

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

In the Matter of:

ORDER R5-2021-0521

**CITY OF REDDING,
REDDING CITY COLLECTION
SYSTEM,
SHASTA COUNTY**

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

I. Introduction

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

II. Recitals

1. The Discharger owns and operates the Redding City Collection System, a sanitary sewer collection system that consists of approximately 2,280,960 lineal feet of sewer lines and serves the City of Redding. When the sanitary sewer system overflows, discharges to waters of the United States may occur.
2. At the time the alleged violation occurred, the Discharger's sanitary sewer system was regulated by the *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*, State Board Order No. 2006-0003, as revised by WQ-2013-0058-EXEC (General Order). The General Order requires that the Discharger operate and maintain its collection system to prevent sanitary sewer overflows (SSOs) and spills. Prohibition C.1 of the General Order prohibits the discharge of untreated or partially treated wastewater from the collection system to waters of the United States.
3. 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 General Order is not a NPDES permit.
4. Pursuant to Water Code section 13385 subdivision (a), any person who violates Water Code section 13376 or any requirements of Section 301 of the Clean Water Act is subject to administrative civil liability pursuant to Water Code section

13385 subdivision (c), in an amount not to exceed the sum of both of the following: (1) ten thousand dollars (\$10,000) for each day in which the violation occurs; and (2) where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) per gallon discharged but not cleaned up over 1,000 gallons.

5. Pursuant to Water Code section 13350, subdivision (a)(1), any person who in violation of a waste discharge requirement, discharges waste, or causes or permits waste to be deposited where it is discharged, into waters of the state, shall be subject to administrative civil liability pursuant to Water Code section 13350 subdivision (e), in an amount not to exceed either of the following: (1) five thousand dollars (\$5,000) for each day in which the violation occurs; or (2) where there is a discharge, liability not to exceed ten dollars (\$10) for each gallon discharged.
6. On or around 31 August 2020, as part of scheduled maintenance on the Stillwater Wastewater Treatment Plant, the Discharger diverted the flow of wastewater at the Churn Creek lift station to two parallel 8-inch siphon pipes that crossed beneath Churn Creek. Although the Discharger regularly inspected these siphon pipes using a hydro jet and camera, consistent with industry practice, these two siphon pipes were damaged when wastewater was diverted. As a result, from 31 August 2020 to 3 September 2020, when the scheduled maintenance was completed, the City discharged approximately 41,000 gallons of untreated domestic and municipal wastewater to Churn Creek, a tributary to the Sacramento River, and a water of the United States. Because untreated wastewater reached a surface water, the alleged spill was categorized as a category 1 SSO.
7. The Prosecution Team asserts the violation alleged in Section II, paragraph 6 violated Prohibition C.1 of the General Order, Section 301 of the Clean Water Act, and Water Code section 13376. Pursuant to Water Code section 13385, subdivision (c), the alleged violation is subject to both a per day liability of up to \$10,000 per day of violation, and a per gallon liability for gallons discharged and not cleaned up over 1,000 gallons. In the alternative, under Water Code section 13350 (e), the alleged violation is subject to a per gallon liability of up to ten dollars (\$10) for each of the 41,000 gallons discharged. The Prosecution Team has elected to pursue liability under Water Code section 13385, subdivision (c).
8. Pursuant to Water Code section 13327, in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the

degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.

9. The *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy) was adopted on 4 April 2017. The Enforcement Policy's effective date is 5 October 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability.
10. The details of these violations, including the factors required to be considered by Water Code section 13327, are set forth in full in the accompanying Attachment A, which is incorporated herein by reference.
11. The Parties have engaged in settlement negotiations and have agreed to the imposition of an Administrative Civil Liability (ACL) of **fifty-three thousand two hundred and twelve dollars (\$53,212)** in liability against the Discharger pursuant to Water Code section 13385 and Government Code section 11415.60.
12. Based on the information in the record, the Prosecution Team has determined that the above resolution of the alleged violations is fair and reasonable, and fulfills the enforcement objectives of Water Code sections 13000 et seq., and the Water Quality Enforcement Policy, and satisfies the objectives and requirements of the federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

13. **Jurisdiction**: The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
14. **Administrative Civil Liability**:
 - a. The Discharger hereby agrees to the imposition of an ACL in the amount of **fifty-three thousand two hundred and twelve dollars (\$53,212)** to resolve the violations alleged in Attachment A to this Order.
 - b. The Discharger agrees to pay **fifty-three thousand two hundred and twelve dollars** 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:

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 contacts listed in Paragraph 16.

15. **Compliance with Applicable Laws:** The Discharger understands that payment of the ACL 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.

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

For the Regional Board:

Stacy Gotham
Central Valley Water Board
364 Knollcrest Drive, Suite 205
Redding, CA 96002
(530) 224-4993
Stacy.Gotham@waterboards.ca.gov

Vaneeta Chintamaneni, Attorney III
Office of Enforcement
State Water Resources Control Board
801 K St. Suite 2300
Sacramento, CA 95814
Vaneeta.Chintamaneni@waterboards.ca.gov

For the Discharger:

Chuck Aukland, Director of Public Works
City of Redding
777 Cypress Ave.
Redding, CA 96001
caukland@cityofredding.org

Barry E. DeWalt, City Attorney
City of Redding
777 Cypress Ave.
Redding, CA 96001
attorney@cityofredding.org

17. **Attorneys' 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.
18. **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 Regional Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional 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 Regional Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
19. **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.
20. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional 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 Regional 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 Regional 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.
21. **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 Regional Board or any state agency, department, board, or entity or any local agency from exercising its authority under any law, statute, or regulation.
22. **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.
23. **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 Regional Board or its delegee.

24. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
25. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or its delegate, 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 Regional 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:
- a. Objections related to prejudice or bias of any of the Regional 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 Regional 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
 - b. 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.
26. **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 Regional Board.
27. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Regional 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.
28. **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, or representatives, for any and all claims or causes of action, which arise out of or are related to this action.

29. **Water Boards Not Liable:** Neither the Regional Board members, nor the Regional 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 Regional 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.
30. **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.
31. **Necessity for Written Approvals:** All approvals and decisions of the Regional 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 Regional 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.
32. **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.
33. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
34. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Board, or its delegee, enters the Order.
35. **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 Snyder
Clint Snyder
Assistant Executive Officer
Central Valley Regional Water Quality Control Board

September 22 2021
Date

City of Redding

By: Original Signed by Barry E. DeWalt
Barry E. DeWalt
City Attorney
City of Redding

September 21 2021
Date

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

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional 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 Regional 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

Attachment A: Penalty Methodology

**Attachment A to
Stipulated Order R5-2021-0521
Specific Factors Considered for Administrative Civil Liability
City of Redding
Shasta County**

This document provides the penalty calculation methodology for Stipulated Order No. R5-2021-0521, which alleges violations of the State Water Resources Control Board's (State Water Board) *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, Order No. 2006-0003-DWQ* (Statewide General Order), and the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. (Clean Water Act) against the City of Redding (Discharger or City) for a sanitary sewer overflow (SSO) that occurred from 31 August 2020 to 3 September 2020. The Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team derived the proposed administrative civil liability using the State Water Board's *Water Quality Enforcement Policy* effective October 5, 2017 (Enforcement Policy).

State Water Board Enforcement Policy

The Enforcement Policy establishes a methodology for assessing administrative civil liability for violations of the California Water Code (Water Code) and Clean Water Act by addressing factors required to be considered by Water Code sections 13327 and 13385(e). Each factor of the ten-step approach is discussed below, as this is the basis for assessing the corresponding score. [The Enforcement Policy](#) can be found online at the following:

(https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final_adopted_policy.pdf).

Regulatory Basis for Alleged Violations and Proposed Liability

The Discharger is required to comply with the Statewide General Order, because it is a municipality that owns or operates a sanitary sewer collection system greater than one mile in length. The Discharger has been enrolled in the Statewide General Order since 2006. Prohibition C.1 of the Statewide General Order provides that “[a]ny SSO that results in a discharge of untreated or partially treated wastewater to waters of the United States is prohibited.” Section 301 of the Clean Water Act prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. (33 U.S.C. § 1311.)

The Prosecution Team alleges that from 31 August to 3 September 2020, the Discharger discharged untreated domestic and municipal wastewater from its collection system to surface water without an NPDES permit, in violation of Prohibition C.1 of the Statewide General Order and section 301 of the Clean Water Act

Penalty Calculation Methodology

CATEGORY 1 SSO OCCURRING BETWEEN 31 AUGUST 2020 AND 3 SEPTEMBER 2020

Beginning on 31 August 2020, as part of scheduled maintenance on the Stillwater Wastewater Treatment Plant, the Discharger diverted the flow of wastewater at the Churn Creek lift station from its normal path to two parallel 8-inch siphon pipes that crossed beneath Churn Creek and led to the Sunnyhill lift station. According to information provided to the Central Valley Water Board by the Discharger, the pipes through which flow was diverted had not been used since February 2019, and the Discharger was unaware that the pipes were damaged and leaking. As a result, raw, untreated sewage was discharged into Churn Creek from 31 August 2020 to 3 September 2020, when maintenance was completed and the diversion of wastewater ended. Since untreated wastewater reached a surface water, this spill was categorized as a category 1 SSO.

On the morning of 4 September 2020, City staff were doing routine checks of the Churn Creek lift station when they noticed a strong sewage odor. Further inspection revealed sewage had leaked into nearby Churn Creek. That same day, City staff notified the Central Valley Water Board by phone that there had been an SSO of sewage into Churn Creek, south of the Churn Creek lift station.

On 9 September 2020, the Discharger inspected the pipes with a camera truck. Based on its inspection, the Discharger concluded that the pipes, which were encased in concrete at the North bank of Churn Creek, failed under shear stress close to the concrete encasing.

Upon locating the spill, the Discharger, with approval from the Central Valley Water Board, pumped approximately 40,000 gallons of water from Churn Creek and flushed the affected area with dechlorinated hydrant water to collect debris that had accumulated on the riverbanks. The City also posted signs around Churn Creek warning the public not to enter Churn Creek. The City allocated \$300,000 to perform an emergency replacement of the two siphon pipes, which was completed on 29 September 2020.

The Discharger collected weekly samples at two upstream and three downstream locations to determine the impact of the SSO. The samples were analyzed for ammonia, total coliform, fecal coliform, electrical conductivity, and chloride. On 9 October 2020, sampling for ammonia, chloride, and electrical conductivity was discontinued when downstream levels normalized and there was no longer a significant difference between upstream and downstream concentrations. On 9 November 2020, sampling for total and fecal coliform was discontinued, because levels immediately downstream had stabilized and flows in Churn Creek were starting to increase due to the discharge of effluent upstream by the City of Shasta Lake Wastewater Treatment Facility.

On 28 September 2020, the Discharger submitted a technical report to Central Valley Water Board staff describing the spill, the City's response, spill volume estimation, and

public notification. The Discharger estimated that 41,000 gallons of wastewater was discharged between 31 August 2020 and 3 September 2020.

Step 1 – Potential for Harm for Discharge Violations

The “potential harm to beneficial uses” factor considers the harm that may result from exposure to the pollutants in the illegal discharge, while evaluating the nature, circumstances, extent, and gravity of the violation(s). A three-factor scoring system is used for each violation or group of violations to quantify the following: (1) the degree of toxicity of the discharge; (2) the potential for harm to beneficial uses; and (3) the discharge’s susceptibility to cleanup or abatement.

Factor 1: Degree of Toxicity.

The evaluation of this factor considers the physical, chemical, biological, and/or thermal characteristics of the discharge and the risk of damage the discharge could cause to receptors or beneficial uses. Potential receptors are human, environmental, and ecosystem exposure pathways. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

Toxicity is the degree to which a substance can damage a living or non-living organism, and can refer to the effect on a whole organism, such as an animal, bacterium, or plant, as well as the effect on a substructure of the organism, such as a cell or organ. Discharges of sewage to surface water must typically be treated to a high standard to prevent adverse impacts to aquatic life. In this case, the SSO was comprised of raw sewage, which contained highly elevated concentrations of pathogens, biochemical oxygen demand, nitrogen, and ammonia. Fish are highly sensitive to even small concentrations of ammonia. Elevated levels of these constituents can lead to low dissolved oxygen in the receiving water, impacts to aquatic life, and impacts to human health. Because the discharged material possesses an above-moderate risk or a direct threat to potential receptors, a score of **3** was assigned for this factor.

Factor 2: Actual Harm or Potential Harm to Beneficial Uses.

The evaluation of the actual harm or the potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge. A score between 0 and 5 is assigned based on a determination of whether the harm or potential for harm to beneficial uses is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5). During the SSO from 31 August 2020 to 3 September 2020, raw sewage was discharged to Churn Creek, which is a waters of the United States. The designated beneficial uses of Churn Creek that could be impacted by the unauthorized discharge are outlined in the *Water Quality Control Plan for the*

Sacramento and San Joaquin River Basins, Fifth Edition, May 2018 (Basin Plan)¹ and include municipal and domestic supply, agricultural supply, irrigation supply, stock watering, industrial service supply, hydropower generation, contact and non-contact recreation, warm and cold freshwater habitat, warm and cold migration, warm and cold spawning, wildlife habitat, and navigation.

Raw sewage contains pathogens, nitrogen, ammonia, and creates a biological oxygen demand. The discharge of raw sewage deleteriously impacts cold and warm freshwater habitat and wildlife habitat because fish are highly sensitive to even small concentrations of ammonia. The Discharger's inspection of the creek bed revealed over one hundred small fish had died. In addition, raw sewage impacts contact and non-contact recreation because raw sewage contains pathogens, which adversely affect human health.

On 4 September 2020, the Discharger began collecting water samples upstream and downstream of the spill. Results of the 4 September 2020 sample are shown in the table below. Based on the analytical results, the spill adversely affected the water quality at downstream locations.

Table 1 - Sample Results from 4 September 2020

Constituent	Upstream #1	Upstream #2	Downstream #1	Downstream #2	Downstream #3
Total coliform organisms, MPN/100 mL	30,000	2200	≥160,000	≥160,000	≥160,000
Fecal coliform organisms, MPN/100 mL	16,000	13	≥160,000	≥160,000	≥160,000
Ammonia N, mg/L	0.093	ND	22.1	6.22	4.41
Electrical Conductivity, µmhos	359	365	531	491	474
Chloride, mg/L	23.1	23.1	27	28.4	28.6

Based on the analytical data provided by the Discharger, the spill resulted in observed impacts, which were likely to attenuate without chronic effects. Therefore, a score of **3** is assigned for this factor.

¹ The Basin Plan is available at the following:
https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf.

Factor 3: Susceptibility to Cleanup or Abatement.

A score of 0 is assigned for this factor if the discharger cleans up 50% or more of the discharge within a reasonable amount of time. A score of 1 is assigned if less than 50% of the discharge is susceptible to cleanup or abatement, or if 50% or more of the discharge is susceptible to cleanup or abatement, but the discharger failed to clean up 50% or more of the discharge within a reasonable time. On 8 September 2020, the Discharger pumped approximately 40,000 gallons from Churn Creek and flushed the affected area with dechlorinated hydrant water to collect debris that had accumulated on the riverbank. For purposes of settlement and in recognition of the Discharger's diligent cleanup efforts, a score of **0** was assigned to this factor.

Final Score – "Potential for Harm"

The scores of the three factors are added to provide a Potential for Harm score for each violation or group of violations. In this case, a **final score of 6** was calculated. The total score is then used in Step 2, below.

Step 2 – Assessment for Discharge Violations

This step addresses administrative civil liabilities for the spill based on both a per gallon and a per day basis.

Deviation from Requirement

The Enforcement Policy defines a **moderate** deviation as follows: "The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved)."

The Statewide General Order prohibits any SSO that results in a discharge of raw sewage to waters of the United States. The Deviation from Requirement is "moderate" because only a small percentage of sewage (approximately 41,000 gallons) leaked from the pipes relative to the amount of sewage (approximately 410,000 gallons) that the pipes conveyed to the Clear Creek Wastewater Treatment Facility during the spill event. Therefore, although this requirement was not met, given the relatively small percentage of total sewage that discharged from the pipe, the effectiveness of the requirement was only partially compromised.

Per Gallon Assessment for Discharge Violation

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per gallon basis using the Potential for Harm score and the Deviation from Requirement of the violation.

Table 1 of the 2017 Enforcement Policy (p. 14) is used to determine a per gallon factor based on the total score from Step 1 and the extent of Deviation from Requirement. For

a Potential for Harm score of 6 and a moderate Deviation from Requirement, the per gallon factor is 0.15. This value of 0.15 is multiplied by the volume of discharge and the days of discharge, as described below.

Water Code section 13385(c)(2) states that the civil liability amount is to be based on the number of gallons discharged but not cleaned up in excess of 1,000 gallons for each spill event. Of the 41,000 gallons spilled, a total of 40,000 gallons were discharged in excess of 1,000 gallons into waters of the United States.

The Per Gallon Assessment is as follows:
 $0.15 \text{ factor from Table 1} \times 40,000 \text{ gallons} \times \$10 \text{ per gallon} = \$60,000$

Per Day Assessment for Discharge Violation

When there is a discharge, the Central Valley Water Board is to determine an initial liability amount on a per day basis using the Potential for Harm score and the extent of Deviation from Requirement. The per day factor (determined from Table 2 of the 2017 Enforcement Policy, p. 15) is 0.15. The spill event took place over three days, commencing on 31 August 2020 at 0800 hours and stopping on 3 September 2020 at 0800 hours. The liability is calculated as the per day factor multiplied by the number of days multiplied by the statutory maximum per day (\$10,000).

The Per Day Assessment is as follows:
 $0.15 \text{ factor from Table 2} \times 3 \text{ days} \times \$10,000 \text{ per day} = \$4,500$

Initial Liability Amount: The value is determined by adding together the per gallon assessment and the per day assessment. For this case, the total is \$60,000 + \$4,500 for an initial liability amount of \$64,500.

Step 3 – Per Day Assessment for Non-Discharge Violation

This factor is inapplicable to the alleged discharge violation.

Step 4 – Adjustment Factors

There are three additional factors to be considered for potential modification of the initial liability amount: the violator's culpability, the violator's history of violations, and the violator's cleanup and cooperation with regulatory authorities. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for negligent behavior.

The 31 August to 3 September 2020 discharge event resulted from two damaged 8" ABS truss siphon pipes underneath Churn Creek. Despite reasonable efforts to clean and inspect these pipes, the Discharger was unaware that the pipes were damaged. The pipes conveyed flow without any known issues in February 2019, when a significant precipitation event required the City use them. Further, the Discharger cleans the pipes annually and attempts to view the pipes each time they are cleaned. According to the Discharger, viewing the pipes completely is not possible with its current equipment. The Discharger uses a hydro jet to pull water resting in the belly of the pipes uphill towards the downstream end of the pipes. From the upstream end of the pipes, the Discharger inserts a camera and sends it down to the level of water. Once the suction draws down the water level, the Discharger follows the hydro jet with the camera as closely as it can. However, the hydro jet is limited as to how much water it can hold and therefore, per the Discharger, certain sections of the pipe are impossible to inspect with its current equipment.

Therefore, a multiplier value of **1.1** is appropriate.

History of Violations

The Discharger has no prior history of violations within the last five years Therefore, a multiplier value of **1.0** is appropriate.

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.

Once the spill was identified, the Discharger timely notified the Central Valley Water Board, as required by the Statewide General Order, and cooperated with requests and directions from the Central Valley Water Board. The Discharger collected receiving water samples, notified local health officials, and posted public notices. The Discharger satisfied all requirements in section G.4 and D.7 of the Statewide General Order. With approval from the Central Valley Water Board, the Discharger also pumped approximately 40,000 gallons of water from Churn Creek and flushed the affected area with dechlorinated hydrant water to collect debris on the riverbanks. In addition, on 29 September 2020, the City replaced the two siphon pipes for roughly \$300,000. The Discharger was cooperative and put forth significant effort to voluntarily return to compliance quickly and to correct the environmental damage that occurred as a result of the spill.

Therefore, a multiplier value of **0.75** is appropriate.

Step 5 - Determination of Total Base Liability Amount

Total Base Liability Amount: This value is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 2.

<p>Total Base Liability Amount</p> <p>$\\$64,500 \times 1.1 \times 1.0 \times 0.75 = \\$53,212$ Total Base Liability Amount = \$53,212</p>
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Step 6 - Ability to Pay and Ability to Continue in Business

The ability to pay and to continue in business must be considered when assessing administrative civil liabilities. If the Water Board has sufficient financial information to assess the Discharger's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the Discharger's ability to continue in business, then the Total Base Liability amount may be adjusted downward.

In this matter, the Discharger is an ongoing governmental entity with the ability to raise revenue to satisfy the liability proposed through the imposition of fees and taxes. To date, there is no information presented that would evidence the Discharger's inability to pay.

Step 7 – Economic Benefit

Pursuant to California Water Code Section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The City's violation of the Statewide General Order was potentially due to the failure to replace the siphons when they were first damaged and failure to implement a Siphon Bypass Plan. These avoided and delayed expenses have benefited the Discharger.

The City's Report to the City Council states that "[th]e contractor installed two new eight-inch High Density Polyethylene (HDPE) pipes using a butt pipe fusion process, which created a high strength reliable joint-less pipeline system. This will prevent infiltration of groundwater and roots into the sewer system thus preventing any further sewer discharges of raw wastewater." These siphons should have been replaced at the time they were damaged. The damage likely occurred during the previous wet season, which ends mid-April. Since they were not replaced until after the SSO that is the subject of this action, this delayed cost resulted in an economic benefit of approximately \$936.

Additionally, three of the economic benefit components are related to the City's failure to implement a Siphon Bypass Plan as part of their Sewer System Management Plan (SSMP). The first component is a closer review of the lift station flow data, which would

have showed the discrepancy between the flow leaving Churn Creek Lift Station and the flow entering Sunnyhill Lift Station. This action should have been completed weekly since the City's SSMP was implemented, but only the closer review of the lift station flow data during the bypass event is being included and results in an economic benefit of approximately \$27.

The second aspect related to a Siphon Bypass Plan is the development of a standard operating procedure (SOP) for siphon inspection. This SOP should have been in place at the same time as the City's SSMP but was not developed until after the SSO. This component resulted in an economic benefit of approximately \$68.

The third aspect related to a Siphon Bypass Plan is the actual hydrocleaning and visual inspection of the siphon prior to use. As stated in an email from the City of Redding, "all siphons will be viewed annually going forward". This action should have been implemented at the same time as the City's SSMP, but only the avoided cost of hydrocleaning and visually inspecting the siphons prior to this bypass event is being included. This avoided action resulted in an economic benefit of approximately \$4,962.

For computational purposes, the penalty payment date was established as July 31, 2021. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately, \$5,993. 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 \$6,592. Additional details regarding this calculation are included in Attachment B.

Step 8 – Other Factors as Justice May Require

For purposes of settlement, the Prosecution Team is not adjusting the base liability by any factors including staff costs.

Final Adjusted Liability

The final adjusted liability is \$53,212.

Step 9 – Maximum and Minimum Liability Amounts

The maximum and minimum amounts for the discharge violation must be determined for comparison to the amounts being proposed.

Maximum Liability: Pursuant to Water Code section 13385(c), the maximum civil administrative liability is \$10,000 for each day in which the violation occurs and, where there is a discharge, up to \$10 per gallon for each gallon discharged over 1,000 gallons. The Discharger discharged 41,000 gallons of raw untreated sewage over a three-day

period to waters of the United States. Therefore, the Water Code maximum liability amount for the violation is \$430,000.

Minimum Liability: The minimum liability is calculated as the economic benefit plus 10%. The minimum liability is \$6,592.

Step 10 – Final Liability Amount

The final liability amount consists of the amount of the violation, with any allowed adjustments, provided the amount is within the statutory minimum and maximum amounts. Using the Penalty Calculation Methodology, as described above, the proposed penalty is \$53,212.