

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

In the Matter of:

**CITY OF COLFAX
PLACER COUNTY**

ORDER R5-2020-0507

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

I. 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 or Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and City of Colfax (City or Discharger)(collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger owns and operates the City of Colfax's sanitary sewer system collection system, which provides sewerage collection service to the City of Colfax in Placer County. The collection system has approximately 750 service laterals, 200 manholes, 50,000 linear feet of sewer gravity line and force main, and 4 pump stations that feed a 0.5 million gallon per day (MGD) wastewater treatment plant (WWTP or Facility).
3. The Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, State Board Order No. 2006-0003, as revised by WQ-2013-0058-EXEC, (SSS WDRs) regulates the collection system. The SSS WDRs requires the City to operate and maintain its collection system to prevent sanitary sewer overflows and spills. Prohibition C.1 of the SSS WDRs states that the discharge of untreated or partially treated wastewater from the collection system to waters of the United States is prohibited.
4. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The SSS WDRs are not a NPDES permit.

5. Between 24 July 2019 and 29 July 2019, the City discharged, and did not recover, 119,017 gallons of untreated wastewater from its sanitary sewer system into Bunch Creek, a tributary to the North Fork of the American River.
6. The City violated Prohibition C.1 of the SSS WDRs, Section 301 of the Clean Water Act, and Water Code section 13376 by discharging a total of 119,017 gallons of untreated sewage to a water of the State of California or a water of the United States between 24 July 2019 and 29 July 2019.
7. On 12 June 2020, the Central Valley Water Board prosecution team issued a Compressed Administrative Civil Liability (CACL) which included an offer to settle the alleged violations for forty-nine thousand eight-hundred forty-five dollars (\$49,845). Subsequent to the issuance of the CACL the Parties agreed to enter into confidential settlement negotiations.
8. Pursuant to Water Code section 13385 subdivision (a), any person who violated Water Code section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section 13385 subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
9. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
10. The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) was adopted on 4 April 2017. The Enforcement Policy's effective date is 5 October 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability.
11. Attachment A to this Order is the penalty methodology as applied to the City's discharge of untreated sewage in July 2019.

12. Attachment A includes a calculation of the economic benefit of the Discharger's noncompliance. The economic benefit for the alleged violation addressed in Attachment A is \$14,119 and described in more detail in Attachment D.
13. The Prosecution Team has determined that the City of Colfax is a small community with a financial hardship as defined by Water Code section 13385, subdivision (k). Attachment B details the Central Valley Water Board's review of census block data to support the conclusion that the Discharger is a small community with a financial hardship.
14. The total amount of the administrative civil liability (ACL) for the alleged violation is **forty-nine eight-hundred forty-five dollars (\$49,845)**.
15. 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 Water Code section 13323 and Government Code section 11415.60. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of **forty-nine eight-hundred forty-five dollars (\$49,845)**.
16. 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.

III. Stipulations

The Parties stipulate to the following:

17. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
18. **Administrative Civil Liability:**
 - a) The Discharger hereby agrees to the imposition of an ACL in the amount of **forty-nine eight-hundred forty-five dollars (\$49,845)** to the Central Valley Water Board to resolve the violation specifically alleged in Attachment A to this Order.
 - b) The Discharger agrees to pay **\$14,119** to the State Water Pollution Cleanup and Abatement Account and shall indicate this Order number on the check. The Discharger shall send the original check referencing this Order number to the following address:

Division of Administrative Services
ATTN: Accounting, State Water Resources Control Board
1001 I Street 18th Floor
Sacramento, California 95814

- c) A copy of the check described above shall be sent to the Prosecution Team contact listed in Paragraph 28.
- d) The **\$35,726** in remaining liability shall be satisfied through the completion of an Enhanced Compliance Action (ECA) as described below.

19. Representations and Agreements: The Discharger understands that the completed ECA is a material condition of this settlement of liability between the Discharger and the Central Valley Water Board Prosecution Team. As a material consideration for the Central Valley Water Board's acceptance of this Stipulated Order, the Discharger represents and agrees that it will complete the ECA as described herein and in Attachment C.

20. Enhanced Compliance Actions (ECAs) and Suspended Liability: Enforcement Policy section IX. provides,

ECAs are projects that enable a discharger to make capital or operational improvements beyond those required by law and are separate from projects designed to merely bring a discharger into compliance. The Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary ACL for completion of an ECA. Except as specifically provided [in the Enforcement Policy], any such settlement is subject to the rules that apply to Supplemental Environmental Projects [established in the State Water Board Policy on Supplemental Environmental Projects, effective May 3, 2018 (SEP Policy)].

Furthermore, the SEP Policy limits ECAs to 50 percent of the total administrative civil liability excluding the Prosecution Team investigative and enforcement costs, unless the Discharger is a small community with a financial hardship as defined by Water Code section 13385, subdivision (k). The Prosecution Team has determined that the City's ECA complies with the Enforcement and SEP Policies.

The City proposes to implement the following ECA:

- i. **Lift Station 5 Force Main Improvements:** The City agrees to implement Lift Station 5 Force Main Improvements which will upgrade existing facilities and enhance the maintenance and monitoring capability of the system.
21. **Scope of ECA:** The Lift Station 5 Force Main Improvements has a total project budget of \$165,900. The City shall use the suspended liability as described in Paragraph 18 to fund installation of the following items:
 - Pressure Gauge and Transmitter
 - Combination Air Valves
 - Isolation Valves
 - Inspection Vaults
22. **ECA Completion Deadlines:** The City shall comply with the following agreed upon ECA completion deadlines. Additionally, the City shall submit a Certificate of Completion, as described below and in Attachment C, upon the completion of the ECA declaring such completion and detailing fund expenditures and goals achieved. The deadline for completion of the ECA and submission of the Final Report is 12 months after the adoption of this Order.
23. **Request for Extension of Final ECA Completion Deadlines:** If the City cannot meet the ECA Completion Deadlines due to circumstances beyond the City's anticipation or control, the City shall notify the Executive Officer in writing within thirty (30) days of the date the City first knew of the event or circumstance that caused or could have caused a violation of this Stipulated Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. The City shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the City and its agents will be made by the Executive Officer. Where the Executive Officer concurs, that compliance was or is impossible, despite the timely good faith efforts of the City, due to circumstances beyond the control of the City that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the City, a new compliance deadline shall be established and provided to the City in writing with the effect of revising this Stipulated Order. The Executive Officer will endeavor to grant a reasonable extension of time, if warranted.

24. Audits and Certification of Enhanced Compliance Actions:

- a. **Certification of Completion:** Within 30 days of completion of the ECA, the City shall submit a certified statement of completion of the ECA (“Certification of Completion”). The City’s authorized representative shall submit the Certification of Completion under penalty of perjury to the designated Central Valley Water Board contact. The Certification of Completion shall include the following:
 - i. **Certification of Expenditures:** Certification documenting all expenditures by the City. The expenditures may include external payments to outside vendors or contractors implementing the ECA. If applicable, the expenditures may include the costs of internal environmental management resources and internal business unit resources, provided that such expenditures are directly related to development and implementation of the ECA. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors. The City shall provide any additional information requested by Central Valley Water Board staff that is reasonably necessary to verify ECA expenditures.
 - ii. **Certification of Performance of Work:** Certification that the ECA has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other material reasonably necessary for the Central Valley Water Board to evaluate the completion of the ECA and the costs incurred by the City.
 - iii. **Certification that Work Performed on ECA Met or Exceeded Requirements of CEQA and other Environmental Laws [where applicable]:** Certification that the ECA meets or exceeds the requirements of CEQA and/or other environmental laws. Unless the City is exempted from compliance with CEQA, the City shall, before the ECA implementation date, consult with other interested state agencies regarding potential impacts of the ECA.
- b. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved ECA:** In the event that the City is not able to demonstrate to the reasonable satisfaction of the designated Central Valley Water Board contact that the entire ECA amounts pursuant to Paragraph 18 have been spent for the completed ECAs, the City shall pay as an administrative civil liability the difference between the ECA amounts and the amounts the City can demonstrate were actually spent on the ECAs.

c. **Failure to Complete the ECAs:** If the ECAs are not fully implemented by the Paragraph 22 ECA Completion Deadlines required by this Stipulated Order and an extension has not been granted by the Central Valley Water Board's Executive Officer pursuant to Paragraph 23 above, the designated Central Valley Water Board contact shall issue a Notice of Violation. As a consequence, the City shall be liable to pay the entire Suspended Liability to the State Water Pollution Cleanup and Abatement Account.

25. **Publicity:** Whenever the City or its agents or subcontractors publicize 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 City.

26. **Site Inspections:** The City shall permit Central Valley Water Board's staff to inspect during normal business hours any location where the ECA is being implemented as well as review any documents associated with implementation of the ECA at any time without notice.

27. **Compliance with Applicable Laws:** The Discharger 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 herein may subject it to further enforcement, including additional administrative civil liability.

28. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

Xuan Luo, Senior Water Resources Control Engineer
NPDES Compliance and Enforcement
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4848
Xuan.Luo@waterboards.ca.gov

For the Discharger:
Wes Heathcock
City Manager
City of Colfax
P.O. Box 702
Colfax, CA 95713
(530) 346-2313
Wes.Heathcock@colfax-ca.gov

29. **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.
30. **Public Notice:** The Discharger 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. 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 Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulated Order.
31. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this 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.
32. **No Waiver of Right to Enforce:** The failure of the Prosecution Team 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 this Stipulated Order. The failure of the Prosecution Team 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. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including

without limitation, the issuance of ACL complaints or orders for violations other than those addressed by this Order.

33. **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 Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
34. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
35. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
36. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
37. **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 Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board

members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.

38. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
39. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
40. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
41. **Water Boards 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 the negligent or intentional acts or omissions by the Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
42. **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 Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

43. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
44. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation 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.
45. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
46. **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.
47. **Counterpart Signatures:** This 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

By: Original Signed By
John J. Baum
Assistant Executive Officer

01/07/2021
Date

City of Colfax

By: Original Signed By
Wes Heathcock
City Manager

01/05/2021
Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
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, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 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
Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

03/26/2021
Date

Attachment A: Penalty Methodology
Attachment B: Small Community with a Financial Hardship Determination
Attachment C: Enhanced Compliance Action Project Proposal
Attachment D: Economic Benefit Calculation.

ATTACHMENT A
PENALTY CALCULATION METHODOLOGY FOR
CITY OF COLFAX
SEWER COLLECTION SYSTEM
R5-2020-0507
PLACER COUNTY

The State Water Resources Control 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 (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:

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Violation 1 – Discharge of Untreated Sewage to Surface Waters

The City of Colfax (City or Discharger) is regulated by the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order 2013-0058-EXEC (SSS WDRs). The SSS WDRs prohibit the discharge of untreated wastewater to waters of the United States.

Between 24 July 2019 and 29 July 2019, there was a spill of untreated wastewater from a force main in the City of Colfax's sanitary sewer collection system that reached nearby Bunch Creek, which is a tributary to the North Fork of the American River, a water of the United States. The incident occurred on the shoulder of Canyon Way approximately 100 yards east of Canyon Creek Drive (site) in Colfax, California. The spill was discovered when City staff detected an odor while driving on Canyon Way on 29 July 2019. City staff determined that there was a break in the 6-inch C900 PVC force main pipe downstream of a nearby lift station (LS5) located on Canyon Way.

Based on pump run time records from LS5 and the July 2019 influent daily flow rates at the City of Colfax Wastewater Treatment Plant (WWTP), the City estimated that approximately 153,180 gallons of wastewater was spilled into the native soil surrounding the force main. The City used WWTP influent flow data in conjunction with the LS5 pump run time data to verify the duration and quantity of the spill.

As described in the City's LS5 Technical Report, the City used an excavator and vacuum truck to recover approximately 33,000 gallons of wastewater in the area of the spill. The City also excavated approximately 32 cubic yards of saturated soil in the area of the spill. The City assumed a soil saturation of 18% by volume and calculated that an additional 1,163 gallons of wastewater was removed by the soil excavation. The City estimates that they were able to prevent a total of 34,163 gallons of wastewater from entering Bunch Creek resulting in a spill of approximately 119,017 gallons to Bunch Creek.

The Central Valley Regional Water Quality Control Board (Central Valley Water Board) reserves its right to modify this penalty methodology should the City not accept this settlement offer. The Central Valley Water Board may issue an Administrative Civil Liability Complaint in this matter for a higher liability based on revisions to this penalty methodology or the addition of new violations.

PENALTY FACTOR	VALUE	DISCUSSION
The Degree of Toxicity of the Discharge	3	Untreated sewage contains elevated concentrations of ammonia, nitrate, coliform organisms and other substances which are known to adversely impact aquatic life and human health. The spill material had no partial treatment or dilution. Consequently, an above moderate risk or a direct threat to potential receptors with a score of 3 was assigned for this factor.
Actual Harm or Potential Harm to Beneficial Uses	2	The untreated sewage entered Bunch Creek, a tributary to the North Fork of the American River. Beneficial uses of the North Fork of the American River that could be impacted include municipal water supply, agricultural irrigation, recreational contact, freshwater habitat, and wildlife habitat. Untreated sewage contains pathogens, nitrogen, ammonia, and biochemical oxygen demand. Elevated levels of these constituents can lead to low dissolved oxygen in the receiving water, impacts to aquatic life, and impacts to human health. The City conducted total coliform, fecal coliform, and ammonia monitoring in Bunch Creek upstream and downstream of the spill location for two weeks after discovering the spill on 7/29/2019; the harm or potential harm to beneficial uses caused by the spill was measurable in the short term, but not appreciable. The discharge was expected to have a below moderate impact to beneficial uses to the North Fork of the American River.
Susceptibility to cleanup or abatement	1	Approximately 22% of the spill (34,163 gallons of 153,180 gallons) was recovered before reaching Bunch Creek. This is less than 50% cleaned up and a value of "1" has been assigned.
Per gallon and per day factor for discharge violations	0.28	The "Deviation from Requirement" is major because the Prohibition C.1 in SSS WDRs prohibit any discharge of sanitary sewage overflows from entering waters of the United States. The discharge, therefore, is a major deviation from the requirements of the SSS WDRs.
Volume discharged minus 1,000 gallons per event	118,017 gallons	According to the City, 119,017 gallons were discharged to surface water and not recovered. Central Valley Water Board staff reviewed the Discharger's volume estimate methodology and agrees that it is reasonable. The total volume, minus 1,000 gallons per event, is used in the calculation.

PENALTY FACTOR	VALUE	DISCUSSION
Adjustment for high volume discharges	Yes, \$2/gallon	For large volume spills (between 100,000 gallons and 2,000,000 gallons), the Enforcement Policy allows a reduction from the statutory maximum of \$10/gallon and suggests \$2/gallon for sewage spills. The Prosecution Team has determined that \$2/gallon is appropriate in this matter.
Per gallon penalty	\$66,090	The liability is calculated as per day factor multiplied by the number of gallons multiplied by \$2/gallon.
Days of discharge	6 days	Untreated sewage was discharged to Bunch Creek from 24 July 2019 to 29 July 20019.
Per day penalty	\$16,800	The liability is calculated as per day factor multiplied by the number of days multiplied by the statutory maximum per day (\$10,000).
Initial Liability for Violation	\$82,890	Sum of the per-gallon and per-day penalties.

Adjustments for Discharger Conduct

PENALTY FACTOR	VALUE	DISCUSSION
Culpability	1.0	<p>The spill occurred in the sanitary system collection system force main due to a longitudinal crack in a 6-inch PVC pipe. This section of pipe was replaced in 2012 as part of the City's Capital Improvement Project. A spill in a force main can be difficult to detect when compared to a gravity-fed collection line because there may not be an obvious overflow on the surface (such as an overflow coming out of a manhole). In this case, the wastewater leaked into the piping bedding material and native soil in the vicinity of the crack before seeping out of the bank leading to Bunch Creek.</p> <p>The City has a Sewer System Management Plan (SSMP) that contains preventative operation and maintenance procedures for collection systems. Part of these procedures is to conduct a video inspection of the sewer mains a minimum of once every 10 years. The Discharger is adhering to its SSMP as required by the SSS WDRs. The SSMP was updated in October of 2018.</p>

PENALTY FACTOR	VALUE	DISCUSSION
History of Violations	1.0	The City had two Category 3 SSOs and one Category 2 SSO in the last five years. A spill of 353 gallons occurred in January 2018, a spill of 41 gallons occurred in February 2018 and a spill of 5,270 gallons occurred in January 2020. Two of the spills were on or near public streets and the other spill was at a residence cleanout. The spills did not reach a surface water body, storm drain, or drainage channel. Because the Central Valley Water Board took no formal enforcement action in response to these events, a neutral multiplier of 1.0 is appropriate in this matter.
Cleanup and Cooperation	1.0	The City has adequately responded to the spill event once discovered. Upon discovering the spill, the City provided prompt notification to the California Office of Emergency Services (CAL-OES) and to the Central Valley Water Board. The City also made significant efforts to clean up the spill via vacuum truck and soil excavation.
Total Base Liability for Violation	\$82,890	The base liability is calculated as the initial liability multiplied by each of the above three factors.

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

Total Base Liability for all violations: \$82,890

Other Factor Considerations

PENALTY FACTOR	VALUE	DISCUSSION
Ability to pay and continue in business	No adjustment	The City of Colfax is a public entity with the ability to raise funds. The Discharger has an annual operation and maintenance budget of \$195,277 for sanitary sewer system facilities according to the CIWQS questionnaire.
Economic benefit	\$14,119	Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit of noncompliance derived from the acts that constitute the violation. The economic benefit of noncompliance for the violations is estimated at \$14,119. Water Board staff calculated the economic benefit using information provided by the Discharger. Items considered in the economic benefit were preparation of a lift station SOP, SCADA monitoring, force main inspections, and reprogramming of the lift station pumping (see ACLC R5-2020-0507, Attachment C).

PENALTY FACTOR	VALUE	DISCUSSION
Other factors as justice may require	Reduction of Per Gallon Penalty to \$1/gallon	<p>The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Central Valley Water Board has incurred over \$3,000 in staff costs associated with the investigation and enforcement of the alleged violations which it is not included at this time. The Prosecution Team retains discretion to seek staff costs, which may increase, should this matter proceed to hearing.</p> <p>The City is a small community with a financial hardship as defined by Water Code section 13385(k). In addition, the Prosecution Team acknowledges that the City has invested significant resources into improving and upgrading its sanitary sewer collections system. Together, these circumstances warrant an additional reduction to the overall liability based on equitable considerations. The Prosecution Team has determined, as a settlement consideration, that a reduction in the per gallon penalty to \$1 per gallon is appropriate.</p>
Adjusted Total Base Liability for Violations	\$49,845	Per gallon penalty of \$1 per gallon applied to determine adjusted base liability
Maximum liability	\$1,240,170	Based on Water Code section 13385: \$10,000 per day per spill and \$10 per gallon, minus the first 1,000 gallons per spill event.
Minimum liability	\$15,531	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%. Here, the proposed penalty exceeds the minimum liability.
Final Liability	\$49,845	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.

Settlement Agreement R5-2020-0507
Small Community with Financial Hardship Determination

City of Colfax

Small Community with Financial Hardship Determination

The Regional Water Board may allow a Public Owned Treatment Work (POTW) to spend an amount equivalent to the Mandatory Minimum Penalty (MMP) towards a compliance project that is designed to correct the violation, if the POTW is found to be serving a small community with a financial hardship. The determination is to be made at the time MMPs are assessed. The most recent data available through the United State Census Bureau's website [United States Census Bureau](http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml) (<http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>) is used to make the determination.

Small Community Determination

The community served by the POTW must meet **one** of the following criteria to qualify as a small community.

If census data is not available for the community served by the POTW, data for a neighboring community or the average dry weather flow rate to the POTW (including documentation of the number of connections) can be used to make the determination. If a neighboring community is used, the average dry weather flow to the POTW must be checked to verify that the facility does not service more than 10,000 people.

Has a population of **20,000** or fewer people:

Population served by the community: 1,963 (April 2010 Census)/ 2,029 (2018 Estimate)
Year of Census: 2010

Or, lies completely within one or more rural counties:

The determination of the size of population served by the POTW and "rural county" status shall be made as of the time the penalty is assessed, not as of the time the underlying violations occurred. "Rural County" means a county classified by the Economic Research Service, United States Department of Agriculture (ERS, USDA) with a rural-urban continuum code of four through nine. [Rural County Defined](http://www.ers.usda.gov/topics/rural-economy-population/rural-classifications.aspx) (<http://www.ers.usda.gov/topics/rural-economy-population/rural-classifications.aspx>)

Counties POTW lies within: N/A

Or, if neither of the above criteria applies and data from a neighboring community or the average dry weather flow rate was used to make the determination, include the data used below.

Community used: _____
Population: _____

POTWs average dry weather flow rate: _____

Number of connections to POTW: _____

Financial Hardship Determination

In addition to meeting one of the criteria above, the community served by the POTW must meet one of the below criteria determining financial hardship:

Median household income for the community is less than **80 percent** (Percent of the labor workforce that is unemployed at the time penalty is accessed) of the California median household income.

The median income divides the income distribution into two equal groups, one having incomes above the median and the other having incomes below the median.

California median household income: \$75,277
(2017 American Community Survey 1-Year Estimates)

80 percent of California median household income: $0.8 \times \$75,277 = \$60,222$

Community's median household income: \$44,826 City of Colfax, Ca
(2013-2017 American Community Survey
5-Year Estimates)

Or, the community has an unemployment rate of **10 percent**, or greater

- All civilians, 16 years or older, are classified as unemployed if they (1) were neither "at work" nor "with a job but not at work" during the reference week, (2) were actively looking for work during the last 4 weeks, and (3) were available to accept a job. Also included as unemployed are civilians who (1) did not work at all during the reference week, (2) were waiting to be called back to a job from which they had been laid off, and (3) were available for work for temporary illness.
- These factors must be determined by the State Water Resources Control Board, Division of Financial Assistance (State Board) pursuant to Water Code section 13385(k)(2).

Community's unemployment rate: _____

- Percent of the labor workforce that is unemployed at the time penalty is accessed
- These factors must be determined by the State Water Resources Control Board, Division of Financial Assistance (State Board) pursuant to Water Code section 13385(k)(2).

City of Colfax

Or, 20 percent of the population is below the poverty level

- Following the Office of Management and Budget's Directive 14, the Census Bureau uses a set of income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being "below the poverty level."
- These factors must be determined by the State Water Resources Control Board, Division of Financial Assistance (State Board) pursuant to Water Code section 13385(k)(2).

Percent of community's population below the poverty level7: _____

Small Community with Financial Hardship Determination

Based on the above information staff has determined that the City of Colfax qualifies as a small community with financial hardship as defined in section VII.B of the State Water Board Water Quality Enforcement Policy, effective October 5, 2017.

- Yes
- No

ATTACHMENT C

SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2020-0507

Enhanced Compliance Action Description

1. Project Title: Lift Station 5 Force Main Improvements

2. Service Area: City of Colfax

3. Name of Responsible Entity: City of Colfax

4. Contact Information:

Wes Heathcock, City Manager

City of Colfax

P.O. Box 702, Colfax, CA 95713

<wes.heathcock@colfax-ca.gov>

(530) 346-2313

5. Project Goals and Description:

Lift Station 5 experienced failure of its force main and a consequential Category 1 Spill into Bunch Creek on July 29, 2019, (Spill Event ID: 860183) due to a lateral crack that developed along the pipeline. An investigative study was completed to evaluate the system's current condition to determine potential causes for the pipeline failure and determine the improvements necessary to mitigate future failures and spills. The study noted that the existing force main has inadequate access to routinely clean and inspect, lacks isolation valves and working air release valves, and lacks pressure gauges that can provide insight on the pressure condition within the force main.

The Lift Station 5 Force Main Improvements Project includes the following components:

- a) Three (3) inspection vaults equipped with pressure gauges
- b) Two (2) isolation valves
- c) Two (2) combination air valve

The Lift Station 5 Force Main Improvements Project has the following objectives:

- a) To increase access for adequate cleaning, inspection, and preventative maintenance.
- b) To reduce potential sanitary sewer overflow (SSO) events; and
- c) To enhance monitoring capability and system hydraulics.

The improvements proposed will upgrade existing facilities and enhance the maintenance and monitoring capability of the system to improve Lift Station 5 efficiency and extend the operational life of the existing force main. Extending the operational life of the existing force main reduces long-term costs for the City by preventing future sewer overflow violations and allowing for proper maintenance instead of higher cost repairs.

6. Estimated Cost of Project Completion: The anticipated cost of the Lift Station 5 Force Main Improvements Project is \$165,900, which includes \$35,726 of suspended liability. The table below shows the proposed improvements and expenses expected with each installation. Cost does not include surface restoration or other related work expenses.

Proposed Improvements as Itemized Expenses:

Description	Units	Quantity	Unit Cost	Line Total
Mobilization/Demobilization	LS	1	\$10,000	\$10,000
Shoring and Bracing	LS	1	\$7,000	\$7,000
Traffic Control	LS	1	\$10,000	\$10,000
Pavement Replacement	SY	75	\$50	\$3,750
Mechanical Cleaning	Ls	1	\$5,000	\$5,000
Pressure Gauge and Transmitter	EA	3	\$3,500	\$10,500
Combination Air Valves	EA	2	\$6,000	\$12,000
Isolation Valves	EA	2	\$10,000	\$20,000
Inspection Vaults	EA	3	\$20,000	\$60,000

Subtotal Construction Cost:		\$138,250
Contingency	20% Unit Cost	\$27,650
TOTAL CONSTRUCTION COST:		\$165,900

7. Water body, beneficial use and/or pollutant addressed: If the Lift Station 5 Force Main Improvements Project is successful, the increased resiliency of the pressurized system will prevent further SSO events, protecting Bunch Creek, and nearby small businesses and residents from exposure/contamination from untreated sewage.

8. Project Task, Schedule, and Milestones: The Lift Station 5 Force Main Improvements Project will include the following milestones, measured from the date the Central Valley Regional Water Quality Control Board or its delegee signs this Settlement Agreement (ECA Effective Date).

a. Study Funding: The City will obtain bids, prepare purchase agreement, and obtain City Council approval and budget appropriation for the project within 4 months of the ECA Effective Date.

b. Equipment Delivery: The equipment delivery will take approximately 3 months following the receipt of the purchase order provided under section 8(a) above and receipt of any engineering or site information requested by the vendor. The equipment delivery is estimated to be completed within 7 months from the ECA Effective Date.

c. Equipment Installation: The selected vendor will install the improvements within 4 months of equipment delivery. The Lift Station 5 Force Main Improvements Project proposes to install the following with an estimated completion date of 11 months after ECA Effective Date:

1. Three (3) Pressure Gauges and Transmitters
2. Two (2) Combination Air Valves
3. Two (2) Isolation Valves
4. Three (3) Inspection Vaults

Removal of compromised appurtenances, mechanical cleaning of the force main, traffic control, and excavation efforts are also included in this proposed Work.

- d. **Support, Testing, SOP Development:** Once the improvements are installed, the City will test installed appurtenances and transmitters. Furthermore, Standard Operating Procedures involving increased inspection, operation, and maintenance of the system with its new improvements will be developed. The project will also be closed out. This testing, procedure development, and close-out will require 1 month to complete. Project close-out has an estimated completion date of one year after ECA Effective Date.

- 9. **Project Deliverables:** The City is responsible for all deliverables described below. Due dates are measured from the date the Central Valley Water Board or its delegee signs this Settlement Agreement (ECA Effective Date).

- a. **Project Progress Report:** The City will submit a progress report summarizing activities it has completed. At minimum, the progress report shall include the status of the ECA project update and equipment delivery and installation summaries.

Due Date: Within 9 months of the ECA Effective Date

- b. **Final Report and Certification of Completion:** The City shall provide a final report documenting completion of the Smart Cover Installation Project. The final report will document that the ECA project goals have been achieved and shall include all a Certification of Completion as described in Paragraph 24 of the Settlement Agreement. The Certification of Completion shall include a Certification of Expenditures, Certification of Performance of Work, and Certification that Work Performed Met or Exceeded CEQA and other Environmental Laws. The accounting will clearly show whether the final cost of the ECA project is less than, equal to, or more than the liability suspended amount.

Due Date: Within 12 months of the ECA Effective Date

**ECONOMIC BENEFIT ANALYSIS
 CITY OF COLFAX**

Compliance Actions: One-Time Non-Depreciable Expenditure

Expenditure	Write SOP for Monitoring Pumps	Investigate Force Main Inspection Options	Reprogram Pump's Soft Start Deceleration Speed
Amount	\$385.51	\$385.51	\$180.00
Basic	ECI	ECI	ECI
Date	06/25/2019	06/25/2019	10/18/2019
Delayed?	Y	Y	Y

Compliance Actions: Annual Cost

Costs	Monitor SCADA For Deviations
Amount	\$1907.98
Basic	ECI
Date	06/25/2019

Dates – Rate - Benefit of Non-Compliance

Compliance Actions	Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
Write SOP for Monitoring Pumps	12/31/2012	2/1/2020	8/15/2020	3.80%	\$43.67
Monitor SCADA For Deviations	12/31/2012	9/12/2019	8/15/2020	3.80%	\$14,015.77
Investigate Force Main Inspection Options	12/31/2012	9/12/2019	8/15/2020	3.80%	\$40.94
Reprogram Pump's Soft Start Deceleration Speed	12/31/2012	9/30/2019	8/15/2020	3.80%	\$18.69

Income Tax Schedule: Municipality

Total Benefit: \$14,119.07

USEPA BEN Model Version: Version 2019.0.0 (March 2019)

Analyst: Jamie Johnson

Date/Time of Analysis: 5/11/20 14:36