

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

In the Matter of:

ORDER R5-2020-0543 (Proposed)

CITY OF MOUNT SHASTA

**SANITARY SEWER SYSTEM AND
WASTEWATER TREATMENT PLANT
SISKIYOU COUNTY**

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

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and City of Mount Shasta (City or Discharger)(collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Allegations: Sanitary Sewer Overflows

2. The City owns and operates a sanitary sewer collection system serving the City of Mount Shasta that is greater than one mile in length. The City's sanitary sewer system consists of approximately 165,000 lineal feet of sewer lines. When the City's sanitary sewer system overflows, discharges to a Waters of the United States may occur.
3. The *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, State Board Order No. 2006-0003, as revised by WQ-2013-0058-EXEC, (Statewide General Order) regulates the Discharger's sanitary sewer system. The Statewide General Order requires the City to operate and maintain its collection system to prevent sanitary sewer overflows and spills. Prohibition C.1 of the Statewide General Order states that the discharge of untreated or partially treated wastewater from the collection system to waters of the United States is prohibited.
4. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and Water Code section 13376 prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. The Statewide General Order is not a NPDES permit.

5. Since 27 October 2014, the City has discharged untreated domestic and municipal wastewater from its collection system to surface waters 15 times.
6. The City violated Prohibition C.1 of the Statewide General Order, Section 301 of the Clean Water Act, and Water Code section 13376 during each of those 15 discharge events by discharging a total of 2,788,310 gallons of untreated sewage to a water of the United States during the period of 27 October 2014 to 1 January 2018.
7. The Central Valley Water Board has issued several Notices of Violation (NOV) to the City regarding its sanitary sewer overflows. NOVs identifying violations of the Statewide General Order were sent to the City on 11 December 2014, 14 January 2015, 20 October 2015, 2 February 2017, 13 April 2017, and 1 January 2018.
8. The details of these violations, including the factors required to be considered by Water Code section 13327, and as agreed to by the Parties, are set forth in full in the accompanying Attachment A, which is incorporated herein by this reference as if set forth in full.

III. Allegations: Mandatory Minimum Penalties

9. The Discharger owns and operates the Mount Shasta Wastewater Treatment Plant.
10. On 4 October 2012, the Central Valley Water Board issued NPDES permit Order R5-2012-0086, which became effective on 23 November 2012 and regulates the City's wastewater treatment plant. Treated wastewater is discharged from Discharge Point D-001 to the Sacramento River, a water of the United States. The Discharger is subject to effluent limitations measured at monitoring location EFF-001 contained in its NPDES permit when discharging at Discharge Point D-001.
11. On 4 October 2012, the Central Valley Water Board also adopted Time Schedule Order (TSO) R5-2012-0087. The TSO became effective on that date and provided a compliance time schedule table with interim effluent limitations for ammonia, copper, and zinc until 1 June 2017.
12. On 7 April 2017, the Central Valley Water Board amended TSO R5-2012-0087 and adopted TSO R5-2012-0087-01. TSO R5-2012-0087-01 extended the compliance time schedule table and interim effluent limitations contained in TSO R5-2012-0087 for copper and zinc until 4 October 2017 and extended the compliance time schedule and recalculated interim effluent limitations for ammonia until 27 May 2020.

13. On 8 December 2017, the Central Valley Water Board adopted NPDES permit Order R5-2017-0117, which became effective on 1 February 2018.
14. As described in Attachment B, since 28 February 2017, the City has violated its effluent limitations contained in Order R5-2017-0117 for biological oxygen demand, copper, zinc, and total suspended solids.
15. Together, these exceedances of effluent limitations, are subject to mandatory minimum penalties pursuant to Water Code section 13385. Water Code section 13385 subdivision (h)(1) requires that a mandatory minimum penalty of \$3,000 be assessed for each serious violation of an effluent limit. A serious violation is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirement by 40% or more for Group I pollutants and 20% or more for Group II pollutants. Order R5-2017-0117 specifies the effluent limitations that apply to the City.
16. Water Code section 13385 subdivision (i)(1) requires that a mandatory minimum penalty of \$3,000 be imposed for each non-serious violation. A non-serious violation is defined as whenever the discharger exceeds a waste discharge requirement effluent limitation four or more times in a six-month period, except that the first three violations are not counted.
17. Attachment B details the liability incurred by the City pursuant to Water Code section 13385 subdivisions (h) and (i) and is incorporated herein by this reference as if set forth in full

IV. Stipulations

The Parties stipulate to the following:

18. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60. To resolve the violation by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of **one million three hundred thirty thousand one hundred ninety-seven dollars (\$1,333,197)**. 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.
19. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.

20. **Administrative Civil Liability**

- a. The Discharger hereby agrees to the imposition of an ACL in the amount of **one million two hundred twenty-five thousand one hundred ninety-seven dollars (\$1,225,197)** to resolve the violations specifically alleged in Attachment A to this Order.
- b. The Discharger agrees to pay **one hundred sixty-six thousand nine hundred eighty-eight dollars (\$166,988)** to the *State Water Board's Cleanup and Abatement Account* and shall indicate this Order number on the check. The Discharger shall send the original check referencing this Order number to the following address:
 - i. Division of Administrative Services
ATTN: Accounting, State Water Resources Control Board
1001 I Street 18th Floor
Sacramento, California 95814
- c. A copy of the check described above shall be sent to the Prosecution Team contact listed in Paragraph 35.
- d. The **one million fifty-eight thousand two-hundred and nine dollars (\$1,058,209)** in remaining discretionary liability shall be satisfied through the completion of an Enhanced Compliance Action (ECA) as described below.
- e. The **one hundred eight thousand dollars (\$108,000)** in liability assessed pursuant to Water Code section 13385, subdivisions (h) and (i) shall be satisfied through a Compliance Project as described below.

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

22. **City's Financial Hardship Status:** The Enforcement Policy defines a community with a financial hardship as one that satisfies one of the following conditions: (1) the median household income for the community is less than 80 percent of the California median household income; (2) the community has an unemployment rate of 10 percent or greater; (3) twenty percent of the population is below the poverty level. The City qualifies as a small community with a financial hardship, as defined by the Enforcement Policy, and Water Code section 13385 subdivision (k), because the City has a population of 3,287 according to the 2018 census data, is located entirely within Siskiyou County which is a rural county, its

median income is less than 80 percent of the California Median income and more than 20 percent of its population is below the poverty level.

23. **Enhanced Compliance Actions (ECAs) and Suspended Liability:**

Enforcement Policy section IX. provides,

- b. "ECAs are projects that enable a discharger to make capital or operational improvements beyond those required by law, and are separate from projects designed to merely bring a discharger into compliance. The Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary ACL for completion of an ECA. Except as specifically provided [in the Enforcement Policy], any such settlement is subject to the rules that apply to Supplemental Environmental Projects [established in the State Water Board Policy on Supplemental Environmental Projects, effective May 3, 2018 (SEP Policy)]."
- c. The SEP Policy limits ECAs to 50 percent of the total administrative civil liability excluding the Prosecution Team investigative and enforcement costs. However, the Enforcement Policy states that "the 50 percent limit on ECAs shall not apply to economically disadvantaged communities with a financial hardship, the criteria for which is defined in Water Code Section 13385(k)."

24. The Prosecution Team has determined that the City's ECA complies with the Enforcement and SEP Policies. As discussed above, the City is a small community with a financial hardship and therefore, the Prosecution Team has determined that it is appropriate to divert more than 50 percent of the total liability in this matter towards an ECA as allowed by the Enforcement Policy. The City proposes to implement the following ECA:

- a. Downtown Collection System Improvement Project: The purpose of the Downtown Collection System Improvement Project is to prevent future SSOs at the downtown area and McCloud Avenue by upsizing and installing new sewer lines and new manholes. The ECA includes a new sewer line that crosses a railroad in the downtown area to bypass an area of sewer lines with historical capacity issues. The ECA will upsize the sewer line along McCloud Avenue to address long-term issues that were previously addressed by increased maintenance. The total cost of the Downtown Collection System Improvement Project is \$3,705,880 and it is described in additional detail in Attachment C. Of the total cost, **\$1,058,209** offsets the liability in this Order.

25. **ECA Completion Deadline:** The City shall comply with the following agreed upon ECA completion deadlines. Additionally, the City shall submit a Certificate of Completion, as described below, upon the completion of the ECA declaring

such completion and detailing fund expenditures and goals achieved. The deadline for completion of the ECA and submission of the Final Report is one year after the date of the adoption of this Order.

26. **Request for Extension of Final ECA Completion Deadlines:** If the City cannot meet the ECA Completion Deadlines due to circumstances beyond the City's anticipation or control, the City shall notify the Executive Officer in writing within thirty (30) days of the date the City first knew of the event or circumstance that caused or could have caused a violation of this Stipulated Order. The notice shall describe the reason for the nonperformance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken by the City to prevent or minimize the delay, the schedule by which the measures will be implemented, and the anticipated date of compliance with this Stipulated Order. The City shall adopt all reasonable measures to avoid and minimize such delays.

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

27. **Audits and Certification of Enhanced Compliance Action:** Within 30 days of completion of the ECA, the City shall submit a certified statement of completion of the ECA ("Certification of Completion"). The City's authorized representative shall submit the Certification of Completion under penalty of perjury to the designated Central Valley Water Board contact. The Certification of Completion shall include the following:
- a. **Certification of Expenditures:** Certification documenting all expenditures by the City. The expenditures may include external payments to outside vendors or contractors implementing the ECA. If applicable, the expenditures may include the costs of internal environmental management resources and internal business unit resources, provided that such expenditures are directly related to development and implementation of the ECA. In making such certification, the official may rely upon normal company and project tracking systems that captures employee time expenditures and external payments to outside vendors. The City shall provide any additional information requested

\$263,551. The Compliance Project was initiated by the City in order to address non-compliance identified by the Central Valley Water Board in previous Administrative Civil Liability Complaints R5-2013-0549 and 2012-0538, which identified exceedances of effluent limitations including copper and zinc, in addition to 3 Notices of Violation which were received before the Compliance Project began in 2013.

- b. The Compliance Project is designed to correct the violations identified in Attachment B within five years because the City will complete needed repairs and upgrades to the WWTP within five years of the adoption of this Order. The Design and Feasibility Phase of this project has already been completed and the City is preparing to move onto the Construction Phase of the WWTP Improvement Project.
 - c. The Compliance Project is in accordance with the Enforcement Policy:
 - i. The Central Valley Water Board will not authorize additional compliance projects for the project completed as described in the attached, except under unusual circumstances.
 - ii. The Discharger agrees that the Central Valley Water Board has the right to require a third-party audit of the funds expended by it to implement the Compliance Project; and,
 - iii. The Discharger shall permit inspection of the Compliance Project by the Central Valley Water Board staff during normal business hours, at any location where the Compliance Project is being implemented, as well as review of any documents associated with implementation of the Compliance Project, at any time without notice.
31. **Third Party Financial Audit of Compliance Project:** At the written request of the Central Valley Water Board, the Discharger, at its sole cost, shall submit a report prepared by an independent third party acceptable to the Central Valley Water Board providing a professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to the Central Valley Water Board within six (6) months of notice from the Central Valley Water Board to the Discharger of the need for an independent third-party audit. The Audit need not address any costs incurred by the Central Valley Water Board for oversight.
32. **Publicity:** Whenever the City or its agents or subcontractors publicize the ECA or Compliance Project, they shall state in a prominent manner that the project is

being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the City.

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

34. **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 herein may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

35. **Party Contacts for Communications Related to Stipulated Order:**

For the Central Valley Water Board:
Jeremy Pagan
Central Valley Water Board
364 Knollcrest Drive, Suite 205
Redding, CA 96002
(530) 224-4850
Jeremy.Pagan@waterboards.ca.gov

For the Discharger:
Bruce Pope
205 N. Mt. Shasta Boulevard
Mt. Shasta, CA 96067
bpope@mtshastaca.gov

36. **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.

37. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The

Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

38. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
39. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of ACL complaints or orders for violations other than those addressed by this Order.
40. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
41. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
42. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
43. **Integration:** This Stipulated Order, including attachments, constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
44. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the

Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

45. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
46. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
47. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Central Valley Water Board.
48. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
49. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
50. **Water Boards Not Liable:** Neither the Central Valley Water Board members, nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or its respective directors,

officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.

51. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
52. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
53. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
54. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
55. **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.
56. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
Central Valley Region

By: **Original Signed By**
Clint E. Snyder, P.G.
Assistant Executive Officer

7/2/2020
Date

City of Mount Shasta

By: **Original Signed By**
Bruce Pope, City Manager

6/26/2020
Date

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

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

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

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

Date

Attachment A: Penalty Methodology

Attachment B: Mandatory Minimum Penalties

Attachment C: Enhanced Compliance Action Project Proposal

Attachment D: Compliance Project Proposal