

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter of:

**El Dorado Irrigation District
Drinking Water Distribution System,
El Dorado County**

ORDER R5-2017-0541

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the El Dorado Irrigation District (District) (collectively referred to as Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

RECITALS

2. The District is a public agency and provides municipal water, industrial water, irrigation water, wastewater treatment, recycled water, recreation, and hydroelectric services to the communities of Cameron Park, Camino, Diamond Springs, El Dorado, El Dorado Hills, Placerville, Pollock Pines, and Shingle Springs in El Dorado County.
3. On 12 June 2008, the Central Valley Water Board adopted the Low Threat Permit, Waste Discharge Requirements (WDRs) Order R5-2008-0081. The Low Threat Permit prescribes requirements for dewatering and other low threat discharges to surface waters. Under the Low Threat Permit, water suppliers that have or propose to have numerous discharge points shall prepare and implement a Pollution Prevention and Monitoring and Reporting Plan (PPMRP) in lieu of the specific Effluent Monitoring Requirements and Receiving Water Monitoring Requirements contained in the Low Threat

Permit's Monitoring and Reporting Program. The PPMRP must be submitted with the Notice of Intent (NOI) and is subject to approval by the Executive Officer. The PPMRP is to include, at a minimum, the elements identified in Attachment H of the Low Threat Permit.

4. On 19 November 2008, the District submitted its NOI and PPMRP for its drinking water distribution and was issued a Notice of Applicability (NOA) and assigned Order R5-2008-0081-027 on 23 February 2009.
5. On 31 May 2013, Order R5-2008-0081 was replaced by WDRs Order R5-2013-0074. The District was then assigned Order R5-2013-0074-027 upon adoption of the updated Low Threat Permit. The Low Threat Permit contains, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the District must comply when it makes discharges as a result of its drinking distribution water system.
6. On 18 December 2015, coverage under the Central Valley Water Board's Low Threat Permit was terminated and the District was enrolled under the State Water Resources Control Board's (State Water Board's) Statewide National Pollutant Discharge Elimination System (NPDES) Permit for Drinking Water System Discharges to Waters of the United States (Drinking Water Permit), State Water Board Order 2014-0194-DWQ. The Drinking Water Permit prescribes requirements for discharges from drinking water system discharges to waters of the U.S. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the District must comply.
7. On 26 October 2015, the District allegedly discharged 1,000,000 gallons of chlorinated drinking water into Squaw Hollow Creek in violation of Discharge Prohibitions IV.A and IV.B, as well as Standard Provision I.D of the Low Threat Permit. The discharge occurred from a break in a 24-inch diameter drinking water transmission main that ruptured in the Pleasant Valley area of El Dorado County.
8. On 30 October 2015, the District allegedly discharged 600,000 gallons of chlorinated drinking water into Hangtown Creek in Placerville in violation of Discharge Prohibitions IV.A and IV.B, as well as Standard Provision I.D of

the Low Threat Permit. The discharge occurred from a break in an eight-inch diameter drinking water main. The District failed to provide the results of sampling and sediment cleanup activities in the 5-day Incident Report as required by the District's PPMRP, pursuant to Provision VII.C.2.a of the Low Threat Permit.

9. On 4 November 2015, the District submitted its 5-day Incident Reports for the two spill events. The Incident Report submitted for the 26 October 2015 spill exceeded the 5-day deadline. Additionally, the Incident Report submitted for the 30 October 2015 spill failed to provide the results of sampling and sediment cleanup activities conducted in response to the spill. Accordingly, the District failed to submit adequate 5-day Incident Reports in accordance with the District's PPMRP, as required under Provision VII.C.2.a of the Low Threat Permit.
10. Staff from the Central Valley Water Board reviewed the two incident reports, in conjunction with the District's Fourth Quarter 2015 SMR, and identified several inconsistencies, including which receiving water was impacted, the dates and volumes of the spills, and conflicting descriptions of the spill events.
11. On 28 June 2016, staff issued an Order for Technical Reports pursuant to Water Code section 13267 (13267 Order) to clarify details of all spills occurring between 1 January 2015 and 30 June 2016. The 13267 Order also required, "[a] description of actions taken to mitigate the spill, including the Discharger's response and timeline to temporarily repair ruptured water lines and if appropriate, permanently repair the lines at a later date."
12. The District responded to the 13267 Order on 5 August 2016, and clarified the details of the spills, including dates, times, volumes, and the receiving waters impacted.
13. Pursuant to Water Code section 13385, the above-referenced alleged unauthorized discharge violations are each subject to administrative civil liability not to exceed \$10,000 per day of violation and \$10 per gallon for the waste discharged and not cleaned up in excess of 1,000 gallons. Additionally, the above-mentioned alleged monitoring and reporting

violations are each subject to administrative civil liability not to exceed \$1,000 per day of violation, pursuant to Water Code section 13268.

14. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of \$39,092 in discretionary penalties (Attachment A to this Stipulated Order) against the District. The Parties agree to suspend a portion of the liability conditioned on successful completion of a supplemental environmental project as described in Paragraph 17 and Attachment B of this Stipulated Order.
15. The Central Valley Water Board 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 herein, and that this Stipulated Order is in the best interest of the public.

STIPULATIONS

The Parties stipulate to the following:

16. **Administrative Civil Liability:** The El Dorado Irrigation District hereby agrees to the imposition of an administrative civil liability totaling THIRTY-NINE THOUSAND AND NINETY-TWO DOLLARS (\$39,092) to resolve the violations alleged in Paragraphs 7 through 10, above. Specifically:
 - 16.1. Within thirty (30) days of issuance of the Order, the District agrees to remit, by check, NINETEEN THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS (\$19,546) payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The District shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888,

Sacramento, CA 95812-1888. Copies of the check shall be sent to Heather Mapes, Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Howard Hold, Acting Supervisor, Compliance/Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

16.2. The Parties agree that NINETEEN THOUSAND FIVE HUNDRED AND FORTY-SIX DOLLARS (\$19,546) of the administrative civil liability shall be suspended (Suspended Liability) pending completion of a supplemental environmental project (SEP) as set forth herein and in Attachment B.

17. **Supplemental Environmental Project:** The Parties agree that this resolution includes a SEP. Detailed plans concerning how the project will be implemented, as well as an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as Attachment B.

17.1. **SEP Definitions:**

a. "Designated Central Valley Water Board Representative" – the representative from the Central Valley Water Board responsible for oversight of the SEP. That individual is:

Howard Hold
Acting Supervisor, Compliance/Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Telephone: (916) 464-4679
Email: Howard.Hold@waterboards.ca.gov

b. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.

17.2. **SEP Completion Dates:** The SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by the SEP

Completion Date. Upon a showing of good cause and upon written agreement of the Parties, the Central Valley Water Board, or its delegee, may extend the SEP Completion Date.

- 17.3. **Agreement to Fund, Report and Guarantee Implementation of SEPs:** The District represents that: (1) it will fund the SEP in the amount as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Central Valley Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP by remaining liable for the Suspended Liability until the SEP is completed and approved by the Central Valley Water Board, or its delegee, in accordance with the terms of this Stipulated Order. The District agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEP, in accordance with Paragraph 17.6., below.
- 17.4. **SEP Progress Reports:** As described in Attachment B, the District shall provide quarterly reports of progress on the SEP to the Designated Central Valley Water Board Representative commencing **30 September 2017** and continuing through submittal of the Certification of Completion described below in Paragraph 17.5, below. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.
- 17.5. **Final Report and Certification of Completion of SEP:** On or before the applicable SEP Completion Date, the District shall submit the Final Report as described in the SEP proposal (Attachment B) and a certified statement of completion of the SEP (Certification of Completion). The Certification of Completion shall be submitted, under penalty of perjury, to the designated Central Valley Water Board representative by a responsible official representing the District. The Certification of Completion, in conjunction with the Final Report, shall include following:
- a. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation

may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Central Valley Water Board to evaluate the completion of the SEP and the costs incurred by the District.

- b. Certification documenting the expenditures by the District during the implementation period for the SEP. The District's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the District may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Central Valley Water Board for oversight. The District shall provide any additional information requested by the Central Valley Water Board staff, which is reasonably necessary to verify SEP expenditures.
- c. Certification, under penalty of perjury, that the District followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the District shall provide the Central Valley Water Board with one of the following documents from the lead agency prior to commencing SEP construction:
 - i. Categorical or statutory exemptions relied upon;
 - ii. Negative Declaration if there are no potentially "significant" impacts;
 - iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or

iv. Environmental Impact Report.

- 17.6. **Third Party Financial Audit:** In addition to the Certification of Completion and at the written request of the Central Valley Water Board Executive Officer, the District, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Central Valley Water Board Executive Officer providing such party's professional opinion that the District has expended money in the amounts claimed. The audit report shall be provided to the Designated Central Valley Water Board Representative within three (3) months of notice from the Central Valley Water Board Executive Officer to the District of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.
- 17.7. **Central Valley Water Board Acceptance of Completed SEP:** Upon the District's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the Central Valley Water Board Executive Officer, the Designated Central Valley Water Board Representative shall send the District a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the District and result in the permanent stay of the Suspended Liability.
- 17.8. **Failure to Expend all Suspended Administrative Civil Liability Funds on the SEP:** In the event that the District is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board Executive Officer that the entire Suspended Liability has been spent to complete SEP, the District shall pay the difference between the Suspended Liability and the amount the District can demonstrate was actually spent to complete the SEP, as an administrative civil liability. The District shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board Executive Officer's determination that the District has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components. In the event that payment is due pursuant to this Paragraph, the District shall send the original signed check to the State Water Resources Control Board Accounting Office,

Attn: SEP Differential, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Heather Mapes, Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Howard Hold, Acting Supervisor, Compliance and Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

- 17.9. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date required by this Stipulated Order, the Central Valley Water Board Executive Officer shall issue a Notice of Violation. As a consequence, the District shall be liable to pay the entire Suspended Liability or, if shown by the District, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability, as described below, or as agreed in writing by the Parties. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the District shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the *State Water Board Cleanup and Abatement Account* within thirty (30) days after the service of the Central Valley Water Board's determination. In addition, the District shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to, reasonable legal costs and reasonable expert witness fees. Payment of the assessed amount will satisfy the District's obligations to implement the SEP. In the event that payment is due pursuant to this Paragraph, the District shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment/SEP Failure, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to Heather Mapes,

Staff Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Howard Hold, Acting Supervisor, Compliance and Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.

- 17.10. **Publicity:** Should the District or its agents or contractors publicize one or more elements of the SEP, it shall state in a prominent manner that the project is being partially funded as part of the settlement of an enforcement action by the Central Valley Water Board against the District.
18. **Compliance with Applicable Laws:** The District understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
19. **Party Contacts for Communications related to Stipulated Order:**
- For the Central Valley Water Board:**
Howard Hold, Acting Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
Howard.Hold@waterboards.ca.gov
(916) 464-4679
- For the District:**
Brian Poulsen, General Counsel
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
bpoulsen@eid.org
(530) 642-4021

20. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
21. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein or which could have been asserted based on the specific facts alleged herein as of the effective date of this Stipulated Order (Covered Matters). The provisions of this Paragraph are expressly conditioned on the District's payment of the administrative civil liability by the deadline specified in Paragraph 16.1 and the District's successful completion of the SEP described in Paragraphs 17.1 through 17.10.
22. **Public Notice:** The District understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The District agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
23. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
24. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or of the

Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

25. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated 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.
26. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
27. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
28. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary

hearing on a formal administrative civil liability complaint in this matter;
or

- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

- 29. **No Admission of Liability:** In settling this matter, the District does not admit to any of the allegations, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the District agrees that in the event of any future enforcement actions by the Central Valley Water Board, this Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.
- 30. **Waiver of Hearing:** The District has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of this Stipulated Order.
- 31. **Waiver of Right to Petition:** The District hereby waives its right to petition the Central Valley Water Board's adoption of this Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
- 32. **Covenant Not to Sue:** The District covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, board members, employees, representatives, agents, or attorneys arising out of or relating to Covered Matters.
- 33. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract

entered into by the District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

34. **The District is Not Liable:** Neither the District nor its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Central Valley Water Board members, or the Central Valley Water Board staff, attorneys, or representatives in carrying out activities pursuant to this Stipulated Order, nor shall the District, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Central Valley Water Board, its members or staff, in carrying out activities pursuant to this Stipulated Order.
35. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
36. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
37. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, approves and enters the Order.
38. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
39. **Incorporation of Attachments:** Attachments "A" and "B" are hereby incorporated by reference.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: Andrew Altevogt
Andrew Altevogt
Assistant Executive Officer

Date: 10/11/17

El Dorado Irrigation District

By: Jim Abercrombie
Jim Abercrombie
General Manager, El Dorado irrigation District

Date: 10-10-17

Reviewed & Approved as to Form on: 10/10/17
Elizabeth Seep
EID, Office of the General Counsel

Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in Water Code sections 13327 and 13385, subdivision (e). The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations described in the Pre-Issuance Letter or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change in the environment.

3. The terms of the foregoing Stipulated Order are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to Water Code sections 13323 and 13385 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region.

Original signed by _____
Pamela Creedon
Executive Officer

11/28/2017

Date

Attachment A: Enforcement Policy Administrative Civil Liability Methodology
Attachment B: Supplemental Environmental Project

Attachment A
TO STIPULATED ORDER R5-2017-0541
Specific Factors Considered for Administrative Civil Liability
El Dorado Irrigation District
Water Distribution System
El Dorado County

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

The El Dorado Irrigation District (Discharger or District) is required to make discharges to surface water as a result of operating a drinking water system. These discharges include occasional system failures, pressure releases, fire hydrant testing, pipeline flushing, dewatering, and other related routine discharges. On 23 October 2009, the Discharger was enrolled under the *Waste Discharge Requirements for Dewatering and Other Low Threat Discharges to Surface Water* (Low Threat Permit) R5-2008-0081, and was issued Order number R5-2008-0081-027. The Order number became Order R5-2013-0074-027 upon adoption of the updated Low Threat Permit. On 18 December 2015, coverage under WDRs Order R5-2013-0074-027 was terminated and the Discharger was enrolled under the Statewide Drinking Water System Discharge Permit, State Water Board Order 2014-0194-DWQ (Drinking Water Permit). The Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) only assesses liability for the Discharger's failure to comply with the Low Threat Permit. The Stipulated Order alleges two categories of violations: 1) discharges of chlorinated water, and 2) failure to properly document and report the spills.

| |
|---|
| Unauthorized, Chlorinated Discharge Violations (1,600,000 million gallons) |
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Background:

In October 2015, two discharges of drinking water occurred from the Discharger's distribution system. The Discharger submitted incident reports for the two spill events. Staff's review of the two incident reports, in conjunction with the Discharger's Fourth Quarter 2015 Self-Monitoring Report (SMR), identified several inconsistencies. On 28 June 2016, Board staff issued an Order for Technical Reports pursuant to Water Code section 13267 to clarify details of all spills occurring between 1 January 2015 and 30 June 2016.

The following two spills occurred while the Discharger was enrolled under the Low Threat permit. These spills are summarized in the Stipulated Order, and further described below.

1. On 26 October 2015, a 24-inch diameter drinking water transmission main ruptured in the Pleasant Valley area of El Dorado County. The spill occurred either from 0510 to 0700 (as stated in the Incident Report) or from 0500 to 0900 (as stated in the 13267 Technical Report). Approximately 1,000,000 gallons of chlorinated water spilled into Squaw Hollow Creek. Some sediment also entered the creek.
2. On 30 October 2015, an eight-inch diameter drinking water main ruptured and approximately 600,000 gallons of chlorinated water was discharged into Hangtown Creek, in Placerville. Some sediment was also discharged.

The following table depicts the spills that occurred in violation of the Low Threat Permit, as deciphered from the documents provided by the Discharger (e.g. SMRs, 13267 Technical Report, etc.).

Table A: Unauthorized, Chlorinated Discharges (Low Threat Permit)

| Spill # | Date | Unauthorized, Chlorinated Discharge (gallons) | Receiving Water Impacted | Violations of the MRP & PPMRP (Monitoring) | Violations of the MRP & PPMRP (Reporting) | Violations of the 13267 Order |
|---------|------------|---|--------------------------|--|--|----------------------------------|
| 1 | 10/26/2015 | 1,000,000 | Squaw Hollow Creek | Upstream: pH, chlorine Point of Entry (Mix): pH, chlorine Downstream: pH | Incomplete Domestic Water Discharge Report | Actions taken to repair pipeline |
| 2 | 10/30/2015 | 600,000 | Hangtown Creek | Upstream: pH, chlorine Point of Entry (Mix): pH, chlorine Downstream: pH | Incomplete Domestic Water Discharge Report | Actions taken to repair pipeline |

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations: (1) the potential for harm to beneficial uses; (2) the degree of toxicity of the discharge; and (3) whether the discharge is susceptible to cleanup or abatement.

Factor 1: Harm or Potential Harm to Beneficial Uses.

This factor evaluates direct or indirect harm or potential for harm from the violation. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses ranges from negligible (0) to major (5). The designated beneficial uses of Squaw Hollow and Hangtown Creeks that could be impacted by the unauthorized, drinking water discharges include municipal and domestic supply; agricultural irrigation; agricultural stock watering; industrial process water supply; industrial service supply; water contact recreation; other non-contact water recreation; warm freshwater aquatic habitat; cold freshwater aquatic habitat; warm fish migration habitat; cold fish migration habitat; warm spawning habitat; wildlife habitat; and navigation.

The most sensitive beneficial use for this discharge is toxicity to freshwater habitat, due to the potential exposure of elevated levels of chlorinated effluent to aquatic life. Toxicity is the degree to which a substance can damage a living or non-living organism. Toxicity can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or an organ. In this case, the discharges consisted of chlorinated drinking water. The Discharger stated that field staff analyzed samples from the creek downstream of each of the line breaks and found a total chlorine residual of <0.02 mg/L. However, there were no details as to when or how far downstream the sample was collected; therefore, Board staff is unable to determine if the data is representative of the conditions of the chlorinated discharge. The two spills occurred in the fall, and thus the line breaks were likely the major source of water into these creeks. Although the Discharger’s 13267 Technical Report states that post-event creek observations in the vicinity of the line breaks revealed no water quality impacts and minimal silt sedimentation in the creeks, the Discharger did not provide supporting documentation. Additionally, although the creeks were likely dry during the spills, there are impacts and potential impacts that Board staff considered when assigning a score under this factor. Board staff consulted with Department of Fish and Wildlife staff and disagrees that there was no actual or potential harm from the spills due to the following: 1) although monitoring of the

spills for chlorine residual were reported as <0.02 mg/L, Board staff believes there was potential for chlorine residual above 0.02 mg/L to exist in the spilled drinking water because drinking water systems typically maintain a chlorine residual of approximately 0.5 mg/L in their distribution system at all times; 2) when the water main released 1 million gallons to the dry Squaw Hollow Creek, it caused sediment to flow into the streambed, which can impair aquatic life; 3) wetting a creek during the dry period can cause early emergence of macroinvertebrates that are dormant in stream sediment; and 4) changes to stream fluviogeomorphology, erosion, and head cutting of the creek channel can cause harm to the environment and aquatic life. Therefore, it is appropriate to assign a “minor” potential harm to beneficial uses. “Minor” is defined as “*low threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor)*”. A score of **1** corresponds to a minor harm.

Factor 2: The Physical, Chemical, Biological or Thermal Characteristics of the Discharge.

While Factor 1 considers the harm to potential beneficial uses that can occur because of where the discharge occurred, Factor 2 considers the characteristics of the pollutant, prior to its discharge. A score between 0 and 4 is assigned. Drinking water contains low levels of chlorine, so the pollutant that was assessed under this factor was chlorine.

The Discharger is permitted by the Low Threat Permit to discharge disinfected and dechlorinated drinking water from its water system, but is required to ensure that the discharge not be toxic to aquatic life. Chlorine is a known toxicant to freshwater aquatic life; short-term acute exposure may result in biological harm or death, while chronic exposure over an extended period of time may lead to irreversible side effects. The Low Threat Permit contains effluent limitations for chlorine as a four-day average (0.011 mg/l) and as a 1-hour average (0.019 mg/l). These limits reflect the high toxicity of chlorine to aquatic organisms. Board staff does not know the specific chlorine level that the Discharger maintains in its drinking water distribution system, but according to the Centers for Disease Control and Prevention¹, the goal is to maintain at least 0.5 mg/l of free chlorine at the water tap. This value is at least 45 times higher than the chlorine effluent limitations, and reflects the potentially toxic nature of chlorinated water. Therefore, the chlorinated water is assigned a “moderate risk or threat to potential receptors...” for a factor of **2**.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if 50% or more of the discharge is susceptible to cleanup or abatement. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement. This factor is evaluated regardless of whether the discharge was actually cleaned up or abated by the discharger. In this case, the chlorinated drinking water entered multiple creeks with little or no flow during the unplanned discharge events, making cleanup and abatement unfeasible. Since neither spill was susceptible to cleanup and abatement, a factor of **1** is assigned.

Final Score – “Potential for Harm”

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 4** was calculated. The total score is then used in Step 2, below.

Step 2 – Assessment for Discharge Violations

This step addresses administrative civil liabilities for the unauthorized discharge based on both a per-gallon and a per-day basis.

1. Per Gallon Assessments for Discharge Violations

¹ <http://www.cdc.gov/safewater/chlorine-residual-testing.html>

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using on the Potential for Harm score and the Extent of Deviation from Requirement of the violation.

The Potential for Harm Score was determined in Step 1, and is 4. For purposes of settlement, staff have agreed to a “**moderate**” Extent of Deviation. The Discharger is permitted to discharge nontoxic, disinfected, and dechlorinated drinking water from its water distribution system. The Low Threat Permit prohibits 1) the discharge of wastewater to surface waters which does not meet eligibility criteria as described in Section II.C of the Low Threat Permit (Section IV.A.), and 2) the by-pass or overflow of wastes to surface waters (Section IV.B.). The Extent of Deviation is considered “moderate” because these requirements have been rendered ineffective when the distribution system failed on two occasions during October 2015 where chlorinated drinking water was released into Squaw Hollow Creek and Hangtown Creek. Table 1 of the Enforcement Policy (p. 14) is used to determine a “per gallon factor” based on the total score from Step 1 and the level of Deviation from Requirement. For this particular case, the factor is **0.011**. This value is multiplied by the volume of discharge and the per gallon civil liability, as described below.

This Complaint assesses penalties for two discharges that total 1,600,000 gallons. Water Code section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged—but not cleaned up—over 1,000 gallons per violation, which for this Complaint, is 1,598,000 gallons since there were two separate discharges. The maximum civil liability allowed under Water Code section 13385 on a per gallon basis is \$10/gallon. However, the Enforcement Policy allows for a reduced per gallon penalty for high volume discharges, as long as the reduction does not result in an inappropriately small penalty. In this case, the discharge can be considered a high volume discharge and the reduced per volume factor of \$1/gallon applies.

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| <p>The Per Gallon Assessment is calculated as follows: 0.011 factor from Table 1 x 1,598,000 gallons x \$1 per gallon = \$17,578</p> |
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2. Per Day Assessments for Discharge Volumes

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the same Potential for Harm and the Extent of Deviation from Requirement that were used in the per-gallon analysis. The “per day” factor (determined from Table 2 of the Enforcement Policy) is 0.011. The spills occurred over a period of two days, and the maximum penalty under the Water Code is \$10,000 per day of violation.

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| <p>Per Day Assessment is calculated as follows: 0.011 factor from Table 2 x 2 days x \$10,000 per day = \$220</p> |
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Initial Liability Amount for Discharge Violations: The value is determined by adding together the per gallon assessment and the per day assessment. For this case, the initial liability amount is **\$17,798**.

Adjustment Factors For Discharge Violations

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean-up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Culpability is assessed based on what a reasonable and prudent person would have done under similar circumstances. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. A neutral multiplier of 1 is assessed when a discharger meets the standard of a reasonably prudent person. The Discharger was given a multiplier value of 1.1. The Discharger is required to properly operate and maintain all facilities. Although the Discharger performed routine monitoring and inspections, staff believes the Discharger could have been more diligent in detecting issues in the infrastructure to prevent failures. Rapidly changing slope conditions in El Dorado County's terrain makes water conveyance systems more vulnerable to failure. Board staff contends that the District's knowledge of the environment and the water conveyance lines' susceptibility to more frequent breaks should have prompted the District to increase the frequency of maintenance and inspection activities, which may have prevented the spills. However, staff also recognizes that some failure are to be expected with drinking water systems. Therefore, the Discharger was given a multiplier value of 1.1.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. A total of 1,600,000 gallons of chlorinated drinking water was discharged to creeks in El Dorado County, which are waters of the United States. Because the chlorinated water was discharged to dry, ephemeral creeks and the line breaks were not discovered immediately, the possibility to clean up the unauthorized discharge was virtually impossible. Although Board staff agrees that the Discharger could not have done much to clean up the 1,000,000 gallon spill because the creek bed was dry and the water infiltrated, Board staff continues to assert that the Discharger did not provide sufficient "before & after" photo documentation showing the sediment displaced, and ultimately cleaned up, due to the spill. Without this or similar documentation, it is impossible for Board staff to determine what cleanup was actually conducted. Under the Cleanup and Cooperation factor, a multiplier of 1.0 represents what is expected of a discharger. In this case, although the Discharger asserts that it took action to remove sediment, the Discharger did not submit information sufficient to allow Board staff to assess the adequacy of the Discharger's cleanup efforts. Nevertheless, in light of the cleanup actions identified by the Discharger, staff has assigned a factor of 1.1 for purposes of settlement.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger does not have a history of violations from its drinking water conveyance system. Given that, a multiplier value of 1.0 is appropriate for this case.

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| Total Base Liability for Violation 1: $\$17,798 \times 1.1 \times 1.1 \times 1.0 = \$21,536$ |
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Monitoring and Reporting Violations

These violations relate to the failure to submit complete incident reports. The Low Threat Permit contains requirements to submit reports to allow Board staff to evaluate whether the Discharger has taken the necessary steps to abate the continued, unauthorized, chlorinated discharges to surface waters. The Discharger failed to submit two adequate reports in accordance with the Discharger's approved PPMRP, which is required by the Low Threat Permit, Provision VII.C.2.a. For each discharge

event, Board staff allege that the Discharger did not follow the PPMRP, including: 1) failure to perform required monitoring (time, pH, chlorine residual at the point of discharge, upstream, and downstream), 2) failure to notify all agencies as required, 3) domestic discharge reports (field sheets) were not completed at the time of the events, and 4) insufficient description of sedimentation was provided for cleanup activities.

The “per day” factor is calculated for each non-discharge violation considering (a) the potential for harm and (b) the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, a “**moderate**” factor is appropriate. Although these violations may not directly or immediately impact beneficial uses, the Discharger’s violations of these reporting requirements harm and undermine the regulatory program. Due to the Discharger’s poor reporting of the spills, Board staff was unable to determine compliance with the Low Threat General Order, and had to expend significant resources to determine the circumstances surrounding each spill.

Deviation from Requirement

For purposes of settlement, Board staff will apply a “**moderate**” deviation from the requirement. Although the Discharger’s reporting was extremely deficient for these spills when they occurred, the Discharger has subsequently provided additional information to address staff’s concerns. The Discharger originally provided field sheets with information about the spills as identified in the approved PPMRP. After engaging in settlement discussions, the Discharger provided printouts from the new electronic system (Hansen Database), which is used to track spills, work orders, etc. related to their drinking water distribution system. The Discharger has also established updated standard operating procedures for reporting spills in the Hansen Database under the Drinking Water Permit. Lastly, a full-time staff person has been brought on with the District to manage compliance with the Drinking Water Permit.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.35** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

The Enforcement Policy provides that, for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per-day economic benefit, if any, resulting from the violation. In order to adjust the per-day basis, the Central Valley Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. The Prosecution Team finds that it is possible to adjust the per-day basis for civil liability for the technical reports because no economic benefit can be measured on a daily basis for these reports, as they are considered a one-time cost.

Table B: Days of Violation

| Document | Report Due | Days Incomplete ¹ | Compressed Days ¹ |
|-----------------------------------|-----------------|------------------------------|------------------------------|
| 5-Day Incident Report for Spill 1 | 31 October 2015 | 396 | 19 |
| 5-Day Incident Report for Spill 2 | 4 November 2015 | 392 | 19 |
| Total | | 788 days | 38 days |

¹As of 30 November 2016

Initial Liability for Non-Discharge Violations
 (0.35 factor from Table 3) x (38 days) x (\$1,000/day) = \$13,300

Adjustment Factors for Non Discharge Violations

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean-up or cooperate with regulatory authority, and the violator’s compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Culpability is assessed based on what a reasonable and prudent person would have done under similar circumstances. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. A neutral multiplier of 1 is assessed when a discharger meets the standard of a reasonably prudent person. For each spill listed above, the Discharger should have contacted the Central Valley Water Board within 24-hours of becoming aware of a line break causing chlorinated water to discharge to surface water. Also required are 5-day reports that must be submitted for spills where discharges occur that are not treated in accordance with the Low Threat Permit (e.g. dechlorinated). Board staff received 5-day reports for the 26 and 30 October 2015 spill events on 4 November 2015. Additionally, the Fourth Quarter 2015 SMR contained conflicting information regarding the spills, prompting Board staff to issue a 13267 Order requiring the Discharger to submit a technical report clarifying the details of each spill (i.e. creek name, date/time of discharges, planned or emergency discharge, etc.). In light of the Discharger’s poor documentation and reporting, staff determined that a multiplier of **1.2** was appropriate.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. A multiplier of 1.0 represents what is expected of a discharger. As discussed above, multiple contradictory reports were submitted which described details of these unauthorized discharges. Even after the technical report required by the 13267 Order was made available to Board staff, there were still questions about the spills’ dates, times, volumes, receiving waters, notifications, etc. as the field inspection forms did not contain all of the information required by the Discharger’s PPMRP. Staff’s concerns were not fully addressed until the Discharger engaged in settlement discussions with staff. After engaging in settlement discussions, the Discharger

provided printouts from the new electronic system (Hansen Database), which is used to track spills, work orders, etc. related to their drinking water distribution system. In addition, the Discharger provided a 28 April 2017 Response Letter to the draft complaint which, according to Board staff, was thorough and provided all of the details from the spills thought to originally have been lacking, including the required information requested in the 13267 Order. The Discharger has also established updated standard operating procedures for reporting spills in the Hansen Database under the Drinking Water Permit. Lastly, a full-time staff person has been brought on with the District to manage compliance with the Drinking Water Permit.

Therefore, in light of the information provided during settlement negotiations, Board staff assigned a multiplier of 1.1.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1 to be used. The Discharger does not have a history of violations from its drinking water conveyance system. Given that, a multiplier value of 1.0 is appropriate for this case.

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| <u>Total Liability for Violation 2</u> \$13,300 x 1.2 x 1.1 x 1.0 = \$17,556 |
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Step 5 - Determination of Total Base Liability Amount

This value is the sum of the discharge and non-discharge violations, and is \$39,092.

Step 6 - Ability to Pay and Ability to Continue in Business

The ability to pay and to continue in business factor must be considered when assessing administrative civil liabilities. The El Dorado Irrigation District is a public agency with the ability to raise revenue. The District has the ability to pay this penalty, as reflected in its *Mid-Cycle Operating Budget and 2016-2020 Financial Plan* (<http://www.eid.org/home/showdocument?id=5270>).

Step 7 – Other Factors as Justice May Require

The costs of investigation and enforcement are “other factors as justice may require” and should be added to the liability amount. The Central Valley Water Board incurred over \$11,250 (75 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. The Prosecution Team, in its discretion, is not recommending an increase in the Total Base Liability amount in consideration of these costs incurred as the proposed liability amount serves as a sufficient general and specific deterrent against future violations.

Step 8 – Economic Benefit

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. During the investigation of this complaint, it was determined that multiple water distribution pipe failures occurred at the same location on the Pleasant Oak Main line. Central Valley Regional Water Board staff believes that had pipe deficiencies been identified and repaired sooner, at least one discharge event could have been avoided. Although the extent and knowledge of pipe deterioration in the vicinity of these failures is unknown, staff believes that at a minimum, an economic benefit was realized from the delayed, proper replacement of approximately 100 linear feet of 24-inch pipe. Using the BEN model (Version 5.6.0) developed by the United States Environmental Protection Agency, the conservative economic benefit associated with the delayed pipe replacement is estimated to be approximately \$52.

In addition to capital improvements and as documented in this complaint, the District repeatedly submitted inadequate and conflicting reports related to discharge notification and in response to the

13267 Order. Central Valley Regional Board staff has assessed the report deficiencies and determined that a minimum of eight hours of additional staff time would have been necessary to complete an acceptable 5-Day Incident Report, and a minimum of twelve hours would have been necessary to complete an acceptable 13267 Technical Report. Using the BEN model, the economic benefit associated with reporting deficiencies is approximately \$4,125.

Assumptions regarding cost estimates, cost indexing, and the noncompliance period are detailed in the attached table. In summary, the total economic benefit of noncompliance is approximately \$4,177.

Final adjusted liability

The final adjusted liability is \$39,092.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for discharge violation must be determined for comparison to the amounts being proposed. These values are calculated in the ACL Complaint, and the values are repeated here.

Maximum Liability Amount: \$17,182,000.

Minimum Liability Amount: the minimum liability is equal to the economic benefit plus 10%, which estimated to be \$4,595.

Step 10 – Final liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Without further investigation of the discharge, calculation of economic benefits, and additional staff time, the proposed Administrative Civil Liability is \$39,092.

**ATTACHMENT B TO STIPULATED ORDER R5-2017-0541
EL DORADO IRRIGATION DISTRICT
DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

Project Title: Sly Park Beetle Kill Reforestation Project (Project)

Geographic Area of Interest: Watershed surrounding Sly Park Reservoir (Jenkinson Lake), Pollock Pines, California

Name and Contact Information for Responsible Entity:

Brian Poulsen
General Counsel
El Dorado Irrigation District
2890 Mosquito Road
Placerville, CA 95667
Tel: 530-642-4144
E-mail: bpoulsen@eid.org

Estimated Project Cost: The El Dorado Irrigation District (District or EID) estimates total project costs of \$45,000. A maximum of \$19,546 will be allocated to this SEP. The primary activity under the SEP consists of reforestation of approximately 20 acres of coniferous forest impacted by the recent beetle infestation across California. The total direct cost for design of three reforestation design concepts for community input and technical advisory during planting is \$20,000. Materials costs for reforestation including plugs, seedlings, potentially some potted larger trees for specific locations, potting soil mixture, water crystals, fertilizer, mulching, protective tubes, etc. is estimated at \$5,000. Approximately \$5,000 in community outreach costs are anticipated to ensure broad outreach to a variety of community groups and active participate during the planting days, which will likely occur over several weekends. Approximately \$5,000 in interpretive signage design and production is anticipated. Following implementation of the tree planting, EID anticipates annual costs for brush control (mastication, chipping, and/or targeted herbicide application) to be approximately \$2,500 for a period of approximately 5 years until maintenance levels are consistent with those of surrounding forest areas not affected by the beetle kill.

Project Description: EID recently completed an emergency harvest of over 600 dead coniferous trees from the watershed surrounding Sly Park Reservoir that were impacted by years of drought followed by infestation of the bark beetle species. The reservoir serves as one of the primary water sources for over 100,000 people in western El Dorado County. Although there were many clumps of dead trees scattered throughout the park requiring removal for safety reasons, there are two larger blocks comprised of approximately 20 acres in total where reforestation should be completed to return a natural composition of hard and soft woods and protect the watershed. Those two areas include a large block impacted at the entrance of the park where over 400,000 pass annually as well as another block along the north side of the park near Scout Hill. The remaining pockets of beetle kill will provide desired canopy heterogeneity that will recover organically.

In order to maximize the community outreach during and following reforestation, EID plans to install two large interpretative signs describing the reforestation and community involvement so that future park visitors will be able to better understand the efforts to protect water quality and maintain the ecosystem functions. The current unfortunate situation of dead trees provides an excellent opportunity to educate the public regarding the importance of protecting water quality and investing in protecting the watershed.

Water Body, Beneficial Use, or Pollutant Addressed by the Project: The Project will help protect water quality in Jenkinson Lake, which is located on Hazel and Park Creeks – tributaries

ATTACHMENT B TO STIPULATED ORDER R5-2017-0541
EL DORADO IRRIGATION DISTRICT
DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)

to the Cosumnes River watershed and a primary water supply to over 100,000 people as well as an important source of agricultural water supplies. Revegetation of the area near the lake will help stabilize the soil and prevent sediment from entering the lake.

Compliance with CEQA: EID has reviewed the proposed project and anticipates that the revegetation will be categorically exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15304 of the CEQA Guidelines (*Minor Alterations to Land*) as "alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry or agricultural purposes". Once the final design concept is selected in coordination with community input, EID will verify an exemption is appropriate and file a Notice of Exemption from CEQA.

Project Schedule: The District will begin design immediately, and conduct public outreach, including community input meetings, in October of 2017. Planting will be in the spring of 2018 as soon as ground cover and soil moisture conditions permit.

Project Tasks, Budget, and Deliverables:

Task 1 - Preliminary work

- Review background information such as topographic maps, aerial imagery, and site context information provided by EID
- Initiate communication with CAL FIRE Unit Forester in regards to forest practice requirements applicable to the subject site

Task 2 - Site Assessment (1 day)

- Determine site prep needs by evaluating the following:
 - Logging slash remaining onsite post-salvage operation
 - Understory brush and regrowth following salvage harvest
 - Slope and aspect of treatment area
 - Identify watercourse protection zones and site access
- Map planting locations and specifications
 - High density planting in clearcut areas where densities will be thinned following initial establishment of plantings
 - Low density inter-planting in areas where some green trees remain standing
 - No planting areas where due to safety or other reasons conifers will not be replanted in favor of lower growing hardwoods or shrubs

Task 4 – Determine Plan Specifications

- Site Preparation Specifications
 - Licensed PCA to develop herbicide plan to control herbaceous and non target woody vegetation after planting (could include use of Velspar, pre-emergent, pre-planting application + 2 or 3 year post planting application)
 - Specifications for slash or brush treatment (could include pile and burn, deck, chip, and remove, windrow, felling dead standing trees)
 - Specify rodent control treatment as necessary
- Determine Planting and Stock Specifications to include:
 - Seed zone
 - Stock type (e.g. 1-0 bare root pine stock)
 - Species composition (to address various objectives it is anticipated stocking will include shrubs and other hardwoods in addition to conifers)

**ATTACHMENT B TO STIPULATED ORDER R5-2017-0541
EL DORADO IRRIGATION DISTRICT
DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

- Planting density (Trees per Acre). Spacing may be subject to requirements of funding source. Spacing also driven by landowner objective, e.g. wider spacing for wildlife enhancement, or narrower spacing for commercial timber production. Spacing (e.g. 15' x 15') equals the square root of 43,560 divided by Trees per Acre. 15' x 15' spacing equates to 194 trees per acre. It is our understanding that no restocking density requirements apply to this particular project.
- Identifying nursery(ies) with available stocks of conifers, hardwoods, and
- Specifying cold storage facilities in area of planting site, as necessary
- Identify timing for planting
- Prepare up to three design concepts with different vegetation concept layouts
 - Each layout will have varied species composition, density, and placement to address various reforestation objectives (shade, viewshed, overall aesthetics, screening, fire resilience and/or resistance, etc.)
 - Each layout will be available for printing (by EID) on large format for viewing and evaluation
- Specifications for follow-up treatments
 - Schedule for damage/mortality monitoring in treatment area
- *Note: The approach identified in this scope of work and cost estimate assumes that seed production has occurred and that planting stock is available through a nursery and that cone collection will not be a requirement of the design. Should cone collection be required the work program would require modification with associated change in estimated costs.*

Task 4 - On-site meeting with EID, CAL FIRE, and/or non-profit partners (if applicable) to discuss management objectives, opportunities, and constraints of 2-3 design concepts. (1 day)

- Attend one public workshop meeting organized by EID to respond to questions regarding alternative design concepts (1 day)

Task 5 - Final Reforestation Design Package

- Graphic to display planting areas on USGS 7.5' quadrangle or equivalent
- Graphic to display planting areas on large scale aerial image for field use. Labeled polygons will identify planting areas and treatments.
- Planting plan specifications including:
 - Site prep requirements
 - Planting requirements
 - Monitoring requirements
 - Follow-up care requirements
 - Best Management Practices

Task 6 – Technical Assistance

- Ongoing technical assistance to facilitate volunteer efforts for planting and plan implementation.

Quarterly Reporting: EID will provide quarterly reporting of progress with implementation of the SEP beginning **September 30, 2017, and continuing until December 31, 2018**. Quarterly reports are due on the 1st day of the second month after the quarter (ex: September – November, report due 1 January). Each report will include a summary of work completed on the Project and all funds expended on the Project. The report will include copies of contractor invoices and

**ATTACHMENT B TO STIPULATED ORDER R5-2017-0541
EL DORADO IRRIGATION DISTRICT
DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)**

documentation showing invoices paid. The accounting will clearly show whether the final cost of the SEP is less than, equal to, or more than the suspended liability amount. Above the signature line of each report, EID will state the following: *"I certify under penalty of perjury that the foregoing is true and correct."*

Final Report and Certification of Completion of SEP: The final project report (Final Report) is to include a summary of the work completed and all funds expended on the SEP. The Final Report will include documentation clearly showing whether the final cost of the SEP is less than, equal to, or more than the suspended liability amount. The Final Report will be submitted with a certified statement of completion of the SEP (Certification of Completion). The Certification of Completion, under penalty of perjury, will: 1) certify that the SEP has been completed in accordance with the terms of this Stipulated Order, 2) certify the documentation submitted as verification of the District's expenditures during the implementation period for the SEP, and 3) certify that the District followed all applicable environmental laws and regulations in the implementation of the SEP.