
Central Valley Regional Water Quality Control Board

26 August 2020

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William Malinen, General Manager
Bear Valley Community Services District
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Bear Valley Springs Association
29541 Rolling Oak Drive
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**OFFER TO PARTICIPATE IN THE EXPEDITED PAYMENT LETTER PROGRAM
RELATING TO ADMINISTRATIVE CIVIL LIABILITY R5-2020-0535 FOR
ASSESSMENT OF MANDATORY MINIMUM PENALTIES, BEAR VALLEY
COMMUNITY SERVICES DISTRICT AND BEAR VALLEY SPRINGS ASSOCIATION,
BEAR VALLEY COMMUNITY SERVICES DISTRICT WASTEWATER TREATMENT
FACILITY, KERN COUNTY**

The Bear Valley Community Services District and Bear Valley Springs Association (Discharger) discharge treated wastewater from the Bear Valley Community Services District Wastewater Treatment Facility (Facility), which is regulated by Waste Discharge Requirements (WDRs) Order R5-2015-0011 (NPDES CA0081213). This Offer to Participate in the Central Valley Regional Water Quality Control Board's (Central Valley Water Board's) Expedited Payment Letter (EPL) Program (Conditional Offer) provides the Discharger with an opportunity to resolve mandatory minimum penalties for alleged NPDES permit violations without a formal administrative civil liability complaint. The alleged mandatory minimum penalty, in the amount of **nine thousand dollars (\$9,000)**, represents the sum of accrued mandatory minimum penalties for effluent limitation violations specifically identified in the Record of Violations (Attachment A) subject to Mandatory Minimum Penalty (MMP), attached hereto and incorporated herein by reference, that occurred between 1 January 2011 and 30 June 2020.

NOTICE OF VIOLATION AND RECORD OF VIOLATIONS

Based on the Discharger's self-monitoring reports, the Central Valley Water Board Prosecution Team (Prosecution Team) sent the Discharger a Notice of Violation and Draft Record of Violations (ROV) on 6 November 2018, notifying the Discharger of effluent limit violations and corresponding violations of the California Water Code. The Prosecution Team provided the Discharger with an opportunity to review and contest the violations listed in the ROV.

Following the Discharger's review of the ROV, the Discharger submitted a 5 December 2018 response letter contesting violations dated from 11 January through 31 January 2017 (Items 5 through 19 of Attachment A, Table 1), and indicated that these fifteen violations were result of a single operational upset (SOU). The SOU was due to excessive hydraulic overloading in the treatment system caused by excessive infiltration and inflow of the collection system originating from extreme storm event(s) for the month of January with record high of 7.26 inches of rain. In addition, the Discharger contended that the 20 March 2011 violation (Item 1) was old and regulated by previous Waste Discharge Requirements Order R5-2008-0121 and should not be subject to MMP.

The Central Valley Water Board's 14 January 2019 letter requested the Discharger submit additional information to justify the SOU and causes of chlorine injection system failure, which occurred on 3 January 2017. The Discharger's 5 February 2019 response letter provided additional data supporting the SOU, which was documented in the Facility's logbooks. The Discharger also clarified that although the chlorine injection pipeline had failed below grade a couple of days prior to the Facility's hydraulic overloading, the pipeline was repaired timely and was back online by 5 January 2017.

The Prosecution Team confirmed that the fifteen violations were caused by the SOU and in compliance with State Water Resources Control Board Enforcement Policy dated 20 May 2010 addressing the SOU and US EPA Guidance in determining if the SOU had occurred. Therefore, the fifteen violations were reduced to one violation subject to the MMP (Item 19, violation dated 31 January 2017). The Prosecution Team also recommends that the older violation (Item 1), which dates back to 2011, be subject to the MMP. In addition, the violation dated 14 February 2017 (Item 20) was not contested by the Discharger and is subject to the MMP. Therefore, the MMP subjects the Discharger to three violations and a total liability of \$9,000.

STATUTORY LIABILITY

Water Code sections 13385(h) and (i) require the assessment of a mandatory minimum penalty of \$3,000 for each specified serious and chronic effluent limit violation. Pursuant to Water Code section 13385.1(a), the failure to file a discharge monitoring report required pursuant to section 13383 for each complete period of thirty (30) days following the deadline for submitting the report constitutes a serious violation subject to a mandatory minimum penalty under Water Code section 13385(h). The Discharger may also be subject to discretionary administrative civil liabilities pursuant to Water Code section 13385(c) of up to \$10,000 for each day in which the violation occurs, and \$10 for each gallon discharged but not cleaned up in excess of 1,000 gallons. These mandatory minimum penalties and discretionary administrative civil liabilities may be assessed by the Central Valley Water Board beginning with the date that the violation first occurred. The formal enforcement action that the Central Valley Water Board uses to assess such liability is an administrative civil liability complaint, although the Central Valley Water Board may instead refer such matters to the Attorney General's Office for prosecution. If referred to the Attorney General for prosecution, the Superior Court may assess up to \$25,000 for each day in which the violation occurs, and \$25 for each gallon discharged but not cleaned up in excess of 1,000 gallons.

SETTLEMENT OFFER

The Discharger can avoid the issuance of a formal enforcement action and settle the alleged violations identified in Attachment A by participating in the EPL Program.

To promote resolution of these violations, the Central Valley Water Board Prosecution Team makes this Conditional Offer. The Central Valley Water Board's Prosecution Team proposes to resolve these violations without the issuance of a formal enforcement action through this Conditional Offer assessing **nine thousand dollars (\$9,000)** in mandatory minimum penalties. If the Discharger accepts this proposal, subject to the conditions below, the Central Valley Water Board Prosecution Team will accept that payment in settlement of any enforcement action that would otherwise arise out of the violations identified in Attachment A. Accordingly, the Central Valley Water Board Prosecution Team will forego issuance of a formal administrative civil liability complaint, will not refer the violations to the Attorney General, and will waive its right to seek additional discretionary civil liabilities for the violations identified in Attachment A. The Conditional Offer does not address or resolve liability for any violation that is not specifically identified in Attachment A, regardless of the date that the violation occurred.

If the Discharger accepts this Conditional Offer, please complete and return the enclosed "Acceptance of Conditional Resolution and Waiver of Right to Hearing" (proposed) Order" (Acceptance and Waiver) **on or before 25 September 2020**. The Acceptance and Waiver constitutes a settlement of the violations specifically identified in Attachment A.

CONDITIONS FOR CENTRAL VALLEY WATER BOARD ACCEPTANCE OF RESOLUTION

Federal regulations require the Central Valley Water Board to publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). Notice of this settlement will be published on the Central Valley Water Board's website at:

[This Settlement Notice](https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/)

(https://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/)

If no comments are received within the 30-day comment period, and unless there are new material facts that become available to the Central Valley Water Board, the Executive Officer or his designee will execute the Acceptance and Waiver as a stipulated order assessing the uncontested mandatory minimum penalty amount pursuant to Water Code sections 13385.

However, if significant comments are received in opposition to the settlement, this Conditional Offer may be withdrawn. In that case, the Discharger's waiver pursuant to the Acceptance and Waiver will be void and the violations will be addressed in an administrative civil liability hearing. At the hearing, the Discharger will be free to make arguments to any of the alleged violations, and the Discharger's prior agreement to accept this Conditional Offer will be treated as a settlement communication and will not in any way be binding or used as evidence against the Discharger. The Discharger will be provided with further information on the administrative civil liability hearing process.

If the Discharger chooses to sign the Acceptance and Waiver, full payment of the assessed amount may be submitted with the waiver. However, full payment of the assessed amount shall be due no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Executive Officer. In accordance with California Water Code section 13385(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to section 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$9,000 liability shall be paid by cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". Failure to pay the full penalty within the required time period may subject the Discharger to further liability.

The Discharger shall indicate on the check the number of this EPL and send it to the State Water Resources Control Board, Accounting Office, Attn: EPL R5-2020-0535 Payment, PO Box 1888, Sacramento, California, 95812-1888. The waiver and a copy of the check must also be mailed to the Central Valley Water Board at 1685 E Street, Fresno, CA, 93706 attention to Russell Walls.

If you have any questions or comments regarding this Settlement Offer, please contact Hossein (HOSS) Aghazeynali at (559) 445-6194 or Hossein.Aghazeynali@waterboards.ca.gov.

Original Signed by:
CLAY L. RODGERS
Assistant Executive Officer

Enclosures: Attachment A - Record of Violations
Acceptance of Conditional Resolution and Waiver of Right to Hearing

cc w/o encl: Eric Magnan, USEPA, Region 9, San Francisco
David Boyers, Office of Enforcement, SWRCB, Sacramento
Patrick Pulupa, Central Valley Water Board Advisory Team, Rancho Cordova
Jessica Jahr, Office of Chief Counsel, SWRCB, Sacramento
Adam Laputz, Central Valley Water Board Advisory Team, Rancho Cordova
Kern County Environmental Health, Bakersfield
Jason Parks, Bear Valley CSD, Tehachapi

ATTACHMENT A TO SETTLEMENT OFFER NUMBER R5-2020-0535

Record of Violations Subject to Mandatory Minimum Penalties

**BEAR VALLEY COMMUNITY SERVICES DISTRICT AND BEAR VALLEY SPRINGS ASSOCIATION
BEAR VALLEY COMMUNITY SERVICES DISTRICT WASTEWATER TREATMENT FACILITY**
RECORD OF VIOLATIONS (1 January 2011 through 30 June 2020) MANDATORY MINIMUM PENALTIES

(Data reported under Monitoring and Reporting Programs R5-2008-0121 and R5-2015-0011)

The following table lists the alleged violations subject to mandatory minimum penalties (MMPs), pursuant to Water Code section 13385(h) and (i).

Table 1. Violations subject to Mandatory Minimum Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	Exempt Reason	PENALTY	CIWQS Violation Number
1	03/20/2011	Chlorine, Total Residual	mg/L	0.02	1	24-hour Average	CAT 2	SIG		\$3,000	897547
2	01/03/2017	Total Coliform	MPN/100	23	1600	Not to exceed more than once in any 30-day period	OEV	NCHRON	NA	\$0	1020763
3	01/03/2017	Total Coliform	MPN/100	240	1600	Daily Maximum	OEV	NCHRON	NA	\$0	1043569
4	01/11/2017	Total Coliform	MPN/100	23	1600	Not to exceed more than once in any 30-day period	OEV	NCHRON	NA	\$0	1020768
5	01/11/2017	Total Coliform	MPN/100	240	1600	Daily Maximum	OEV	CHRON	SOU	\$0	1043570
6	01/12/2017	Total Coliform	MPN/100	240	540	Daily Maximum	OEV	CHRON	SOU	\$0	1043571

ATTACHMENT A TO SETTLEMENT OFFER NUMBER R5-2020-0535

Record of Violations Subject to Mandatory Minimum Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	Exempt Reason	PENALTY	CIWQS Violation Number
7	01/12/2017	Total Coliform	MPN/100	23	540	Not to exceed more than once in any 30-day period	OEV	CHRON	SOU	\$0	1020765
8	01/12/2017	Total Coliform	MPN/100	2.2	540	7-Day Median	OEV	CHRON	SOU	\$0	1020766
9	01/17/2017	Total Coliform	MPN/100	240	540	Daily Maximum	OEV	CHRON	SOU	\$0	1043572
10	01/17/2017	Total Coliform	MPN/100	2.2	540	7-Day Median	OEV	CHRON	SOU	\$0	1043574
11	01/17/2017	Total Coliform	MPN/100	23	540	Not to exceed more than once in any 30-day period	OEV	CHRON	SOU	\$0	1020769
12	01/18/2017	Total Coliform	MPN/100	2.2	540	7-Day Median	OEV	CHRON	SOU	\$0	1043575
13	01/19/2017	Total Coliform	MPN/100	2.2	49	7-Day Median	OEV	CHRON	SOU	\$0	1043576
14	01/19/2017	Total Coliform	MPN/100	23	49	Not to exceed more than once in any 30-day period	OEV	CHRON	SOU	\$0	1020770
15	01/24/2017	Total Coliform	MPN/100	2.2	17	7-Day Median	OEV	CHRON	SOU	\$0	1043577
16	01/25/2017	Total Coliform	MPN/100	2.2	17	7-Day Median	OEV	CHRON	SOU	\$0	1043578
17	01/26/2017	Total Coliform	MPN/100	23	33	Not to exceed more than once in any	OEV	CHRON	SOU	\$0	1020767

ATTACHMENT A TO SETTLEMENT OFFER NUMBER R5-2020-0535

Record of Violations Subject to Mandatory Minimum Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	Exempt Reason	PENALTY	CIWQS Violation Number
						30-day period					
18	01/26/2017	Total Coliform	MPN/100	2.2	17	7-Day Median	OEV	CHRON	SOU	\$0	1043579
19	01/31/2017	Total Coliform	MPN/100	2.2	9.3	7-Day Median	OEV	CHRON		\$3,000	1020764
20	02/14/2017	Total Coliform	MPN/100	23	33	Not to exceed more than once in any 30-day period	OEV	CHRON		\$3,000	1022616

EXPEDITED PAYMENT AMOUNT VIOLATIONS SUMMARY

VIOLATIONS AS OF:	6/30/2020
Group I Serious Violations:	0
Group II Serious Violations:	1
Non-Serious Violations Not Subject to MMPs:	3
Non-serious Violations Subject to MMPs:	2
Total Violations Subject to MMPs:	3

Mandatory Minimum Penalty Amount for Effluent Limit Violation(s)

1 Serious Violation(s) x \$3,000 Violation = \$3,000

2 Non-Serious Violation subject to MMP x \$3,000 per Violation = \$6,000

Total Expedited Payment Amount = \$9,000

ATTACHMENT A TO SETTLEMENT OFFER NUMBER R5-2020-0535

Record of Violations Subject to Mandatory Minimum Penalties

Table 2. Definition

Abbreviation	Description
CAT 1	Violation of effluent limitation for Group I pollutant.
CAT 2	Violation of effluent limitation for Group II pollutant
CHRON	Chronic violation as defined by Water Code section 13385 (i). Any non-serious violation that falls within a 180-day period with three preceding violations. Thus, the fourth non-serious violation that occurs within a 180-day period is subject to MMPs.
CIWQS	California Integrated Water Quality System database. (https://www.waterboards.ca.gov/water_issues/programs/ciwqs/)
CTOX	Violation of chronic toxicity effluent limitation.
DREP	Deficient reporting violation. This will only result in MMPs if the report is so deficient as to make determination of compliance impossible for the reporting period.
LREP	Late Reporting violation. Every 30-Days a report is late counts as one serious late reporting violation subject to MMPs.
Measured	Reported value for the monitoring period by the Discharger.
MMP Type	Classification of the type of MMP violation.
Occurrence Date	Date that a violation occurred. For averaging period limitation violations, such as weekly and monthly averages, the last day of the reporting period is used such as last day of the week (Saturday) and last day of the month, respectively.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
NA	Not Applicable
NCHRON	Non-serious violation falls within the first three violations in a 180-day period, thus, not subject to MMP.
SIG	Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more. For Group II pollutants that exceed the effluent limitation by 20 percent or more.
SOU	Single Operational Upset

**ACCEPTANCE OF CONDITIONAL RESOLUTION
AND WAIVER OF RIGHT TO HEARING; (proposed) ORDER**

Bear Valley Community Services District and Bear Valley Springs Association

EPL No. R5-2020-0535

By signing below and returning this Acceptance of Conditional Resolution and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Regional Water Quality Control Board (Central Valley Water Board), the Bear Valley Community Services District and the Bear Valley Springs Association (Discharger) hereby accepts the "Offer to Participate in Expedited Payment Letter Program" (Conditional Offer), incorporated herein by reference, and waives the right to a hearing before the Central Valley Water Board to dispute the allegations of violations described in the Record of Violations (ROV), which is included as Attachment A to the Conditional Offer.

The Discharger agrees that the Conditional Offer shall serve as a complaint pursuant to Article 2.5 of the California Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations through its Chief Prosecutor. The Discharger agrees to pay the penalties required by California Water Code section 13385(h) and/or (i), in the sum of \$9,000 (Expedited Payment Amount), which shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that otherwise might be assessed for the violations described in the ROV. The Discharger understands that this Acceptance and Waiver waives its right to contest the allegations in the ROV and the amount of civil liability assessed for the violations.

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

Upon execution by the Discharger, the completed Acceptance and Waiver shall be returned via email or U.S. mail to:

Russell Walls, Senior Water Resources Control Engineer
Compliance and Enforcement Unit
1685 E Street
Fresno, CA 93706
Phone: (559) 488-4392
Russell.Walls@waterboards.ca.gov

Offer to Participate in Expedited Payment Letter Program
EPL R5-2020-0535

The Discharger understands that federal regulations set forth in Title 40, Code of Federal Regulations, section 123.27(d)(2)(iii) require the Central Valley Water Board to publish notice of and provide at least thirty (30) days for public comment on any proposed resolution of an enforcement action addressing NPDES permit violations. Accordingly, this Acceptance and Waiver, prior to execution by the Central Valley Water Board Executive Officer, will be published as required by law for public comment.

If no comments are received within the notice period that causes the Central Valley Water Board Executive Officer to question the Expedited Payment Amount, the Central Valley Water Board Executive Officer or his designee will execute this Acceptance and Waiver.

The Discharger understands that if significant comments are received in opposition to the Expedited Payment Amount, the offer on behalf of the Central Valley Water Board to resolve the violations set forth in the ROV may be withdrawn. In that circumstance, the Discharger will be advised of the withdrawal and an administrative civil liability complaint may be issued and the matter may be set for a hearing before the Central Valley Water Board. For such a liability hearing, the Discharger understands that this Acceptance and Waiver executed by the Discharger will be treated as a settlement communication and will not be used as evidence in that hearing.

The Discharger further understands that once the Acceptance and Waiver is executed by the Central Valley Water Board Executive Officer or his designee, the full payment required by the deadline set forth below is a condition of this Acceptance and Waiver. In accordance with California Water Code section 13385(n)(1) and California Water Code section 13385.1(c)(1), funds collected for violations of effluent limitations and reporting requirements pursuant to sections 13385 and 13385.1 shall be deposited in the State Water Pollution Cleanup and Abatement Account. Accordingly, the \$9,000 liability shall be paid by a cashiers or certified check made out to the "State Water Pollution Cleanup and Abatement Account". The Discharger may choose to submit the full payment with the Waiver. However, the payment must be submitted to the State Water Resources Control Board no later than thirty (30) calendar days after the date the Acceptance and Waiver is executed by the Central Valley Water Board Executive Officer or his designee.

Please mail the check to:

State Water Resources Control Board, Accounting Office
Attn: EPL R5-2020-0535 Payment
PO Box 1888
Sacramento, CA 95812-1888

The Discharger shall also provide a copy of the waiver form and check via email to the Central Valley Water Board (Russell.Walls@waterboards.ca.gov).

Offer to Participate in Expedited Payment Letter Program
EPL R5-2020-0535

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

Bear Valley Community Services District and Bear Valley Springs Association and

BY: Original Signed by 09/18/2020
Signed Name Date

Wesley Shyod of Bear Valley
Springs Association 09/18/2020
Printed or Typed Name Date

and

BY: Original Signed by 09/18/2020
Signed Name Date

William J. Malinen of Bear Valley
Community Services District 09/18/2020
Printed or Typed Name Date

IT IS SO ORDERED PURSUANT TO CALIFORNIA WATER CODE SECTION 13385

BY: _____
Patrick Pulupa Date
Executive Officer