00** is applied to the violation based on the Discharger's cooperation in the investigation of the October 2012 incident and the various incidents prior to and subsequent to that incident. The score is higher than the minimum as the Discharger made no attempt to verify that the application of aquatic pesticides did not impact the beneficial uses in the receiving waters. There were observable adverse impacts, such as fish kills (fish kills were observed during the October 2012 incident).

#### C. Adjustment for History of Violations

The Enforcement Policy recommends that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used for this factor. In this case, a multiplier of **1.0** has been selected, as this was the Discharger's first offense for aquatic pesticide application.

### **Step 5: Determination of Total Base Liability Amount**

Total Base Liability Amount is determined by multiplying the initial liability amounts for each violation calculated from Step 3 by the adjustment factors discussed in Step 4:

$$(\text{Initial Base Liability}) \times (\text{Culpability}) \times (\text{Cleanup/Cooperation}) \times (\text{History}) = \text{Total Base Liability}$$

$$(\$293,000) \times (1.2) \times (1.0) \times (1.0) = \$351,600$$

#### **Step 6: Ability to Pay and Ability to Continue in Business**

The Enforcement Policy provides that if a regional water board has sufficient financial information to assess the violator's ability to pay the Total Base Liability, or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted.

The Prosecution Team contends that the Discharger has the ability to pay based on the Discharger's revenue and budget. In addition, the Prosecution Team has received no evidence that the Discharger does not have the ability to pay.

Based on the above, the Prosecution Team does not believe the proposed penalty will result in widespread hardship to the service the Discharger provides or undue hardship to the Discharger. Therefore, the Prosecution Team has concluded that the Total Base Liability Amount should not be adjusted.

#### **Step 7: Other Factors as Justice May Require**

Generally staff costs for the investigation and development of the enforcement action are considered as one of the other factors. At this time, the Prosecution Team is not proposing to recover staff costs.

#### **Step 8: Economic Benefit**

This is based on the value of the delayed costs and avoided costs. It includes the permit fees from November 1, 2011 to October 29, 2012, the cost of developing and implementing an Aquatic Pesticide Application Plan (APAP), and the cost of monitoring and reporting.

The one year permit fee from November 1, 2011 to November 1, 2012 = \$1,942. (The District suspended aquatic pesticide applications from October 29, 2012 till they got coverage under the 2004 General Permit on August 1, 2013).

The onetime cost of preparation of an APAP = \$2,500 (approximate)  
The onetime cost of preparation of Vicinity Map = \$250

(for a total of \$2,750).

Annual recurring costs for monitoring and reporting (receiving water monitoring for at least 10% of the sites, for physical constituents [temperature, turbidity and electrical conductivity] , chemical constituents [active ingredient, pH, dissolved oxygen and hardness] and visual observations for all applications. Most of these monitoring can be done in the field using field instruments. For the 98 application sites, 10% is 10 sites =  $10 \times \$592/\text{site} = \$5,920$ . Legal support costs are estimated to be \$1,000. Monitoring field staff costs are estimated to be \$15,000. Records maintenance costs are estimated at \$2,000. Quality control and visual inspection costs are estimated at \$10,000 for a total of \$35,943.

Present value of the differed costs (using U.S. EPA's BEN model)=\$35,943

**Step 9: Maximum, Minimum and Proposed Liability**

The maximum liability =  $293 \times \$10,000 = \$2,930,000$ .

The minimum liability= 10% higher than the economic benefit or savings  
=  $\$35,943 \times 1.1 = \$39,537$ .

The Enforcement Policy stipulates that the proposed liability should be at least 10% higher than the economic savings.

Proposed assessment=\$351,600

The proposed liability is approximately 9 times the minimum liability.

<b>ATTACHMENT 6</b>				
ACLC No. R8-2013-0050 Penalty Calculations				
<b>Discharger Name/ID:</b>	Riverside County Flood and Conservation District/Aquatic Pesticide Permit 2004-0009 DWQ			
<b>Discharge Violations</b>	<b>Step 1</b>	Potential Harm Factor	5	
	<b>Step 2</b>	Per Gallon Factor		
		Gallons		
		Statutory / Adjusted Max per Gallon (\$)		
		<b>Total</b>		
		Per Day Factor		0.1
	Days	293		
	Statutory Max per Day	\$10,000		
	<b>Total</b>	<b>\$293,000</b>		
<b>Non-Discharge Violations</b>	<b>Step 3</b>	Per Day Factor	N/A	
		Days		
		Statutory Max per Day		
		<b>Total</b>		
<b>Initial Amount of the ACL</b>			<b>\$293,000</b>	
<b>Add'l Factors</b>	<b>Step 4</b>	Culpability	1.2	\$351,600
		Cleanup and Cooperation	1.0	\$351,600
		History of Violations	1	\$351,600
	<b>Step 5</b>	<b>Total Base Liability Amount</b>		<b>\$351,600</b>
	<b>Step 6</b>	Ability to Pay & to Continue in Business	1	\$351,600
	<b>Step 7</b>	Other Factors as Justice May Require	1	\$351,600
		Staff Costs	\$0	
	<b>Step 8</b>	Economic Benefit	\$35,943	
	<b>Step 9</b>	Minimum Liability Amount (Economic Benefit + 10%)	\$39,537	
		Maximum Liability Amount	\$2,930,000	
	<b>Step 10</b>	<b>Final Liability Amount</b>		<b>\$351,600</b>