

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

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| In the matter of: |) | |
| |) | |
| Napa Berryessa Resort |) | Order No. R5-2012-0556 |
| Improvement District |) | |
| Wastewater Treatment |) | Settlement Agreement and Stipulation for |
| System |) | Order; Order |
| |) | |

Section I: Introduction

This Settlement Agreement and Stipulation for Order (“Stipulated Order”) is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint R5-2011-0590 dated 6 September 2011 (the “Complaint”). The parties to this proceeding are the Central Valley Regional Water Quality Control Board (“Central Valley Water Board”) Prosecution Team, and the Napa Berryessa Resort Improvement District (“District” or “NBRID”)(collectively the “Parties”).

Section II: Recitals

1. The District owns and operates a wastewater collection, treatment, and disposal system (“WWTF” or “facility”) that currently serves homes at the Berryessa Highlands subdivision. Prior to October 2009, the WWTF also accepted wastewater from the former Steele Park Resort (now known as Lupine Shores), which is located on land owned by the United States Bureau of Reclamation (Reclamation). It is expected that the WWTF will accept wastewater from Lupine Shores in the future.
2. Wastewater is conveyed to the WWTF by gravity sewers, lift stations, and force mains. The WWTF is an extended aeration activated sludge plant consisting of two aeration basins, two clarifiers and three effluent holding basins. All of the basins are lined with either concrete or synthetic liners. Secondary treated disinfected wastewater is pumped to a 50,000 gallon storage tank located on a hillside at the remote effluent disposal site. The tank is used to gravity feed a spray irrigation system, which consists of four adjacent areas totaling approximately 60 acres. Some of the tailwater from the sprayfields drains to a tailwater pond; a pump station recycles tailwater from the pond back up to the storage tank.
3. On 23 June 1995, the Central Valley Water Board issued Waste Discharge Requirements (WDRs) Order 95-173, which prescribed requirements for the discharge of domestic wastewater from the Discharger’s WWTF. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.

4. On 20 September 1996, the Central Valley Water Board issued Cease and Desist Order 96-232 (the 1996 CDO) in response to numerous wastewater spills to surface waters of Lake Berryessa. The 1996 CDO required the Discharger to make certain improvements to the wastewater treatment facility, the most important and relevant of which was to increase its storage and disposal capacity by 15 September 2000.
5. On 26 October 2006, the Board issued CDO R5-2006-0113 (the 2006 CDO). Due to the substantial and ongoing discharges of wastewater to Lake Berryessa and the failure to make the improvements required by the 1996 CDO, the 2006 CDO included a sewer connection restriction for the homes in the Berryessa Highlands subdivision. The 2006 CDO required the Discharger to complete several studies, submit reports and make the necessary improvements to reduce inflow/infiltration (I/I) and increase the Facility's storage and disposal capacity. The Discharger submitted the reports required by the 2006 CDO. However, the Discharger failed to make any of the physical improvements by the required deadlines, including the improvements needed to reduce inflow/infiltration and those needed to increase storage and disposal capacity.
6. Unresolved issues with the Bureau of Reclamation (Bureau) and its concessionaire for the Steele Park resort within the District's service area contributed to the Discharger's inability to complete the process of financing, designing and constructing a treatment facility upgrade to address these spill issues. Specifically, the Bureau has been working on reissuing contracts for its multiple Lake Berryessa concessionaires for several years, but the federal procurement and contracting process suffered several delays between 2007 and the present, resulting in uncertainty regarding the scope of the Discharger's facilities upgrade and the financing mechanism to pay for such upgrades. The Board staff has facilitated discussions between representatives of the Bureau and the Discharger in an effort to resolve these issues.
7. On 23 September 2010, the Board issued CDO R5-2010-0101 (the 2010 CDO) to, in part, address substantial and ongoing discharges of wastewater to Lake Berryessa, and for the failure to construct the Facility upgrades required by both the 1996 and the 2006 CDOs. The 2010 CDO requires the Discharger to complete several tasks, to submit technical reports, and to complete the necessary improvements to address the longstanding inflow/infiltration and capacity issues. In addition, the CDO expands the connection restriction to include both the Berryessa Highlands subdivision and the Lupine Shores resort. The Discharger has complied with the CDO milestones to date, submitting the required reports and making a number of the improvements, and has begun the process of adopting an assessment to fund the necessary improvements.
8. On 6 September 2011, the Executive Officer of the Central Valley Water Board issued the District an Administrative Civil Liability Complaint (Complaint) totaling

\$330,000 in liabilities for alleged violations of WDRs Order 95-173 and CDO R5-2010-0101. These alleged violations are specifically identified in the Complaint and in Attachment D to the Complaint.

9. The Parties have engaged in discussions concerning the Central Valley Water Board Prosecution Team's allegations and agree to settle the matter without administrative action or resorting to 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. The Central Valley Water Board Prosecution Team believes that this resolution is fair and reasonable, is in the public interest, and comports with the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy).
10. To resolve by consent and without further administrative proceedings, the Parties have agreed to the imposition of ONE HUNDRED NINETY THOUSAND DOLLARS (\$190,000.00) in administrative civil liabilities against the District for alleged violations of the Water Code, WDRs Order 95-173, and CDO R5-2010-0101, as set forth in the Complaint. The District shall pay NINETY FIVE THOUSAND DOLLARS (\$95,000.00) by check made payable to the *State Water Pollution Cleanup and Abatement Account*. That payment is due no later than 30 days following the Central Valley Water Board executing this Stipulated Order.

The remaining NINETY FIVE THOUSAND DOLLARS (\$95,000.00) in administrative civil liabilities ("ECA Amount") shall be spent towards the completion of an Enhanced Compliance Action ("ECA") for the Sewage Lift Station Upgrade Project. The ECA outlined in Attachment A to this Order shall be incorporated into the Stipulated Order and satisfies the provisions of the Enforcement Policy (http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf) and the State Water Resources Control Board Policy on Supplemental Environmental Projects (http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf).

11. In addition, the Parties stipulate to the issuance of Time Schedule Order (TSO) R5-2012-0900 by Central Valley Water Board, or its delegee, ordering compliance with the tasks and the requirements in the 2010 CDO pursuant to an accelerated time schedule. Notably, the TSO requires the new WWTP to be fully operational by 30 November 2013, nearly two full years earlier than required by the 2010 CDO. In consideration of information provided by the District in response to the Complaint, as well as other matters as justice may require, and as valuable consideration for completing construction of the WWTP pursuant to an accelerated time schedule, and because compliance with an accelerated time schedule will provide a substantial benefit to water quality by preventing millions of gallons of wastewater from being discharged to Lake Berryessa, the Parties agreed to reduce the proposed penalty of \$330,000 to \$190,000.

Section III: Stipulations

The Parties incorporate Paragraphs 1 through 11 by this reference, as if set forth fully herein, and stipulate to the entry of this Order as set forth below, and recommend that the Central Valley Water Board issue this Stipulated Order to effectuate the settlement:

12. This Stipulated Order is entered into by the Parties, in part, to resolve by consent and without further administrative proceedings alleged violations of WDR Order 95-173 and CDO R5-2010-0101 as set forth in the Complaint and, in part to address threatened and continuing violations of these Orders.

Administrative Civil Liability: The District hereby agrees to the imposition of an administrative civil liability totaling ONE HUNDRED NINETY THOUSAND DOLLARS (\$190,000.00). Within thirty (30) days of the effective date of this Stipulated Order, the District agrees to remit, by check, NINETY FIVE THOUSAND DOLLARS (\$95,000.00) as set forth in Paragraph 10 of Section II herein payable to the *State Water Pollution Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The District shall send the original signed check to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California 95814, and shall send a copy to Ms. Pamela Creedon, Executive Officer, Central Valley Regional Water Quality Control Board, 11020 Sun Center Drive, Suite 200 Rancho Cordova, California 95670. Further, the District agrees to spend NINETY FIVE THOUSAND DOLLARS (\$95,000.00) towards the completion of the Sewage Lift Station Upgrade ECA, as described in Attachment A to this Stipulated Order.

13. **Compliance with Applicable Laws:** The District understands that payment of administrative civil liability in accordance 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, subject to the conditions in Paragraph 16 below, may subject the District to further enforcement, including additional administrative civil liability.
14. **Party Contacts for Communications related to this Stipulated Order:**

For the Central Valley Water Board:

Ms. Pamela Creedon
Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, California 95670
(916) 464-4839
pcreedon@waterboards.ca.gov

Ms. Mayumi Okamoto
Staff Counsel
Office of Enforcement
State Water Resources Control Board
1001 "I" Street, 16th Floor
Sacramento, California 95814
(916) 341-5674
mokamoto@waterboards.ca.gov

For the Napa Berryessa Resort Improvement District

Ms. Roberta Larson
Mr. Adam D. Link
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, California 95814
(916) 446-7979
blarson@somachlaw.com
alink@somachlaw.com

15. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
16. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the owner or operator as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability, in accordance with Paragraph 10. In consideration of the District's compliance with this Stipulated Order, the Prosecution Team hereby agrees not to initiate any other administrative or judicial enforcement actions against the District for the violations alleged in the Complaint. Additionally, in consideration of the District's compliance with the accelerated timeline in Time Schedule Order No. R5-2012-0900, the Prosecution Team agrees not to initiate administrative or judicial enforcement actions against the District for unauthorized discharges of wastewater specifically resulting from the lack of winter-time storage capacity occurring from 17 March 2012 to 3 May 2012 (1.73 million gallons of wastewater) or during the forthcoming winter of 2012-2013.
17. **Public Notice:** The District understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by 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. 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 Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee.

18. **Publicity:** Should the District or its agents or contractors publicize one or more elements of the ECA, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the District.
19. **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.
20. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or 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 Staff or 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.
21. **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. The District is represented by counsel in this matter.
22. **Modification:** This Stipulated Order and Time Schedule Order described in Paragraph 11 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 or its delegee.
23. **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, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the 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. Notwithstanding objections on the admissibility of settlement discussions as evidence in a 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 the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
24. **Admission of Liability:** In settling this matter, the District admits to the violations alleged in the Complaint and recognizes that in the event of any future enforcement actions by the Central Valley Water Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13385(e) or Water Code section 13327.
25. **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 the Stipulated Order.
26. **Waiver of Right to Petition:** The District hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
27. **Covenant Not to Sue:** The District agrees to a covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
28. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the District, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

29. **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.
30. **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.
31. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.
32. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

Original signed by
By: _____
Pamela C. Creedon, Executive Officer

3 July 2012
Date: _____

Napa Berryessa Resort Improvement District

Original signed by
By: _____
Keith Caldwell, Chairman, Board of Directors

26 June 2012
Date: _____

Attachment A: Sewage Lift Station Upgrade ECA

Section IV: Order of the Central Valley Water Board

33. The Central Valley Water Board incorporates Paragraphs 1 through 32 by this reference as if set forth fully herein.
34. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the District hereby agrees to comply with the terms and conditions of this Order.
35. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Water Board.
36. This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
37. 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, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.
38. The Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the District fails to perform any of its obligations under the Stipulated Order.
39. Fulfillment of the District's obligations under the Stipulated Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Stipulated Order.

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

Original signed by

Kenneth D. Landau, Assistant Executive Officer
Central Valley Water Board

20 August 2012

Date: _____

Attachment A: Sewage Lift Station Upgrade ECA

ATTACHMENT A

Settlement Agreement and Stipulation for Order R5-2012-0556

ECA Project Description

Project Title: Sewage Lift Station Upgrade Project

Geographic area of interest: Berryessa Highlands, Napa County

Name of responsible entity: Napa Berryessa Resort Improvement District (NBRID)

Estimated cost for project completion: \$185,000

Contact Information:

Phillip Miller
Napa County Public Works, C/O Napa Berryessa Resort Improvement District
804 First Street
Napa, CA 94559-2623
(707) 259-8620

Brief description of the project:

NBRID will make improvements to two lift stations to improve their reliability. This project will consist of the upgrade of two existing lift stations at Red Rock Lane and Woodhaven Court that were originally installed in the 1960's. The existing pneumatic ejector style pumps will be replaced with solids handling submersible pumps. Electrical upgrades and rehabilitation of the existing sumps will also occur at the same time. This project will enhance the integrity of the sumps and decrease downtime due to availability of parts and maintenance required with aging pneumatic lift station components.

Water body, beneficial use and/or pollutant addressed by this project:

The project will take place in the Berryessa Highlands development, which is adjacent to Lake Berryessa. This is the same watershed into which the NBRID Wastewater Treatment Plant discharges. The project will enhance the reliability of the lift stations and reduce the risk of sanitary sewage overflows to the local water body.

Project schedule, budget, and deliverables:

The Discharger will be responsible for providing all deliverables described below for each phase of the project.

1. Formal Agreement. The Discharger will submit a resolution approving work to be completed under the existing design-build-finance-operate-maintain (DBFOM) agreement in place between NBRID and Western Water Constructors. The agreement will document that the Contractor will complete the project as described herein, that any ECA funds received from the Discharger will be spent in accordance with the terms of the ACL Order, and that NBRID agrees to an audit of its ECA expenditures, if requested by the Water Board.

Deliverable: Formal Agreement

Due Date: **1 November 2012**

2. Pump Station Improvements. The Discharger, through its contractor, will be responsible for procurement of all permits that will be needed for the project, preparation of improvement plans,

purchasing of equipment, installation of new pumps and piping, and electrical system upgrades. Removal and disposal of existing infrastructure elements that are no longer needed will be included in the scope. Confined space entry practices will be in place for all work within each sump.

Temporary power, pipes, and bypass pumping elements will be installed to facilitate rehabilitation and pump replacement without stopping service of the existing residences. This will allow for wastewater generated to be forwarded to the wastewater treatment plant during construction. Temporary facilities will be removed once the improvements are fully operational.

Estimated Cost: \$185,000. Time frame: 8 weeks, executed as a part of the overall project. Deliverable: As-Built plan set, installation and commissioning report including field confirmation of pumped flowrate in simplex and duplex operation modes.

Due date: **1 October 2013**

3. Quarterly Progress Reports. The Discharger shall submit quarterly progress reports describing the work completed to date to fulfill this ECA. The deliverables for Items #1, 2 and 4 shall replace the quarterly reports for that particular period.

Deliverable: progress reports

Due dates: **1 February 2013, 1 April 2013, 1 July 2013**

4. Final Report. Will include a summary of all tasks completed, an analysis of the success of the project, and a post-project accounting of all expenditures. The accounting must clearly show whether the final cost of the successfully completed ECA is less than, equal to, or more than the suspended liability of \$95,000. The report must be completed under penalty of perjury.

Deliverable: Final Report including the above information

Due date: **31 December 2013**