

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R5-2006-_____

AND MANDATORY PENALTY
IN THE MATTER OF

CITY OF MANTECA
SAN JOAQUIN COUNTY

This Order is issued to the City of Manteca (hereafter Discharger) based on a finding of violations of NPDES Waste Discharge Requirements (WDR) Order No. R5-2004-0028 (NPDES No. CA0081558). Imposition of Administrative Civil Liability and Mandatory Penalties are authorized pursuant to California Water Code (CWC) section 13385.

The Central Valley Regional Water Quality Control Board, Central Valley Region (hereafter Regional Water Board) finds with respect to the Discharger's acts or failure to act, the following:

1. The Discharger owns and operates the City of Manteca Wastewater Quality Control Facility (WQCF), which provides sewerage service to the City of Manteca. Treated municipal wastewater is discharged to the San Joaquin River, a water of the United States, and part of the Sacramento-San Joaquin Delta.
2. On 19 March 2004, the Regional Water Board adopted WDR Order No. R5-2004-0028 (NPDES No. CA0081558) to regulate discharges of waste from the WQCF. The Regional Water Board subsequently amended Order No. R5-2004-0028 on 5 August 2005 by adopting Resolution No. R5-2005-0110.
3. On 1 June 2006, the Executive Officer issued the Discharger Administrative Civil Liability Complaint No. R5-2006-0508 (Complaint) proposing a \$207,000 Administrative Civil Liability pursuant to CWC section 13385. The Complaint included the assessment of \$207,000 in mandatory penalties.
4. CWC section 13385(h) and (i) require assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each serious violation.

CWC section 13385 (h)(2) states for purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) requires the Regional Water Board to assess a mandatory penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if the discharger does any of the following four or more times in any period of six consecutive months.

- i. Violates a waste discharge requirement effluent limitation.
 - ii. Fails to file a report pursuant to CWC section 13260.
 - iii. Files an incomplete report pursuant to CWC section 13260.
 - iv. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
5. WDR Order No R5-2004-0028 includes, Effluent Limitations B.2., which states, in part, the following:

Effective 1 April 2004, and through 31 January 2009, the effluent concentrations and mass loadings shall not exceed the following limits:

<u>Constituent</u>	<u>Unit</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
Total Coliform	MPN/100 mL	---	23 ¹	---	500
Settleable Solids	mL/L	0.1	--	---	0.2
Arsenic	µg/L	10	---	---	---
	lbs/day ²	0.68	---	---	---
Copper	µg/L	7.9	---	---	10.4
	lbs/day ²	0.53	---	---	0.70
Cyanide	µg/L	3.7	---	---	10
	lbs/day ²	0.25	---	---	0.68
Bromodichloromethane	µg/L	5	---	---	8
	lbs/day ²	0.34	---	---	0.54
Dibromochloromethane	µg/L	1.4	---	---	2.8
	lbs/day ²	0.095	---	---	0.19

1. Weekly median

2. Based upon a design treatment capacity of 8.11 mgd

6. CWC section 13385(j) provides exceptions to the assessment of mandatory penalties required by CWC section 13385(h) and (i). CWC section 13385(j) states, in part, the following:

”(j) Subdivisions (h) and (i) do not apply to any of the following:

”(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or Section 13308...” (emphasis added)

7. On 19 March 2004, pursuant to CWC section 13301, the Regional Water Board adopted Cease and Desist Order (CDO) No. R5-2004-0029. The Regional Water Board subsequently amended the CDO by Resolution No. R5-2004-0142 on 26 July 2004, and by Resolution No. R5-2006-0006 on 26 January 2006. Pursuant to CWC section 13385(j), while the Discharger is in compliance with the CDO, violations of Effluent Limitations B.1 through B.3 for aluminum, arsenic, copper, cyanide, electrical conductivity, iron, manganese, MBAS, nitrate, and nitrite contained in WDR Order No. R5-2004-0028 are not subject to the assessment of mandatory penalties.
8. From 1 September 2004 through 27 June 2005, the Discharger was out of compliance with the time schedule to assure compliance with Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS contained in the CDO. While not in compliance with the CDO, the Discharger was subject to the assessment of mandatory penalties for violations of Effluent Limitations B.1 through B.3 for arsenic, copper, cyanide, iron, manganese, and MBAS required by WDR Order No. R5-2004-0028. This Complaint includes the assessment of mandatory penalties for effluent violations for these parameters, which occurred while the Discharger was out of compliance with the CDO.
9. According to monitoring reports submitted by the Discharger through 30 March 2006, the Discharger committed fifty-three (53) serious violations during the period beginning 1 February 2005 and ending on 28 February 2006. The mandatory penalty for these serious violations is **\$159,000**.
10. According to monitoring reports submitted by the Discharger through 30 March 2006, the Discharger also committed sixteen (16) violations of effluent limitations that were not considered serious violations. All sixteen (16) non-serious violations are subject to mandatory penalties under CWC section 13385(i)(2). The mandatory penalty for these non-serious violations is **\$48,000**.
11. The total mandatory penalty for serious and non-serious violations is **\$207,000**. A detailed list of all violations is included in Attachment A, a part of this Order.
12. On 5 July 2006, the Discharger submitted a letter proposing to fund the implementation of a supplemental environmental project (SEP) to offset a portion of the administrative civil liability. On 22 August 2006, the discharger submitted a revised SEP. The SEP is a riparian habitat restoration project with a total budget of \$111,000, to be administered by River Partners. The proposed project involves planting 5,300 linear feet of wildlife habitat on the abandoned/ decommissioned Army Corps of Engineers levees on the Hagemann Unit of the

San Joaquin River National Wildlife Refuge. Details of the SEP proposal are provided in Attachment B, a part of this Order.

13. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000, et. seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, Section 15321(a)(2).
14. Any person affected by this action of the Regional Water Board may petition the State Water Board to review this action. The State Water Board must receive the petition within 30 days of the date on which the Regional Water Board adopted this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED that the Discharger shall pay a penalty of \$207,000 as follows,

1. **Within 30 days of adoption of this Order**, the Discharger shall pay \$96,000 by check, which contains a reference to "ACL Order No. R5-2006-0508" and is made payable to the *State Water Pollution Cleanup and Abatement Account*.
2. **By 1 January, annually**, the Discharger shall provide a status report to the Regional Water Board documenting progress of the supplemental environmental project. By **31 December 2009**, the Discharger shall provide a final report documenting completion of the supplemental environmental project as described in Finding 12 and Attachment B of this Order. If the Discharger does not maintain compliance with this schedule, by order of the Executive Officer, the Discharger shall pay the remaining \$111,000 by check, which contains a reference to "ACL Order No. R5-2006-0508" and is made payable to the *State Water Pollution Cleanup and Abatement Account*.

I, PAMELA C. CREEDON, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, Central Valley Region, on _____

PAMELA C. CREEDON, Executive Officer

ATTACHMENT A-

CITY OF MANTECA

Wastewater Quality Control Facility

RECORD OF VIOLATIONS (1 February 2005 - 28 February 2006) FOR MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program No. R5-2004-0028)

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
1	02/09/2005	Bromodichloromethane	8 ug/L	9.4 ug/L	Daily	4
2	02/28/2005	Total Arsenic	10 ug/L	14 ug/L	Monthly	2
3	02/28/2005	Total Copper	7.9 ug/L	8.4 ug/L	Monthly	4
4	02/28/2005	Bromodichloromethane	5 ug/L	9.4 ug/L	Monthly	2
5	02/28/2005	Bromodichloromethane	0.34 lbs/day	0.44 lbs/day	Monthly	2
6	02/28/2005	Dibromochloromethane	1.4 ug/L	1.6 ug/L	Monthly	4
7	03/10/2005	Total Copper	10.4 ug/L	13 ug/L	Daily	2
8	03/10/2005	Bromodichloromethane	8 ug/L	14 ug/L	Daily	2
9	03/31/2005	Total Arsenic	10 ug/L	13 ug/L	Monthly	2
10	03/31/2005	Total Copper	7.9 ug/L	13 ug/L	Monthly	2
11	03/31/2005	Bromodichloromethane	5 ug/L	14 ug/L	Monthly	2
12	03/31/2005	Dibromochloromethane	1.4 ug/L	2.5 ug/L	Monthly	2
13	03/31/2005	Total Copper	0.53 lbs/day	0.6 lbs/day	Monthly	4
14	03/31/2005	Bromodichloromethane	0.34 lbs/day	0.65 lbs/day	Monthly	2
15	04/07/2005	Total Copper	10.4 ug/L	12 ug/L	Daily	4
16	04/07/2005	Bromodichloromethane	8 ug/L	14 ug/L	Daily	2
17	04/07/2005	Bromodichloromethane	0.54 lbs/day	0.74 lbs/day	Daily	2
18	04/30/2005	Total Arsenic	10 ug/L	14 ug/L	Monthly	2
19	04/30/2005	Total Copper	7.9 ug/L	12 ug/L	Monthly	2
20	04/30/2005	Bromodichloromethane	5 ug/L	14 ug/L	Monthly	2
21	04/30/2005	Dibromochloromethane	1.4 ug/L	2.6 ug/L	Monthly	2
22	04/30/2005	Total Copper	0.53 lbs/day	0.55 lbs/day	Monthly	4
23	04/30/2005	Bromodichloromethane	0.34 lbs/day	0.64 lbs/day	Monthly	2
24	05/11/2005	Total Copper	10.4 ug/L	12 ug/L	Daily	4
25	05/11/2005	Bromodichloromethane	8 ug/L	16 ug/L	Daily	2
26	05/11/2005	Dibromochloromethane	2.8 ug/L	3.5 ug/L	Daily	2
27	05/11/2005	Bromodichloromethane	0.54 lbs/day	0.84 lbs/day	Daily	2
28	05/31/2005	Total Arsenic	10 ug/L	14 ug/L	Monthly	2
29	05/31/2005	Total Copper	7.9 ug/L	12 ug/L	Monthly	2
30	05/31/2005	Total Cyanide	3.7 ug/L	7 ug/L	Monthly	2
31	05/31/2005	Bromodichloromethane	5 ug/L	16 ug/L	Monthly	2
32	05/31/2005	Dibromochloromethane	1.4 ug/L	3.5 ug/L	Monthly	2
33	05/31/2005	Bromodichloromethane	0.34 lbs/day	0.73 lbs/day	Monthly	2
34	05/31/2005	Total Copper	0.53 lbs/day	0.55 lbs/day	Monthly	4
35	05/31/2005	Total Cyanide	0.25 lbs/day	0.32 lbs/day	Monthly	2
36	05/31/2005	Dibromochloromethane	0.095 lbs/day	0.16 lbs/day	Monthly	2
37	06/02/2005	Total Copper	10.4 ug/L	15 ug/L	Daily	2
38	06/02/2005	Bromodichloromethane	8 ug/L	18 ug/L	Daily	2
39	06/02/2005	Total Copper	0.7 lbs/day	0.79 lbs/day	Daily	4
40	06/02/2005	Bromodichloromethane	0.54 lbs/day	0.95 lbs/day	Daily	2
41	06/02/2005	Dibromochloromethane	2.8 ug/L	3.8 ug/L	Daily	2
42	06/30/2005	Bromodichloromethane	0.34 lbs/day	0.81 lbs/day	Daily	2

ATTACHMENT A

	<u>Date Occurred</u>	<u>Violation Type</u>	<u>Limit</u>	<u>Measured</u>	<u>Period Type</u>	<u>Remarks</u>
43	06/30/2005	Dibromochloromethane	0.095 lbs/day	0.17 lbs/day	Daily	2
44	06/30/2005	Bromodichloromethane	5 ug/L	18 ug/L	Monthly	2
45	06/30/2005	Dibromochloromethane	1.4 ug/L	3.8 ug/L	Monthly	2
46	07/13/2005	Bromodichloromethane	8 ug/L	19 ug/L	Daily	2
47	07/13/2005	Bromodichloromethane	0.54 lbs/day	0.95 lbs/day	Daily	2
48	07/13/2005	Dibromochloromethane	2.8 ug/L	3.6 ug/L	Daily	2
49	07/31/2005	Total Coliform	500 MPN	900 MPN	Daily	4
50	07/31/2005	Bromodichloromethane	5 ug/L	19 ug/L	Monthly	2
51	07/31/2005	Bromodichloromethane	0.34 lbs/day	0.86 lbs/day	Monthly	2
52	07/31/2005	Dibromochloromethane	1.4 ug/L	3.6 ug/L	Monthly	2
53	07/31/2005	Dibromochloromethane	0.095 lbs/day	0.16 lbs/day	Monthly	2
54	08/04/2005	Bromodichloromethane	8 ug/L	9.4 ug/L	Daily	4
55	09/21/2005	Total Copper	16 ug/L	15 ug/L	Daily	4
56	10/07/2005	pH	8	8.4	Daily	4
57	10/07/2005	pH	6.5	6.4	Daily	4
58	11/17/2005	Total Coliform	500 MPN	1600 MPN	Daily	4
59	11/30/2005	pH	8	8.5	Daily	4
60	11/30/2005	Settleable Solids	0.2 ml/L	0.3 ml/L	Daily	1
61	12/15/2005	pH	8	9.3	Daily	4
62	02/03/2006	Total Coliform	23 MPN	30 MPN	7-day Median	4
63	02/04/2006	Total Coliform	23 MPN	30 MPN	7-day Median	4
64	02/05/2006	Total Coliform	23 MPN	50 MPN	7-day Median	4
65	02/06/2006	Total Coliform	23 MPN	50 MPN	7-day Median	4
66	02/07/2006	Total Coliform	23 MPN	30 MPN	7-day Median	4
67	02/13/2006	Settleable Solids	0.2 ml/L	0.4 ml/L	Daily	1
68	02/14/2006	pH	6.5	6.4	Daily	4
69	02/27/2006	Settleable Solids	0.2 ml/L	0.4 ml/L	Daily	1

REMARKS:

1. Serious Violation: For Group 1 pollutants that exceed the effluent limitation by 40 percent or more
2. Serious Violation: For Group 2 pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violation falls within the first three violations in a six-month period, thus is exempt from mandatory penalties.
4. Non-serious violation subject to mandatory penalties

VIOLATIONS AS OF: 02/28/2006

Group 1 Serious Violations:	3
Group 2 Serious Violations:	50
Non-Serious Violations Subject to MPs:	16
Non-Serious Violations Exempt from MPs:	0
<u>TOTAL VIOLATIONS SUBJECT TO MPs:</u>	<u>69</u>

Mandatory Penalty = (53 Serious Violations + 16 Non-Serious Violations) x \$3,000 = \$207,000

ATTACHMENT B-

San Joaquin River National Wildlife Refuge: Hagemann Unit Levee Planting

River Partners

Project Background

This Hagemann Unit levee planting project will restore wildlife habitat on approximately 5,300 linear feet of levee side on an Army Corps of Engineers (Corps) levee on the San Joaquin River National Wildlife Refuge (Refuge). The Refuge is located in Stanislaus County, approximately 10 miles west of Modesto, California. The U.S. Fish and Wildlife Service owns and operates the National Wildlife Refuge system.

The project will vegetate levee sides on the Hagemann Unit (Figure 1). On the southern end of the project, both east and west sides of the levee will be vegetated, while on the northern end, only the east side of the levee will be planted (the west side of the levee was planted in 2004).

The project supports the reintroduction efforts for the Riparian Brush Rabbit. The Endangered Species Recovery Program (administered by the California State University Stanislaus in Turlock) is reintroducing the endangered riparian brush rabbit on the San Joaquin National Wildlife Refuge because of substantial habitat loss throughout the Central Valley. The project area is located adjacent to a riparian brush rabbit release pen, making this levee planting primary habitat for newly released rabbits. The project will create dense, shrubby habitat to provide refuge and a dispersal corridor during times of flooding for the Riparian Brush Rabbit. The project will also benefit a variety of other wildlife.

The Hagemann Unit levee planting project complements one of the largest riparian habitat restoration projects in the Central Valley. Almost 1,500 acres of the Refuge have been restored. River Partners has implemented several large restoration project surrounding the Hagemann Unit levee planting project area (Figure 1). All restoration areas of the Refuge are located within an Army Corps nonstructural flood protection demonstration project. In addition, the project continues other Supplemental Environmental Projects that included restoring wildlife habitat on over 13,000 linear feet of levee sides. The cities of Manteca and Tracy funded these projects as part of Administrative Civil Liability Orders from the Regional Water Quality Control Board.

The Hagemann Unit levee planting project will use these past proven techniques and take advantage of the close proximity to past restoration projects to ease irrigation installation.

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Scope of Work

Task 1: **Planning/Design**

Site Assessment Riparian Habitat Restoration: River Partners will conduct a site assessment to evaluate site factors that will determine the species composition of the native riparian vegetation to be restored.

Task 2: **Irrigation & Installation**

Irrigation Installation: River Partners will install a drip irrigation system to irrigate planted vegetation for three years.

Irrigation Operation/Repair: River Partners will operate and maintain the drip irrigation system for three years.

Task 3: **Ground Preparation**

River Partners will prepare levee sides prior to planting, including removing thatch and weed control.

Task 4: **Planting**

Plant Propagation: Local native plant material will be collected, propagated, and incorporated into the levee planting. River Partners will contract with plant nurseries to grow container-stock for the revegetation. Approximately 3,100 woody plants will be supplied by River Partners and contracted nurseries.

Field Planting: River Partners will survey and layout the field, design plant communities, and plant and provide every tree with a plant protector. River Partners will replant trees and shrubs as required reaching 240 plants per 1,000 linear feet performance goal at the end of three years.

Understory: River Partners will plant a native herbaceous understory throughout the planting area.

Task 5: **Maintenance**

This task includes routine field maintenance operations such as spraying and hoeing for weed control for three years to optimize growing conditions for young riparian plants.

Task 6: **Monitoring and Reporting**

Field managers and biology staff will regularly monitor field and plant conditions to guide adaptive management decisions. At the end of the first growing season, River Partners will complete a field census to monitor survival and density of each species. At the end of the second and third growing seasons, River Partners will monitor sub samples of the project area for survival and density. This task also includes Annual Progress Reports due annually by December 1 and a Final Project Report due by December 1, 2009, describing project activities, monitoring results, and site photos.

ATTACHMENT B

Task 7: **Project Management**

River Partners shall be responsible for managing and administering the project. This includes contract management, accounting, budget management, and coordination with partners, subcontractors, and stakeholders.

ATTACHMENT B

Budget for the San Joaquin River National Wildlife Refuge—Hagemann Unit Levee Planting, Stanislaus County, California.

	Task	Cost
1	Planning/Design	\$1,890
2	Irrigation & Installation	\$24,375
3	Ground Preparation	\$1,683
4	Planting	\$26,663
5	Maintenance	\$26,731
6	Monitoring/Reporting	\$13,686
7	Project Management	\$15,972
	Total	\$111,000

ATTACHMENT B

Implementation Timeline for the San Joaquin River National Wildlife Refuge—Hagemann Unit Levee Planting, Stanislaus County, California.

Task	2006-2007				2007-2008				2008-2009			
	Winter 2006-2007 *	Spring 2007	Summer 2007	Fall 2007	Winter 2007-2008	Spring 2008	Summer 2008	Fall 2008	Winter 2008-2009	Spring 2009	Summer 2009	Fall 2009
Planning/Design												
Irrigation & Installation												
Ground Preparation												
Planting					Replant	Replant		Under story				
Maintenance												
Monitoring/Reporting												
Project Management												

* Project starts on December 19, 2006.

ATTACHMENT B

Figure 1. Proposed project area for the Hagemann Unit Levee Planting

