



EDMUND G. BROWN JR.
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MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Central Valley Regional Water Quality Control Board

6 September 2012

**CERTIFIED MAIL
7011 2970 0003 2756 8718**

David Ansolabehere
Cawelo Water District
17207 Industrial Road
Bakersfield, CA 93308

CONDITIONAL EARLY SETTLEMENT OFFER R5-2012-0560 RELATING TO VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS ORDERS R5-2007-0170 AND R5-2007-0066, CAWELO WATER DISTRICT, CAWELO RESERVOIR B, KERN COUNTY (CIWQS RM 386972)

This letter notifies the Cawelo Water District (District) of alleged violations of the Water Code that occurred at the District’s Cawelo Reservoir B (the “Reservoir”) during the period of 1 March 2008 through 7 June 2012 (the “Review Period”). This letter gives the District the opportunity to address its outstanding liability via an expedited settlement process.

BACKGROUND

The Central Valley Regional Water Quality Control Board (“Central Valley Water Board” or “Board”) regulated the District’s discharge of pollutants from the Reservoir to Poso Creek, a water of the United States, through two sets of waste discharge requirements (WDRs) (NPDES Permit Nos. CA0081311 and CA0082295). The two WDRs also regulated discharges to the Reservoir from the Kern Front No. 2 Treatment Plant, owned and operated by Valley Water Management Company (formerly Valley Waste Disposal Company), and the Produced Water Reclamation Project, owned and operated by Chevron USA, Inc. (formerly Texaco E&P). Valley Water Management Company and Chevron USA, Inc. were named as co-dischargers in the WDRs, which are identified below:

NPDES No.	WDRs	Co-Dischargers
CA0081311	R5-2007-0066	The Cawelo Water District and Valley Water Management Company (formerly Valley Waste Management Company)
CA0082295	R5-2007-0170	The Cawelo Water District and Chevron USA, Inc. (formerly Texaco E&P)

Both of the WDRs identify “Discharge 003” as the discharge point from the Reservoir to Poso Creek (via the District’s Distribution Canal outfall). Historically, the same monitoring data pertaining to Discharge Point 003 has been included in self-monitoring reports submitted pursuant to the two permits. Unless otherwise noted, the effluent limitation violations cited below refer to Discharge Point 003.

NOTICE OF VIOLATION

WDRs Order R5-2007-0066, Effluent Limitation C.1, prescribes, in part, a daily maximum effluent limitation of 10 ug/L for Arsenic and a daily maximum effluent limitation of Non-Detect for Oil and Grease.

WDRs Order R5-2007-0066, Effluent Limitation C.2, states Discharge 003 shall not have a pH less than 6.5 nor greater than 8.3.

WDRs Order R5-2007-0170, Final Effluent Limitation B.1.a, prescribes, in part, a daily maximum effluent limitation for Total Recoverable Arsenic of 10 ug/L¹ and a daily maximum effluent limitation of Non-Detect for Oil and Grease.

WDRs Order R5-2007-0170, Effluent Limitation C.2, states Discharge 003 shall not have a pH less than 6.5 nor greater than 8.3.

Central Valley Water Board staff reviewed self-monitoring reports for WDRs Orders R5-2007-0066 and R5-2007-0170 covering the Review Period. The self-monitoring reports document five serious violations of the arsenic effluent limitation and six serious violations of the oil and grease effluent limitation. These violations are subject to mandatory minimum penalties (MMPs) pursuant to Water Code section 13385(h)(1). The self-monitoring reports also document two chronic violations of pH, which are subject to MMPs pursuant to Water Code section 13385(i).

Based on information above, the Central Valley Water Board alleges that the District has committed the violations identified in the enclosed Exhibit A., Record of Violations. Please review for accuracy and submit any comments or corrections to the Record of Violations by 5:00 PM on **21 September 2012**.

The total amount of the MMPs assessed for the violations identified in Exhibit A is **thirty-nine thousand dollars (\$39,000)**.

STATUTORY LIABILITY

Water Code section 13385(h) requires the Board to assess an MMP of \$3,000 for specified serious effluent limitation violations. The District is also potentially subject to discretionary administrative civil liabilities of up to ten thousand dollars (\$10,000) for each day in which the violation occurs, plus ten dollars (\$10) for each gallon discharged but not cleaned up in excess of 1,000 gallons. These MMP and discretionary administrative civil liabilities may be assessed by the Central Valley Water Board or the State Water Board (collectively "the Water Boards").² The Water Boards may assess this liability by

¹ The Final Effluent Limitation actually contains a typo, and reads 10 mg/L, which is incorrect. The table containing the typo includes a reference to "EPA" as the source of the limitation, and the USEPA Primary Maximum Contaminant Level for Arsenic is 10 ug/L. In addition, elsewhere in the WDRs (Fact Sheet section C.3.b), this point is made clear: "An Effluent Limitation for arsenic of 10 ug/L is included in this Order and is based on protection of the beneficial use of groundwater recharge and municipal and domestic water supply, the Basin Plan water quality objective for chemical constituents, and toxicity; and the USEPA Primary MCL."

² Please note that there are no statutes of limitation that apply to administrative proceedings to assess mandatory minimum penalties. (See *City of Oakland v. Public Employees' Retirement System*, (2002) 95 Cal.App.4th 29, 48; 3 Witkin, Cal. Procedure (4th ed. 1996) Actions, §405(2), p. 510.) The Board contends that the District has not been substantially prejudiced by the passage of time between the date(s) that District reported the violations identified on Exhibit A and the date of this letter. The District was aware of the violations at the time it reported them to the Board. Board staff's limited enforcement resources and competing enforcement priorities provide a rational explanation for the delay. For these reasons, any delay is not unreasonable.

issuing an administrative civil liability complaint, which initiates proceedings that may lead to a Board hearing on the violations, or the Water Boards may refer the alleged violations to the Attorney General for prosecution. If the Attorney General prosecutes the violations, a Superior Court may assess up to twenty-five thousand dollars (\$25,000) for each day in which the violations occur, and up to twenty-five dollars (\$25) per gallon discharged but not cleaned up in excess of 1,000 gallons.

OFFER FOR EXPEDITED SETTLEMENT

The District can avoid the issuance of an administrative civil liability complaint or a referral to the Attorney General to address the alleged violations (identified in the enclosed Exhibit A) if the District chooses to accept the proposed settlement described below.

To promote resolution of the outstanding violations, the Central Valley Water Board makes this Conditional Early Settlement Offer (the "Offer"). The District may accept the Offer, waive the District's right to a hearing, and pay the MMP of \$39,000 for the violations identified in Exhibit A. If the District does this, subject to the conditions below, the Central Valley Water Board will accept the payment in settlement of any enforcement action that would otherwise arise out of the violations identified in Exhibit A. In consideration of the District's acceptance of the Offer, and subject to the conditions below, the Central Valley Water Board will forego the issuance of an administrative civil liability complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in Exhibit A.

The Offer does not address liability for any violation that is not specifically identified in Exhibit A.

DISTRICT'S OPTIONS FOR RESPONSE TO OFFER

If you accept this Offer, please complete and return by **30 days** the enclosed "Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing" (the "Acceptance and Waiver").

CONDITIONS FOR THE CENTRAL VALLEY WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Central Valley Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NDPES permit violations. (40 C.F.R. § 123.27(d)(2)(iii).) Upon receipt of the District's Acceptance and Waiver, staff will publish a notice of the proposed resolution of the violations cited in Exhibit A on the Board's website.

If no comments are received within the public comment period and no new material facts become available to the Board, the Board's Assistant Executive Officer will execute the Acceptance and Waiver. If, however, significant comments are received in opposition to the settlement, the Board may issue an administrative civil liability complaint and schedule a hearing to address the violations. In that event, you will be notified that the Offer and your waiver are withdrawn. Should the Board conduct a hearing, the District will be free to make arguments and introduce evidence regarding the alleged violations, and the District's acceptance of this Offer will not in any way be binding or used as evidence against the District.

In the event the Acceptance and Waiver is executed by the Assistant Executive Officer (following the Board's receipt of the signed Acceptance and Waiver *and* a subsequent 30-day public comment period), the District shall remit payment of the assessed amount to the Board within ten (10) calendar days of being notified that Assistant Executive Officer has executed the Acceptance and Waiver.

The \$39,000 liability shall be paid by cashiers or certified check containing a reference to "Conditional Early Settlement Offer R5-2012-0560" and made payable to the "State Water Pollution Cleanup and Abatement Account." Failure to pay the penalty within the required time period may subject the District to further liability.

Should you have any questions about this matter, please contact Jill Walsh at (559) 445-5130.



for Pamela C. Creedon
Executive Officer

Enclosures: Exhibit A – Record of Violations
Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing

cc w/ encl: Pamela Creedon, Central Valley Water Board, Rancho Cordova
Ken Landau, Central Valley Water Board, Rancho Cordova
Kenneth Greenberg, USEPA, Region 9, San Francisco
Chris Carrigan, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Office of Chief Counsel, SWRCB, Sacramento
Department of Conservation, Department of Oil, Gas, and Geothermal Resources,
Bakersfield
Kern County Environmental Health Department, Bakersfield
Larry Bright, Valley Water Management Company, Bakersfield
Jim Waldron, Chevron USA Inc, Bakersfield

EXHIBIT A
CONDITIONAL EARLY SETTLEMENT OFFER R5-2012-0560

CAWELO WATER DISTRICT
CAWELO RESERVOIR B

RECORD OF VIOLATIONS (1 March 2008 – 07 June 2012) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Programs R5-2007-0170 and R5-2007-0066)

<u>Violation ID¹</u>	<u>Violation Date</u>	<u>Violation Type²</u>	<u>Violation Description³</u>	<u>MMP Type</u>
933662 / 933850	11/29/2008	CAT2	11M; Arsenic; 10; ug/L; D; 22	SERIOUS
824707 / 933851	11/29/2008	CAT1	11M; O&G; ND; mg/L; D; 3. 2	SERIOUS
824731 / 933852	12/01/2008	CAT2	12M; Arsenic; 10; ug/L; D; 22	SERIOUS
824737 / 933853	12/03/2008	OEV	12M; pH; 6.5-8.3; STD; I; 6.44	CHRONIC
824709 / 933854	12/16/2008	CAT1	12M; O&G; ND; mg/L; D; 6.8	SERIOUS
824738 / 933855	12/19/2008	OEV	12M; pH; 6.5-8.3; STD; I; 6.38	CHRONIC
824711 / 933856	01/05/2009	CAT1	1M; O&G; ND; mg/L; D; 5.2	SERIOUS
824732 / 821427	01/28/2009	CAT2	1M; Arsenic; 10; ug/L; D; 15	SERIOUS
824713 / 933857	01/28/2009	CAT1	1M; O&G; ND; mg/L; D; 6.9	SERIOUS
824733 / 821429	02/18/2009	CAT2	2M; Arsenic; 10; ug/L; D; 29	SERIOUS
824714 / 859011	02/26/2009	CAT1	2M; O&G; ND; mg/L; D; 7.1	SERIOUS
824734 / 859016	03/13/2009	CAT2	3M; Arsenic; 10; ug/L; D; 19	SERIOUS
824715 / 859019	03/13/2009	CAT1	3M; O&G; ND; mg/L; D; 4.5	SERIOUS

1 Violation ID in CIWQS

2 Table of Abbreviations below defines abbreviations used in this table.

3 Violation Descriptions are coded as follows: Reporting period (e.g., 2M = February); constituent or parameter (e.g., Arsenic); effluent limitation; units; limitation period; and reported result.

Abbreviation	Definition
CAT1	Group I pollutant effluent limitation as defined in Enforcement Policy
CAT2	Group II pollutant effluent limitation as defined in Enforcement Policy
CIWQS	California Integrated Water Quality System database
D	Daily
I	Instantaneous Maximum or Minimum
ND	Non-detect - The Daily Maximum limit for O&G at Discharge Location 003
MMP	Mandatory Minimum Penalty
O&G	Oil and Grease
OEV	Other effluent violation as defined in Enforcement Policy
STD	Standard pH units

MMP VIOLATION TYPE

**NUMBER OF VIOLATION
03/01/2008 THRU 06/07/2012**

Serious Group II Pollutant Effluent Limitation Violations:	6
Serious Group I Pollutant Effluent Limitation Violations:	5
Chronic Effluent Violations:	2
Total Violations Subject to MMPs:	13
Mandatory Minimum Penalty = 13 x \$3,000	\$39,000

**ACCEPTANCE OF CONDITIONAL EARLY SETTLEMENT OFFER
AND WAIVER OF RIGHT TO HEARING**

By signing below and returning this Acceptance of Conditional Early Settlement Offer and Waiver of Right to Hearing (the "Acceptance and Waiver") to the Central Valley Water Quality Control Board ("Central Valley Water Board"), the Cawelo Water District ("Discharger") hereby accepts the Conditional Early Settlement Offer and conditionally waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in Exhibit A, Record of Violations, transmitted with this Offer and incorporated herein by reference.

The Discharger agrees that the Record of Violations transmitted with this offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations through its Assistant Executive Officer. The Discharger agrees to pay the penalties specified by Water Code section 13385, in the sum of **\$39,000** (Expedited Payment Amount), which shall be deemed payment in full of any civil liability that otherwise might be assessed for the violations described in Exhibit A. The Discharger understands that this Acceptance and Waiver conditionally waives the Discharger's right to contest the allegations identified in Exhibit A and the amount of civil liability for such violations.

The Discharger understands that this Acceptance and Waiver does not address or resolve liability for any violation that is not specifically identified in Exhibit A.

Upon execution by the Discharger, the Acceptance and Waiver shall be returned to:

Regional Water Quality Control Board
Central Valley Region
Compliance and Enforcement Unit
1685 E Street
Fresno, CA 93706

The Discharger understands that federal regulations set forth in 40 Code of Federal Regulations section 123.27(d)(2)(iii) require the Central Valley Water Board to publish notice of and provide at least 30 days for public comment on any proposed resolution of an enforcement action involving NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Assistant Executive Officer, will be published as required by law for public comment. If no comments are received within the notice period which causes the Assistant Executive Officer of the Central Valley Water Board to reconsider the Expedited Payment Amount or other terms of the agreement, the Assistant Executive Officer will execute the Acceptance and Waiver.

The Discharger understands and acknowledges that if significant comments are received in opposition to the settlement, the Board may issue an administrative civil liability complaint and schedule a hearing to address the violations. In that event, the Discharger will be notified that the Offer and your waiver are withdrawn. Should the Board conduct a hearing, the District will be free to make arguments and introduce evidence regarding the alleged violations, and the District's acceptance of this Offer will

ACCEPTANCE AND WAIVER
CAWELO WATER DISTRICT
CAWELO RESERVOIR B
KERN COUNTY

be treated as a settlement communication and will not be used as evidence against the District.

The Discharger understands that once the Acceptance and Waiver is executed by the Assistant Executive Officer of the Central Valley Water Board, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. The Discharger shall pay the Expedited Payment Amount of \$39,000.

The \$39,000 liability shall be paid by cashiers or certified checks in the following manner: made payable to the "State Water Pollution Cleanup and Abatement Account." The payment will be submitted to the Central Valley Water Board, Fresno Office, no later than ten (10) calendar days after the date the Discharger receives written notice that the Assistant Executive Officer of the Central Valley Water Board has executed this Acceptance and Waiver.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this Acceptance and Waiver.

(Name of Discharger)

By: _____
(Signed Name)

(Date)

(Printed or typed name)

(Title)

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

KEN LANDAU
Assistant Executive Officer