

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:	)	
	)	Order R1-2013-0066
University of California, Davis	)	
Bodega Marine Laboratory	)	SETTLEMENT AGREEMENT AND
Complaint No. R1-2012-0110 for	)	STIPULATION FOR ENTRY OF
Administrative Civil Liability	)	ADMINISTRATIVE CIVIL LIABILITY ORDER
	)	
Attn: Nita Puig-Albert	)	
WDID No. 1B840350SON	)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the University of California, Davis, Bodega Marine Laboratory (the Discharger) (collectively Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation and Order are in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability (ACL) Complaint No. R1-2012-0110 (Complaint), dated October 26, 2012, to the Discharger.

Section II: Recitals

1. The Discharger owns and operates the University of California, Davis, Bodega Marine Laboratory a once-through seawater, once-through freshwater and storm water system, located at 2099 Westside Road, Bodega Bay, California. The privately owned treatment facility (POTF) serves the Bodega Marine Laboratory, discharging commingled untreated and de-chlorinated seawater into the Pacific Ocean, a water of the United States.
2. On March 6, 2008, the Regional Water Board adopted Order No. R1-2008-0002 to regulate discharges from the Discharger's POTF to the Pacific Ocean. Order No. R1-2008-0002 became effective on April 25, 2008.
3. On October 26, 2012, the Prosecution Team issued Administrative Civil Liability (ACL) Complaint No. R1-2012-0110 to the Discharger. The Complaint alleges that the Discharger exceeded the effluent limits for total chlorine residual set forth in WDRs Order No. R1-2008-0002 on two (2) occasions; both of these violations are subject to mandatory minimum penalties. The Complaint recommends the imposition of administrative civil liability in the amount of \$6,000 for the violations alleged in the Complaint.

4. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. To resolve by consent and without further administrative proceedings all alleged violations of Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of \$6,000 in mandatory minimum penalties against the Discharger. The Discharger agrees to remit \$3,000 by check payable to the State Water Pollution Cleanup and Abatement Account. The remaining \$3,000 of mandatory minimum penalties shall be suspended (Suspended Liability) pending completion of a Supplemental Environmental Project (SEP) as set forth in this Stipulation and Order and Exhibit "A" hereto and incorporated by this reference.
5. The resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and meets the requirements under Water Code section 13385(i) and the Enforcement Policy, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

6. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
7. **Administrative Civil Liability:** The Discharger shall be subject to administrative civil liability in the amount of \$6,000 in mandatory minimum penalties. This Order acknowledges that on March 21, 2013, the Discharger paid \$3,000 to the "*State Water Pollution Cleanup and Abatement Account*." The remainder, (\$3,000), shall be suspended pending completion of a SEP, as set forth herein and in Exhibit A.
8. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject it to further enforcement, including additional administrative civil liability.
9. On February 3, 2009, the State Water Board adopted Resolution No. 2009-0013, Policy on Supplemental Environmental Projects. The policy can be found at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/rs2009_0013_sep_finalpolicy.pdf
10. **SEP Description:** The SEP is the installation of an oxygen sensor to the existing BML oceanographic mooring to provide dissolved oxygen and dissolved oxygen saturation data for the next two years. The goal of this SEP is to allow for the measurement of

dissolved oxygen year-round one kilometer offshore of the BML seawater intake system within the Bodega Head Marine Reserve (State Marine Protected Area). Data would be available to the public via the BML website. Oxygen data coupled with other monitoring data such as pH, temperature, chlorophyll a, and plankton collection would enable forewarning stakeholders along the Sonoma County Coast of a potential hypoxic event. The dissolved oxygen monitoring program could lead to future funding for research and monitoring of ocean acidification and harmful algal blooms.

The Discharger's research programs that rely on clean oxygen-rich seawater benefit the local coastal ocean and ocean waters of the State. The California Ocean Protection Council has identified hypoxia, harmful algal blooms and ocean acidification as areas of interest for further research and monitoring.

The dissolved oxygen monitoring program would add an additional data set to the Bodega Ocean Observing Node, a public access website which displays and archives data for the following parameters: air temperature, wind direction and speed, rainfall, ocean temperature, salinity, pH, chlorophyll a (algal bloom concentration), solar radiation, ocean currents, wave height and period. <http://bml.ucdavis.edu/boon/>.

The SEP is in accordance with the requirements of the Policy on Supplemental Environmental Projects, February 3, 2009 (SEP Policy) as outlined below.

- The proposed project is not required for the facility to comply with any rule or regulation. Additionally, the installation of a dissolved oxygen monitor is not mitigation to offset the impacts of the chlorine effluent limit discharges.
- The SEP directly benefits surface water quality and the beneficial uses of waters of the State. Information collected by the sensor will provide researchers with additional data about water quality parameters to help answer research questions regarding multistressor events. The database to be developed from this SEP will inform researchers from multiple disciplines about the effects of hypoxic events on nearshore systems and will provide information about how to prepare for potential impacts.
- The following additional criteria were considered during the approval of the SEP.
 - The SEP directly benefits the location where the harm occurred and provides a region-wide use and benefit for researchers and the public.
 - On September 19, 2013, Bodega Marine Lab sent an email that stated that they had reviewed CEQA requirements and had determined that the project falls under Title 14 of the California Code of Regulations, Chapter 3. Guidelines for Implementation of the California Environmental Quality Act, Article 19. Categorical Exemptions, 15306. Information Collection, Class 6.
 - There are limited funding sources available for this project.
 - The Discharger has the ability to complete the SEP and is invested in the completion of the SEP where the data obtained from the dissolved oxygen sensor would answer important research questions.
 - Success of the project will be tied public accountability to a certain extent. By making the data available on a public website, the Discharger will be accountable for ensuring the posting of data for the public.

- There is a nexus between the location of the violation and the location of the proposed SEP. The violations consist of total chlorine exceedances in Bodega Bay, a water body along the Sonoma Coast. The SEP will implement increased monitoring, providing data for nearshore environments of the Sonoma Coast.

The implementation schedule for completion of the SEP is as follows:

MILESTONE	DEADLINE
Purchase dissolved oxygen sensor	6/15/13*
Install dissolved oxygen sensor	7/5/13*
Complete SEP	1/31/2014
Submit progress report relating to implementation and maintenance including the status of: - Divers and Vessel support - Data Download Quality Assurance/Quality Control - Sensor Maintenance and Calibration - Data Summary for Website	3/15/14
Public Access of Archived Data	
Submit Report of Completion including a detailed list of expenditures	4/15/14

*Completed

11. The SEP shall be completed in its entirety no later than April 15, 2014 (SEP Completion Date) as indicated in the schedule above.
12. **Extension of the Implementation Schedule Deadlines:** If, given written justification from the Discharger and the Regional Water Board, staff determines that a delay in the SEP implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Designated Regional Water Board Representative before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide the Discharger a new implementation schedule in writing, which shall include the date the SEP will be completed (Revised SEP Completion Date).
13. **Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents and agrees that (1) it will implement and complete the SEP as described in this

Stipulation and Order; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP identified in Paragraph 10 and Exhibit "A" by remaining liable for the Suspended Liability under the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP. The Discharger shall permit inspection of the SEP by the Regional Water Board staff at any time without notice.

14. **Certification of Completion of SEP:** On or before April 15, 2014 provide a certified statement of completion of the SEP (Certification of Completion). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification of Completion shall include the following:
 - a. Certification that the SEP has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
 - b. Certification documenting the expenditures by the Discharger during the completion period for the SEP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
 - c. Certification that the Discharger 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.
15. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it has spent the entire SEP amount for the completed SEP, the Discharger shall pay the difference between the suspended liability and the amount the Discharger can demonstrate was actually spent on the SEP, as administrative civil liability.
16. **Third Party Financial Audit:** At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing a professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. In the event of such an audit, the Discharger agrees that it will provide the third-party auditor with access to all documents that the auditor requests. The Regional Water Board staff's written request shall specify the reasons why the audit is

being requested. The audit report shall be provided to the Designated Regional Water Board Representative within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

17. **Failure to Complete SEP:** If the Discharger fails to complete the SEP as required by this Stipulation and Order or to submit the Certification of Completion, the Regional Water Board staff shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the entire Suspended Liability to the State Water Board Cleanup and Abatement Account within 30 days of receipt of the NOV.
18. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, the Discharger shall state in a prominent manner that the SEP is undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
19. **Completion of the SEP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulation and completion of the SEP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under the SEP. Receipt of this letter shall terminate any further SEP obligations of the Discharger and result in the dismissal of the Suspended Liability.
20. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:	For the Discharger:
Nancy Robinson Sanitary Engineering Associate North Coast Regional Water Quality Control Board 5550 Skylane Boulevard, Suite A Santa Rosa, CA 95403 Nancy.Robinson@waterboards.ca.gov (707) 576-2657	Nita Puig-Albert, Associate Director University of California, Davis Bodega Marine laboratory P.O. Box 247 Bodega Bay, CA 94923-0247 npuigalbert@ucdavis.edu (707) 875-1958
21. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
22. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the violations alleged in the Complaint (Covered Matters). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Paragraph 7 and the Discharger's full satisfaction of the SEP obligations described herein.

23. **Public Notice:** The Discharger understands that this Stipulation and Proposed Order was noticed for public comment for at least 30 days prior to consideration by the Regional Water Board. In the event objections were raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Stipulation and Proposed Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Stipulation and Proposed Order as necessary or advisable under the circumstances. If the Regional Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present the Order to the Regional Water Board. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated and Proposed Order.
24. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.
25. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
26. **Modification:** This Stipulation and 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 Regional Water Board or its delegee.
27. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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 Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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.

28. **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 Water Board prior to the adoption of the Order.
29. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
30. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State 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 Discharger its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and/or Order nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
31. **Covenant Not to Sue:** The Discharger 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.
32. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional 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 Order.
33. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
34. **Severability:** This Stipulations and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

35. **Counterpart Signatures:** This Stipulation 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. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
36. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**

Original Signed By

Date: October 23, 2013

By:

**David F. Leland, P.E.
Assistant Executive Officer (Acting)**

**University of California, Davis, Bodega Marine
Laboratory**

Original Signed By

Date: October 23, 2013

By:

**Nita Puig-Albert
Associate Director**

Findings of the Regional Water Board:

IT IS HEREBY ORDERED:

1. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Regional Water Board.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Settlement Agreement and Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

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, North Coast Region.

Original Signed By

Matthias St. John
Executive Officer

December 5, 2013

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