

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

In the Matter of:

ORDER R5-2017-0525

**City of Marysville
Wastewater Treatment Facility,
Yuba County**

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

INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Regional Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the City of Marysville (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 Government Code section 11415.60. This Settlement Agreement provides stipulations for settlement of administrative civil liability assessed to the City under California Water Code section 13350.

RECITALS

2. The City of Marysville (hereafter Discharger) owns and operates a wastewater treatment facility (WWTF) in Marysville, Yuba County. The WWTF serves the City of Marysville and surrounding areas. The WWTF consists of secondary treatment followed by disposal to percolation/evaporation ponds. The ponds are located within the Yuba River and Feather River floodplain. The facility also has a tertiary treatment unit that is designed to treat wastewater to tertiary standards, followed by irrigation of soccer fields.
3. On 16 March 2001, the Central Valley Regional Water Quality Control Board issued Waste Discharge Requirements (WDRs) Order 5-01-071. Among other items, the WDRs limit influent flows to 1.7 million gallons per day (mgd), requires the Discharger to construct, operate and maintain the facility such that inundation or washout due to flood and/or storm with a 100 year annual return does not occur, and requires the Discharger to submit a technical report providing an assessment of

- alternatives, costs, implementation plan and schedule for attaining flood protection for the percolation/evaporation ponds located within the floodplain.
4. On 4 June 2004, the Central Valley Water Board adopted Cease and Desist Order R5-2004-0072. The Order was issued after the Discharger failed to submit technical reports as required under WDRs Order 5-01-071. CDO R5-2004-0072 provided the Discharger with a time schedule to make facility improvements and prepare a Feasibility Study and Master Plan Report describing how the wastewater percolation/evaporation ponds would be protected from flooding and washout caused by storm events with a 100 year annual return period.
 5. On 8 May 2005, the Central Valley Water Board and Discharger signed a Settlement Agreement to Administrative Civil Liability R5-2005-0505. The Parties agreed that the Discharger would pay \$15,000 for the failure to timely submit reports required by CDO R5-2004-0072, and that \$10,000 would be held in abeyance pending the submittal of the outstanding reports. The Discharger complied with the Settlement Agreement.
 6. On 31 July 2008, the Central Valley Water Board adopted CDO R5-2008-0110. The CDO provided the Discharger with a time schedule to make facility improvements and implement the Discharger's selected compliance alternative in the Feasibility Study and Master Plan Results Report: regionalization of wastewater collection, treatment and disposal systems with the Linda County Water District (LCWD).
 7. On 24 November 2008, the Discharger and Yuba County requested a 12 month extension to the time schedule in Order R5-2008-0110 to consider larger scale regionalization opportunities with other agencies in Yuba County.
 8. On 5 February 2009, the Central Valley Water Board adopted CDO Order R5-2009-0014. Order R5-2009-0014 provided an extension of the time schedule in CDO R5-2008-0110 and requires the Discharger to submit the following:
 - A Compliance Workplan describing the interagency regionalization plan with LCWD or with other agencies by 31 January 2010.
 - A signed interagency agreement between the City of Marysville and other regionalization partners by 1 March 2010.

- A funding and implementation schedule by 1 April 2010.
 - A Facilities Design Report by 1 July 2010.
 - A CEQA Report certifying submittal of a CEQA application to the Lead Agency for review by 1 August 2010.
 - A Report of Waste Discharge, which includes the City of Marysville within its scope by 1 March 2011.
 - A Pond Closure Workplan for all wastewater ponds subject to inundation or wash out due to flood and/or storm with a 100-year return frequency by 1 April 2012.
 - A Facility Construction Completion Report by 1 December 2014.
 - A Pond Closure Report within 120 days of commencing discharge to the LCWD wastewater treatment plant.
9. CDO R5-2009-0014 also requires the Discharger to submit Quarterly Project Status Reports beginning the first quarter of 2009 and continuing until the CDO is rescinded or revised. The reports are to describe all work completed during the quarter in response to the CDO and the volume of tertiary treated wastewater discharged to the soccer fields during the quarter, and are required to be submitted on the first day of the second month following the end of the quarter.
10. The Prosecution Team alleges that the Discharger violated CDO R5-2009-0014. Specifically, the Prosecution Team alleges that the Discharger violated CDO R5-2009-0014 by failing to timely submit the First Quarter 2013 through Fourth Quarter 2015 Quarterly Progress Reports as required in paragraph 13 of the CDO.
11. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, and in consideration of hearing and litigation risks, the Parties have agreed to the imposition of **TWO HUNDRED EIGHTY-EIGHT THOUSAND TWO HUNDRED AND EIGHTY-EIGHT DOLLARS (\$288,288)** in administrative liability against the Discharger. The calculation of the penalty amount is shown in Exhibit A and conforms with the State Water Board's Water Quality Enforcement Policy.

12. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

STIPULATIONS

The Parties stipulate to the following:

13. **Administrative Civil Liability:** The City hereby agrees to the imposition of an administrative civil liability totaling **TWO HUNDRED EIGHTY EIGHT THOUSAND TWO HUNDRED EIGHTY EIGHT DOLLARS (\$288,288)** to resolve the alleged violations. Specifically:
- 13.1 Within thirty (30) days of issuance of the Order, the City agrees to remit, by check, **ONE HUNDRED FORTY FOUR THOUSAND ONE HUNDRED FOURTY FOUR DOLLARS (\$144,144)** payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. The City shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. Copies of the check shall be sent to John J. Prager, Attorney, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812 and Wendy Wyels, Supervisor, Compliance/Enforcement Section, Regional Water Quality Control Board, Central Valley Region, 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670.
- 13.2 The Parties agree that the remaining **ONE HUNDRED FORTY FOUR THOUSAND ONE HUNDRED FOURTY FOUR DOLLARS (\$144,144)** of this administrative civil liability shall be suspended ("Suspended Liability") pending completion of a Supplemental Environmental Project (SEP) as set forth herein and **Exhibit B**.
14. **SEP Description:** The City agrees to fund the SEP described below. The SEP will directly benefit the water quality of Ellis Lake, a man-made lake in the center of Marysville, and will indirectly benefit the downstream receiving water body, Jack

- Slough, which feeds to the Feather River during the wet season. Ellis Lake has a surplus of algae blooms that contribute to poor water quality. In summary, the SEP would include preparation of a Technical Memorandum to identify a preferred project, and then implementation of the selected preferred project. The project would be to reduce algae growth in Ellis Lake either by pumping water from the Feather River into the lake, by designing and install aeration devices into the Lake, or through some other project that would be defined in the Technical Memorandum.
15. **SEP Definitions:**
- a. "Designated Regional Board Representative" – the representative from the Regional Water Board that will be responsible for oversight of the SEP. That individual is: Wendy Wyels, or a person who may subsequently designated by the Assistant Executive Officer.
 - b. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.
16. **SEP Completion Date:** The Assistant Executive Officer may extend the deadlines contained in Exhibit B if the Discharger demonstrates that unforeseeable contingencies have created delays, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines and makes the extension request in advance of the expiration of the deadline. The Discharger shall make any deadline extension request in writing at least 30-days prior to the deadline. Any request for an extension not responded to in writing by the Board shall be deemed denied. The Discharger must obtain explicit approval from the Assistant Executive Officer for any significant departures from the project described in Exhibit B. Failure to obtain written approval for any significant departures will result in the assessment of the actual cost difference between the portion of the project completed in conformity with the SEP described in Exhibit B and the total amount of the suspended.
17. **Agreement of the City to Fund, Report and Guarantee Implementation of SEP:** The City represents that: (1) it will fund the SEP in the amounts as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Regional Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEP; (3) it will guarantee implementation of the SEP identified in **Exhibit B** by remaining liable for the Suspended Liability until the SEP is completed and accepted by the Regional Board

in accordance with the terms of this Stipulated Order. The City agrees that the Regional Board has the right to require an audit of the funds expended by it to implement the SEP.

18. **SEP Progress Reports:** The City shall provide quarterly reports of progress on the SEP to the Designated Regional Board Representative on the dates listed in Exhibit B. If no activity occurred during a particular quarter, then a quarterly report so stating shall be submitted.
19. **Certification of Completion of SEP and Final Reports:** Within 30 days of the applicable SEP Completion Date, the City shall submit a certified statement of completion of the SEP ("Certification of Completion"), as described in Exhibit B. The Certification of Completion shall be submitted under penalty of perjury, to the Designated Regional Board Representative. The Certification of Completion shall include the following:
 - a. Certification that the SEP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the City.
 - b. Certification documenting the expenditures by the City during the completion period for the SEP. In making such certification, the City may rely upon tracking systems used in the ordinary course of business that capture employee time, expenditures, and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Regional Board for oversight. The City shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify SEP expenditures.
 - c. Certification, under penalty of perjury, that the City followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the City shall provide the Regional

Board with the following documents from the lead agency prior to commencing the SEP:

- i. Categorical or statutory exemptions relied upon by the City;
- ii. Negative Declaration if there are no potentially “significant” impacts;
- iii. Mitigated Negative Declaration if there are potentially “significant” impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
- iv. Environmental Impact Report (EIR).

20. **Third Party Financial Audit:** In addition to the certification, upon completion of the SEP and at the written request of the Assistant Executive Officer, or the Assistant Executive Officer’s delegee, the City, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Assistant Executive Officer providing such party’s(ies’) professional opinion that the City has expended money in the amounts claimed by the City. The audit report shall be provided to the Designated Regional Board Representative within three (3) months of notice from the Assistant Executive Officer to the City of the need for an independent third party financial audit. The audit need not address any costs incurred by the Regional Board for oversight.
21. **Regional Board Acceptance of Completed SEP:** Upon the City’s satisfaction of its SEP obligations under this Settlement Agreement and Stipulated Order and completion of the SEP and any audit requested by the Regional Board, the Designated Regional Board Representative shall issue a letter stating that all obligations under the Settlement Agreement and Stipulated Order have been completed. The issuance of this letter shall terminate any further obligations of the Discharger and/or Implementing Party under this Settlement Agreement and Stipulated Order and permanently suspend the remaining penalty amount.
22. **Failure to Expend all Suspended Liability Funds on the Approved SEP:** In the event that the City is not able to demonstrate to the reasonable satisfaction of the Designated Regional Board Representative that the entire Suspended Liability has been spent to complete the SEP for which the City is financially responsible, the City shall pay the difference between the Suspended Liability and the amount the City can demonstrate was actually spent on completion of the SEP. The City shall pay the difference within 30 days of its receipt of notice of the Designated Regional

Board Representative's determination that the City has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP.

23. **Failure to Complete the SEP:** Except as provided in Paragraph 22, if the SEP is not fully implemented by the SEP Completion Date (as defined in Paragraph 15) required by this Stipulation, the Assistant Executive Officer shall issue a Notice of Violation. The City shall be liable to pay the entire Suspended Liability unless the parties agree that another amount shall be due (which equals a portion thereof less than the value of the completion of any milestone requirements). A "Motion for Payment of Suspended Liability" shall be made before the Regional Board, for the amount of Suspended Liability assessed or if the Parties cannot reach agreement. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the City shall not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP. Upon a determination by the Regional Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Resources Control Board Accounting Office within thirty (30) days after the service of the Regional Board's determination. In addition, the City shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the City's obligations to implement the SEP or remaining SEP milestones
24. **Publicity:** Should the City, or the agents or subcontractors of the City publicize one or more elements of the SEP, they shall state in a prominent manner that the project is being funded as part of the settlement of an enforcement action by the Regional Board against the City.
25. **Compliance with Applicable Laws:** The City understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in herein may subject it to further enforcement, including additional administrative civil liability.

26. **Party Contacts for Communications related to Stipulated Order:**

For the Central Valley Water Board:

Wendy Wyels, Supervisor
Compliance and Enforcement Section
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
wwyels@waterboards.ca.gov
(916) 464-4835

For the City of Marysville:

Walter Munchheimer, Manager
City of Marysville
526 C Street
Marysville, CA 95901
wmunchheimer@marysville.ca.us

And,

Theresa Dunham, Special Counsel
Somach Simmons & Dunn
500 Capitol Mall, Suite 1000
Sacramento, CA 95814
tdunham@somachlaw.com

27. **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.
28. **Matters Addressed by Stipulation:** Upon adoption by the Central Valley Water Board, or its delegee, this Settlement Agreement and Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in the Complaint or which could have been asserted based on the specific facts alleged in the Complaint as of the effective date of this Settlement Agreement and Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the City's payment of the administrative

- civil liability by the deadline specified in Paragraph 13.1, and the City's satisfactory completion of the SEP as described in Paragraph 13.2.
29. **Public Notice:** The City understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The City agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
30. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement and Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Settlement Agreement and 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.
31. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or of the Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Team or of the Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.
32. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
33. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

34. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board.
35. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
36. **No Admission of Liability:** In settling this matter, the City does not admit to any of the allegations in the Complaint, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, the City agrees that in the event of any future enforcement actions by the Central Valley Water Board, the Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.
37. **Waiver of Hearing:** The City has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

38. **Waiver of Right to Petition:** The City hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the Regional Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
39. **Covenant Not to Sue:** The City covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
40. **Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.
41. **The City is Not Liable:** Neither the City, its directors, officers, employees, agents, representatives or contractors shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Central Valley Water Board members, or the Central Valley Water Board staff, attorneys, or representatives in carrying out activities pursuant to this Stipulated Order, nor shall the City, its directors, officers, employees, agents, representatives or contractors be held as parties to or guarantors of any contract entered into by the Central Valley Water Board, its members or staff, in carrying out activities pursuant to this Stipulated Order.
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 Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

43. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
44. **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.
45. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
46. **Incorporation of Exhibits:** Exhibits "A" and "B" are hereby incorporated by reference.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: _____
Andrew Altevogt
Assistant Executive Officer

Date: _____

City of Marysville

By: _____
Walter K. Munchheimer
City Manager

Date: _____

Order of the Central Valley Water Board

1. In adopting this Stipulated Order, the Central Valley Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations described in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The method of compliance with this enforcement action consists entirely of payment of amounts for administrative civil liability. As such, the Central Valley Water Board finds that issuance of this Order is not considered subject to the provisions of the California Environmental Quality Act (CEQA) as it will not result in a direct or reasonably foreseeable indirect physical change in the environment and is not considered a "project" (Public Resources Code sections 21065, 21080(a); sections 15060(c)(2) and (3); 15378(a), Title 14, of the California Code of Regulations). In addition, the Central Valley Water Board finds that issuance of this Order is also exempt from the provisions of CEQA in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations as an enforcement action by a regulatory agency and there are no exceptions that would preclude the use of this exemption.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to Water Code sections 13323 and 13350 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Central Valley Region.

Pamela C. Creedon
Executive Officer

Date

Exhibit A: Penalty Calculation Methodology
Exhibit B: Supplemental Environmental Project

Attachment A – ACL Order R5-2017-0525
Specific Factors Considered for Administrative Civil Liability
City of Marysville, Yuba County

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13350. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

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

Violations of CDO Order R5-2009-0014 for late Submittal and Non-Submittal of Quarterly Project Status Reports

Cease and Desist Order (CDO) R5-2009-0014, issued by the Central Valley Water Board on 5 February 2009, requires the Discharger to submit technical reports as specified by the time line in the CDO. Additionally, the CDO requires the Discharger to submit quarterly project status reports documenting planning, funding, design, and construction activities associated with the wastewater treatment plant regionalization project and decommissioning of wastewater ponds located within the floodplain of the Yuba and Feather Rivers. Our records show that the Discharger has a long history of incomplete and delinquent report submittals. The Discharger has not yet submitted the Pond Closure Report or the Facility Construction Completion Report because the project has not yet been completed. The Discharger did not submit 11 of the 12 required quarterly progress reports in a timely manner. For this Complaint, the Prosecution Team is assessing penalties for the delinquent quarterly progress reports. The reports are required to be submitted pursuant to the CDO. Water Code section 13350 authorizes a liability of up to \$5,000 per day and a minimum of \$100 per day for violation of a CDO.

Step 1 – Potential for Harm for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 2 – Assessment for Discharge Violations

The Prosecution Team is not alleging a discharge violation; therefore, the evaluation of this factor has been omitted from the following calculation.

Step 3 – Per Day Assessment for Non-Discharge Violations

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

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. In this case, the Discharger's failure to submit quarterly project status reports as required by the CDO represents a “substantial threat to beneficial uses.” The substance of the missing reports include documentation of planning, funding, design, and construction activities associated with the wastewater treatment plant regionalization project and decommissioning of wastewater ponds located within the floodplain of the Yuba and Feather Rivers. The purpose of the

quarterly project status reports is to keep the Regional Board apprised of the progress the Discharger is making towards discontinuing its discharge to the wastewater storage and disposal ponds, which being located within the floodplain of the Yuba and Feather Rivers are subject to inundation or washout during high river flow conditions. Delay of the pond closure activities and continuation of discharge presents a continuing and ongoing threat to beneficial uses, as evidenced by the fact that the northern ponds were in fact inundated by the Feather River on 8 February 2017 and 10 February 2017. The Discharger's consistent failure to submit quarterly progress reports deprived the Regional Board of valuable knowledge that could have been used to prevent delay. A value of "Moderate" is therefore warranted.

Deviation from Requirement

The Enforcement Policy requires determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements. For the Deviation from Requirement, a "Major" factor is appropriate in this case because the Discharger's repeated failure to submit reports as required by the CDO shows the Discharger's complete disregard for compliance with regulatory requirements.

Using Table 3 in the Enforcement Policy, the Per Day Factor of **0.55** is assigned. This value is to be multiplied by the days of violation and the maximum per day penalty, as shown in the Initial Liability table below.

Days of Violation

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

Following the Enforcement Policy, for violations lasting more than 30 days, the days are counted as follows: first day of violation, every fifth day of violation until the 30th day, and every 30 days thereafter. For example, a violation lasting 62 days would be compressed to 8 days (counting days 1, 5, 10, 15, 20, 25, 30, 60).

The following table shows the actual days of violation and the compressed days of violation. The days of violation are calculated as the date one report is due until the date the next report is due.

REQUIRED REPORT	REPORT DUE DATE	DATE SUBMITTED	DAYS LATE	COMPRESSED DAYS OF VIOLATION
Q1-2013 Quarterly Progress Report	5-1-2013	3-11-2015	92	
Q2-2013 Quarterly Progress Report	8-1-2013	3-11-2015	92	
Q3-2013 Quarterly Progress Report	11-1-2013	3-11-2015	92	
Q4-2013 Quarterly Progress Report	2-1-2014	3-11-2015	89	
Q1-2014 Quarterly Progress Report	5-1-2014	3-11-2015	92	
Q2-2014 Quarterly Progress Report	8-1-2014	3-11-2015	92	
Q3-2014 Quarterly Progress Report	11-1-2014	3-11-2015	92	
Q4-2014 Quarterly Progress Report	2-1-2015	3-11-2015	38	
Total for First Period of NonCompliance:			679	28
Q2-2015 Quarterly Progress Report	8-1-2015	3-17-2016	92	
Q3-2015 Quarterly Progress Report	11-1-2015	3-17-2016	89	
Total for Second Period of NonCompliance:			181	12
Q4-2015 Quarterly Progress Report	2-1-2016	4-8-2016	67	
Total for Third Period of NonCompliance:			67	8
Total Days of Violation			927	48

Using the compressed days of violation:

<u>Initial Liability Amount</u>
The initial liability amount for the violations calculated on a per-day basis is as follows: $48 \text{ days} \times \$5,000/\text{day} \times 0.55 = \$132,000$

Step 4: Adjustment Factors

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Discharger was assigned a multiplier value of 1.4.

The Discharger is responsible for the failure to submit the required reports even after having received three consecutive NOVs outlining the severity of noncompliance with a Board Order, and even when those reports were submitted many were materially deficient. The Discharger has failed to follow the time schedule outlined in CDO 2009-0014 and failed to initiate contact with the Board to notify staff of non-compliance or potential non-compliance even after the Discharger was aware of that occurrence. Additionally, the Discharger failed to respond to Board staff's 28 April 2016 request for a meeting to discuss non-compliance with the CDO within the 30 day deadline.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. Despite multiple notifications of the violations, the Discharger did not initially cooperate or return to compliance with the quarterly reporting schedule in the CDO until 2016. As noted above, the Discharger failed to submit quarterly reports until after receiving NOV letters for past due reports. Therefore, it is appropriate to use a cleanup and cooperation factor of 1.2.

History of Violation

When there is a history of repeat violations, the Enforcement Policy requires a minimum multiplier of 1.1, with higher values as appropriate. The Discharger has been issued two previous CDOs, multiple NOVs and a previous ACL by the Board. Therefore, a History of Violation multiplier of 1.3 was used for this factor.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount.

Total Base Liability Amount:

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x History of Violations Multiplier = Total Base Liability

$$\$132,000 \times 1.4 \times 1.2 \times 1.3 = \$288,288$$

Step 6 – Ability to Pay and Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liability. The City of Marysville is a public entity with the ability to raise revenue. The City's 2015-2016 budget is \$14.1 million.

Step 7 – Other Factors as Justice May Require

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 Prosecution Team has incurred over \$30,000 (200 hours at a statewide average of \$150/hour) in staff costs associated with the investigation and enforcement of the violations alleged herein. While this amount could

be added to the penalty, the Prosecution Team, in its discretion, is not adding this amount to the total proposed liability.

If the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require” but only if express findings are made to justify this.

Step 8 – Economic Benefit

Pursuant to the Enforcement Policy, civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The economic benefit of noncompliance is any savings or monetary gain derived from the act or omission that constitutes the violation.

The Discharger incurred an economic benefit by not completing the project, not submitting the required reports and not implementing pond closure activities. However, for purposes of this enforcement action, the Prosecution Team is only assessing penalties for the failure to submit quarterly progress reports.

As required by CDO R5-2009-0014, Quarterly Progress Reports were to be submitted by the City detailing the City’s efforts to comply with the CDO. In total, 11 of 12 quarterly reports were submitted delinquent from 2013 to 2015. The Regional Board has assessed the required content of these reports and contends that 20 labor hours is sufficient time to complete each quarterly report. These hours may include, but are not limited to, compliance progress research, report drafting, review, certification, and submittal. A labor rate of approximately \$83 per hour was used to assess the cost of reporting based on the reported salary for the City Services Director. Therefore, each quarterly report has an estimated cost of \$1,658. The delayed reporting cost was computed for each quarterly report individually based on the required submittal date, and the date the report was received by the Regional Board. The total economic benefit related to quarterly reporting was estimated to be approximately \$284.

For computational purposes, the penalty payment date was established as the projected hearing date, October 13, 2016. Changes to this date, or the compliance date of the actions described above, will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$284. The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore the minimum total liability associated with the economic benefit is approximately \$312.

Step 9 – Maximum and Minimum Liability Amounts

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

Maximum Liability Amount: \$4,635,000 (based on CWC 13350 of \$5000 per day of violation)
Minimum Liability Amount: \$92,700 (based on CWC 13350 of \$100 per day of violation)

Step 10 – Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Based on the foregoing analysis, and consistent with the Enforcement Policy, the final proposed Administrative Civil Liability is **\$288,288**.

ATTACHMENT B TO ORDER R5-2017-0525
Supplemental Environmental Project (SEP) Proposal:
City of Marysville

Project Title: **Algae Bloom Reduction in Ellis Lake**

Name of Responsible Entity: **City of Marysville**

Geographic Area of Interest: **Yuba River and Feather River**

Water Body, beneficial use and/or pollutant addressed by this project:
Ellis Lake, algae, Jack Slough, Feather River

Estimated Cost for Project Implementation: **\$172,430**

Contact Information:

Walter Munchheimer
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526 "C" Street
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Overview:

Ellis Lake is a man-made lake centered in downtown Marysville, bordered by 9th Street to the south, B Street to the east, 14th Street to the North and D Street to the West. The lake is fed by urban runoff and was historically supplemented by pumped water from the Yuba River. Ellis Lake has a surplus of algae blooms contributing to poor water quality. The surplus of algae blooms in Ellis Lake has been an issue for the community for a number of years, but no previous scientific investigation, feasibility, or engineering work with respect to implementing a solution has been conducted. Ellis Lake discharges to Jack Slough, which feeds the Feather River, typically during the wet season.

The City of Marysville (City) is proposing to prepare a Technical Memorandum (TM) to analyze potential alternatives to address dissolved oxygens levels in Ellis Lake to improve water quality and reduce the prevalence of algae, and then to implement the selected project. The project will be based on two alternatives, or possibly, a combination of alternatives, pursuant to the findings in the TM. The two alternatives to be analyzed in the TM are as follows:

1. Alternative 1: Rehabilitating and Reactivating the Existing Pump Intake at the Yuba River – The existing pump intake system has not been in operation for several years and was previously used to pump cooler water from the Yuba River to Ellis Lake. The pumping system was deactivated due to pumping equipment being past its useful life and required repairs to the suction end of the intake, as well as the required addition of a proper fish screen. A new groundwater well was installed at the lake to supplement water level, but constituents in the groundwater added to the algae issue. The pumping of cooler water to the lake

from the river previously assisted to keep the lake water at a lower temperature and minimizing algae blooms. It is anticipated that by rehabilitating and reactivating the existing pump intake system, this can be achieved again. The TM will assess the condition of the existing pump intake and make recommendations of required rehabilitation items.

2. Alternative 2: Addition of Aeration Devices to Ellis Lake – This alternative would add aerators to Ellis Lake that would aerate the lake water and assist in minimizing algae blooms. The TM will use existing lake water quality data to assess the number and location of required aerators.

Prior to preparation of the TM, the City Council will conduct a public outreach session with the community to introduce the project alternatives and receive any input. Upon completion of the TM, the City Council will conduct another public outreach session to review and discuss the TM. Items of discussion for the second public outreach session are schedule, costs, and benefits, after which, the City Council will vote and select the preferred project.

The proposed Supplemental Environmental Project (SEP) proposed here is implementation of the preferred project, or an appropriate functional part thereof. Accordingly, estimated implementation costs for Alternative 1 are identified within the scope of this SEP as this alternative has the least unknowns at this time, and therefore work scope and cost to implement it are the most predictable. Costs to implement Alternative 2 (or a combination of Alternatives 1 and 2, if selected as the preferred project pursuant to the findings of the TM) will be developed in the TM. For purposes of the SEP, the project selected for implementation shall be viable and functional, and shall meet the requirements of this SEP.

Objective / Benefits:

The proposed project will directly benefit the water quality of Ellis Lake, and will indirectly benefit the downstream receiving water body Jack Slough, which feeds the Feather River during the wet season. The Feather River will receive indirect water quality benefits from the proposed Supplemental Environmental Project, creating a natural relationship to the proposed SEP.

This proposed project is not independently required of any discharger or proposed as mitigation to offset the impacts of a discharger's project. The proposed SEP will not directly benefit the State Water Board or Regional Water Board functions or staff. Although the City is considered a Severely Disadvantaged Community, it is committed to implement, operate, and maintain the selected project as described in the SEP.

CEQA Compliance:

The proposed SEP is expected to comply with the California Environmental Quality Act (CEQA) through a Categorical Exemption. Of the two alternatives initially developed for the SEP, Alternative 1 may qualify as a Class 2 exemption which includes replacement or reconstruction of existing structures and facilities. Alternative 2 may qualify as a Class 3 exemption, but both alternatives require further development within the Technical Memorandum.

Cost:

The City has provided an estimated total cost associated with implementation of Alternative 1 (Task 5), which is \$172,430 as specified in the attached Opinion of Probable Construction Cost. This cost includes a 20% contingency along with a 3% escalation assuming that construction will take place in the fall of 2018. It is not possible to provide an estimated cost for Alternative 2 until the Technical Memorandum has been completed. There is too much uncertainty, and less known with respect to Alternative 2. Preparation of the Technical Memorandum is designed to resolve this uncertainty. Oversight of the project's implementation is estimated as \$15,000 and is not included when determining the value of the SEP. Costs of Tasks 1-4, and 6 are not included in the implementation cost of the SEP and will be borne by the City. These tasks are shown, however, to illustrate the steps that the City will take to select a project, and then implement pursuant to the SEP. The City will also use in house staff to procure a contractor or contractors to perform the work.

Project:

The City will contract with a qualified consulting firm to develop a Technical Memorandum that analyzes the two identified alternatives for addressing algae blooms in Ellis Lake, or a combination of the two alternatives. The SEP component of this Project is Task 5, which is implementation of the preferred project. However, to ensure proper completion of the project, other tasks are required and thus are set forth herein. The Project Tasks are as follows:

Task 1 – Project Management

Project management encompasses all QA/QC activities, quarterly and final reporting, and all necessary costs directly associated with specific project oversight. It also allows travel to/from the field for investigation and training purposes.

Budget: Not included in this SEP

Timeline: Ongoing throughout project

Deliverable: Quarterly progress reports describing the work accomplished during that quarter. The progress reports are due by the first day of the second month following the end of the quarter (i.e., by 1 May, 1 August, 1 November, and 1 February). The first report is due by 1 August 2017.

Task 2 – Public Outreach

This task includes two public outreach sessions conducted by the City Council to receive input from the community and to discuss the project alternatives. The first session will take place before the preparation of the TM, and the second after the TM's completion. The City Council will select the project to be implemented at the conclusion of the second public outreach session.

Budget: Not included in this SEP

Timeline: The first meeting will be in July 2017 and the second will be in October 2017.

Deliverable: Discussion of results of public outreach meetings in the 1 August 2017 and 1 November 2017 quarterly reports.

Task 3 – Technical Memorandum

This task will produce a Technical Memorandum, including investigation, feasibility, and engineering work to identify the preferred alternative to be implemented. The TM will include an overview of the algae issue at Ellis Lake, analyze feasibility of Alternatives 1 and 2, or a combination of the two, provide project implementation requirements such as a description of necessary construction, costs, and schedule. The TM will identify a project that will be viable, operational, and functional that provides a solution to minimize the algae issue. Phasing of project components will be identified (if necessary), and the TM will identify the implementable phase(s) that meet the requirements of this SEP. For example, if the TM indicates a complete solution for addressing algae in Ellis Lake consists of several different projects that significantly exceed the amount of this SEP, with this SEP the City is committing to implement one or more phases that actually lead to some improvement in minimizing algae in Ellis Lake, but may need to implement other phases in the future to address algae in its entirety.

Anticipated required components of the two alternatives identified are:

1. Alternative 1: Rehabilitating and Reactivating the Existing Pump Intake at the Yuba River – Components to be addressed include replacement or rehabilitation of the existing pump, motor, fish intake screen, discharge piping, and site work. The existing intake may require an extension to the Yuba River low water elevation for proper pumping operation and to minimize sand accumulation in the pumping and discharge facilities. Furthermore, this alternative may require amendments to Yuba County Water Agency's water rights permit, and other regulatory compliance measures. The reintroduction of cold Yuba River water is expected to increase circulation and diffused oxygen and reduce algae growth in Ellis Lake.
2. Alternative 2: Addition of Aeration Devices to Ellis Lake – The aeration devices are expected to increase dissolved oxygen content and circulation within the lake. This environment is more suitable for the beneficial aerobic bacteria, which consume excess nutrients and reduce algae blooms. If this project is selected, the type and quantity of aeration devices will be identified in the Technical Memorandum.
3. Combination of Alternatives 1 and 2 – Consideration for combining Alternatives 1 and 2 will be given in the TM only if Alternatives 1 or 2 cannot fulfill the project objectives independently.

Budget: Not included in this SEP

Timeline: The City will contract with a qualified consultant within 45 days of approval of the Stipulated Order. The Technical Memorandum will be completed by 30 September 2017.

Deliverable: Technical Memorandum, submitted with the 1 November 2017 quarterly report.

Task 4 – Obtain Permits

This effort involves applying for and obtaining the required permits for the selected alternative. The anticipated permitting is described under the CEQA Compliance section above.

Budget: Not included in this SEP.

Timeline: Permits to be received by 30 May 2018.

Deliverable: Copies of permits are to be included in the 1 August 2018 quarterly report.

Task 5 – Project Implementation

This task includes the construction field work required for the implementation of the selected alternative including procurement and installation of equipment. This task also includes testing and troubleshooting throughout the implementation of the selected alternative. This will ensure that the features, performance, and construction procedures comply with all conditions of existing permits and permits required to construct this alternative.

Budget: Up to \$144,144 of the project implementation will be credited to the SEP.

Timeline: Implement during the summer of 2018, and complete by 31 December 2018.

Deliverable: The 1 August 2018 and 1 November 2018 quarterly reports shall describe the implementation.

Task 6 – Preparation of Final Report

The final report will be prepared and submitted after the successful construction and implementation of the selected project. The report shall include the “Certification of Completion” items described in Stipulation 19 of the Stipulated Order. The report shall clearly show the amount of money spent on Task 5, and whether it was more, less, or equal to the amount of the suspended penalty.

Budget: Not part of this SEP

Timeline: 30 January 2019

Deliverable: Final Report

Attachment: Opinion of Probable Construction Cost

OPINION OF PROBABLE CONSTRUCTION COST

KENNEDY/JENKS CONSULTANTS

Project: City of Marysville - SEP: Algae Reduction in Ellis Lake - Alternative 1

Prepared By: RSY

Description: Rehabilitate Pump Intake System

Date Prepared: 10-Apr-17

K/J Proj. No. 1370002*01

Estimate Type: Conceptual Construction
 Preliminary (w/o plans) Change Order
 Design Development @ _____ % Complete

Current at ENR _____
 Escalated to ENR _____
 Months to Midpoint of Construct 18

Spec. No.	Item No.	Description	Qty	Units	Materials \$/Unit	Total	Installation \$/Unit	Total	Sub-contractor \$/Unit	Total	Total
DIVISION 1 - <u>Alternative 1 - Rehabilitate Pump Intake System</u>											
	1	Pump and Motor	1	LS					35,000	35,000	35,000
	2	Site Electrical Work	1	LS					15,000	15,000	15,000
	3	Pump Telemetry	1	LS					15,000	15,000	15,000
	4	Fish Screen	1	LS					25,000	25,000	25,000
	5	Pump Platform Repair	1	LS					5,000	5,000	5,000
	6	Intake Extension	1	LS					35,000	35,000	35,000
	7	Existing Discharge Pipe Cleaning	1	LS					2,500	2,500	2,500
	8	Fencing	1	LS					5,000	5,000	5,000
		Subtotals								137500.00	137500.00
		Division 1 Costs	@								
		Subtotals								137500.00	137500.00
		Taxes - Materials Costs	@								
		Subtotals								137500.00	137500.00
		Taxes - Labor Costs	@								
		Subtotals								137500.00	137500.00
		Contractor Markup for Sub	@								
		Subtotals								137500.00	137500.00
		Contractor OH&P	@								
		Subtotals								137500.00	137500.00
		Estimate Contingency	@	20%							27500.00
		Subtotals									165000.00
		Escalate to Midpoint of Construct	@	3%							7425.00
		Estimated Bid Cost									172,425.00
		Total Estimate									172,430

Estimate Accuracy	
+50%	-30%

Estimated Range of Probable Cost		
+50%	Total Est.	-30%
\$258,645	\$172,430	\$120,701