

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:	)	
	)	
County of Sonoma	)	Order No. R1-2016-0024
	)	
Monitoring Violations of	)	Settlement Agreement and Stipulation for
WDRs Order No. R1-2009-0050	)	Entry of Order; Order
_____	)	

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 North Coast Regional Water Quality Control Board ("Regional Water Board"), on behalf of the Regional Water Board Prosecution Team ("Prosecution Team") and the County of Sonoma ("Settling Respondent") (collectively "Parties") and is presented to the Regional Water Board, or its delegee, for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulation resolves the violations alleged herein by the imposition of administrative liability against the Settling Respondent in the amount of **\$66,500**.

Section II: Recitals

1. Settling Respondent owns and operates various municipal separate storm sewer systems (MS4s), and is a Co-Permittee under Regional Water Board Waste Discharge Requirements ("WDRs") Order No. R1-2009-0050, NPDES Permit No. CA0025054 (the "Permit").
2. The Permit requires the Settling Respondent to submit an annual report by December 15 of each year ("Annual Report"), which shall document, among other things, monitoring results for samples required under the MRP. The MRP requires the Co-Permittees to implement outfall mass chemical monitoring and to collect samples from six (6) outfalls within the Laguna de Santa Rosa watershed during four (4) events per year (two events during the wet season and two events during the dry season). (MRP section A.1.)
3. Based on a cooperative agreement between the Co-Permittees to identify roles and responsibilities under the Permit, the Settling Respondent is responsible for collecting samples from three (3) of the six outfalls during the four (4) required events per year. On December 15, 2014, Settling Respondent did not submit monitoring results

for the twelve outfall samples pursuant to MRP section A.1 in its 2013/2014 Annual Report.

4. The Prosecution Team alleges that: from July 1, 2013, to June 30, 2014, Settling Respondent failed to collect and analyze samples from three (3) outfalls for the (4) required events, totaling twelve (12) violations of the Permit; and the failure to monitor violations are violations of MRP section A.1 subject to administrative civil liability pursuant to Water Code section 13385, subdivision (a)(2).

5. 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, or its delegee, for adoption as an Order by settlement pursuant to Government Code section 11415.60.

6. To resolve by consent and without further administrative proceedings; the Parties have agreed to the imposition of \$66,500 ("Settlement Amount") in administrative civil liability against the Settling Respondent, including \$6,600 in staff costs. The Settlement Amount is less than the liability amount calculated or asserted by the Prosecution Team using Steps 1 through 10 of the State Water Resources Control Water Board Water Quality Enforcement Policy (May 2010) ("Enforcement Policy") as shown in Attachment A. Settling Respondent is willing to stipulate to the Settlement Amount but does not stipulate to the factual conclusions, policy conclusions, and contents of Attachment A. Settling Respondent does not stipulate to the appropriateness or reasonableness of the Settlement Amount. Both parties wish to avoid the uncertainties and risks of an administrative hearing and/or litigation. Settling Respondent wishes to work cooperatively with the Regional Water Board and resolve this matter as expeditiously as possible without incurring additional costs. Based on these settlement considerations, the Settlement Amount is justified pursuant to Enforcement Policy section VI.B.

7. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, 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 incorporate the foregoing Recitals and stipulate to the following:

8. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling \$66,500. The Settling Respondent agrees that \$29,950 of this administrative civil liability shall be suspended pending completion of the Supplemental Environmental Project described in Paragraph 9 and Attachment B. The remainder, \$36,550, shall be submitted by check made payable to the "State Water Pollution Cleanup and Abatement Account," no later than 30 days following execution of this Order by the Regional Water Board or its delegee. The check shall reference the

Order number listed on page one of this Stipulation. The original signed check shall be sent to the following address, and notification of payment shall be sent to the Office of Enforcement (email to paul.ciccarelli@waterboards.ca.gov) and the Regional Water Board (diana.henrioulle@waterboards.ca.gov):

State Water Resources Control Board
Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

9. **Supplemental Environmental Project:** The Parties agree that \$29,950 of the administrative civil liability shall be suspended pending completion of the Supplemental Environmental Project described in this paragraph and Attachment B (the "SEP"). The suspended portion shall be referred to as the SEP Amount.

a. **Definitions:**

"Implementing Party" – an independent third party(ies) with whom the Settling Respondent has contracted or otherwise engaged to implement the SEP. The San Francisco Estuary Institute ("SFEI") will serve as the Implementing Party for the SEP.

"SEP Completion Date" – the date in which the SEP will be completed in its entirety. The SEP Completion date is 12 months (365 days) from the effective date of this Stipulation.

b. **SEP Description:** a full project description is provided in Attachment B.

c. **Representations and Agreements:** Settling Respondent understands that its promise to implement the SEP outlined in this paragraph and Attachment B is a material condition of this Stipulation. Settling Respondent represents the following: (1) that the Settling Respondent (or the Implementing Party) shall utilize the funds provided to it to implement the SEP in accordance with the Project Tasks and Budget set forth in Attachment B; (2) Settling Respondent (or the Implementing Party) shall provide written reports certified under penalty of perjury to the Regional Water Board consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) the Settling Respondent will guarantee implementation of the SEP identified in Attachment B by remaining liable for the SEP Amount until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Settling Respondent agrees that the Regional Water Board has the right to require an independent audit, to be paid for by Settling Respondent, of the funds expended by Settling Respondent to implement the SEP. The Settling Respondent and/or the Implementing Party further agrees that Regional Water

Board staff or its third party oversight staff shall have the right to inspect the SEP at any time without notice.

d. **Publicity:** Whenever Settling Respondent or its agents or subcontractors or the Implementing Party publicizes one or more elements of the SEP, they shall state in a **prominent manner** that the project is being, or has been, undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Settling Respondent.

e. **Monthly Progress Reports:** Settling Respondent and/or the Implementing Party shall provide monthly progress reports to the Regional Water Board contact in Paragraph 11 commencing 30 days after the effective date of this Stipulation and continuing through the submittal of the certified statement of SEP completion. If no activity occurred during a particular month, a monthly report so stating shall be submitted. Monthly reports are due on the 15th day of the following month.

f. **Certified Statement of SEP Completion:** Within 30 days of the SEP Completion Date, the Settling Respondent shall provide a certified statement of SEP completion ("Certification of Completion"). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under California Law to the Regional Water Board contact in Paragraph 11. The Certification of Completion shall include the following:

i. **Certification of Expenditures:** Certification documenting the expenditures by Settling Respondent and the Implementing Party during the completion period for the SEP. In making such certification, the official(s) may rely upon normal project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. Settling Respondent shall provide any additional information requested by Regional Water Board staff or its third party oversight staff that is reasonably necessary to verify SEP expenditures.

ii. **Certification of Performance of Work:** Certification that the SEP has been completed in accordance with the terms of this Stipulation including Attachment B. Documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and the costs incurred by Settling Respondent.

iii. **Certification that Work Performed Meets or Exceeds CEQA Requirements and Other Environmental Laws:** Certification that the Settling Respondent and the Implementing Party 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 Clean Water Act, and the Porter-Cologne Act.

g. **Third Party Audit:** If Regional Water Board staff obtains information that causes it to reasonably believe that Settling Respondent or Implementing Party has not expended money in the amounts claimed by Settling Respondent or Implementing Party, or has not adequately completed any of the work in the SEP, Regional Water Board staff may require, and Settling Respondent shall submit, at its sole cost, a report prepared by an independent third party acceptable to Regional Water Board staff providing such party's professional opinion that Settling Respondent and/or the Implementing Party has expended money in the amounts claimed by Settling Respondent. In the event of such an audit, Settling Respondent and the Implementing Party agree that they will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to Regional Water Board staff within three months of the completion of Settling Respondent's SEP obligations.

h. **Regional Water Board Acceptance of Completed SEP:** Upon Settling Respondent's satisfaction of its obligations under this Stipulation, the completion of the SEP and any audits, Regional Water Board staff will issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of Settling Respondent and/or the Implementing Party under this Stipulation.

i. **Failure to Expend All Suspended Administrative Civil Liability Funds on the Approved SEP:** In the event that Settling Respondent is not able to demonstrate to the reasonable satisfaction of Regional Water Board staff that it and/or the Implementing Party has spent the entire SEP Amount for the completed SEP, Settling Respondent shall pay the difference between the SEP Amount and the amount Settling Respondent can demonstrate was actually spent on the completed SEP (the "Difference"), as an administrative civil liability. Regional Water Board staff shall issue a "Notice of Violation" that will require the Difference to be paid to the State Water Pollution Cleanup and Abatement Account within 30 days pursuant to the procedures identified in Paragraph 8 of this Stipulation. Payment of the Difference will satisfy Settling Respondent's obligation to implement the SEP. Upon confirmation of payment, Regional Water Board staff will issue a Satisfaction of Order.

j. **Failure to Complete the SEP:** All four Project Tasks identified in Attachment B shall be completed in order for the SEP to be deemed fully implemented. If the SEP is not fully implemented by the SEP Completion Date, then Settling Respondent shall be liable to pay the entire SEP Amount. Regional Water Board staff shall issue a "Notice of Violation" that will require the SEP Amount to be paid to the State Water Pollution Cleanup and Abatement Account

within 30 days pursuant to the procedures identified in Paragraph 8 of this Stipulation. Payment of the SEP Amount will satisfy Settling Respondent's obligation to implement the SEP. Upon confirmation of payment, Regional Water Board staff will issue a Satisfaction of Order.

k. **Water Board is not Liable:** Neither the Water Board members nor the Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by Settling Respondent (or the Implementing Party where applicable) its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, nor shall the Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Settling Respondent, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation.

10. **Compliance with Applicable Laws:** The Settling Respondent 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 them to further enforcement, including additional administrative civil liability.

11. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Diana Henrioulle
North Coast Regional Water Quality
Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
Diana.Henrioulle@waterboards.ca.gov
(707) 576-2350

For the Settling Respondent:

Tennis Wick, Director
Permit & Resource Management Department
2550 Ventura Ave
Santa Rosa, CA 95403
(707) 565-1900

12. **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.

13. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein and Attachment A ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Paragraph 8.

14. **Settling Respondent's Denial of Liability:** In settling this matter, the Settling Respondent does not admit to any of the findings in this Stipulation, or that they have been or are in violation of the Water Code, or any other federal, state, or local law or ordinance, provided, the Settling Respondent agrees that in the event of any future enforcement actions by the Regional Water Board, this Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385.

15. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

16. **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.

17. **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. The Settling Respondent is represented by counsel in this matter.

18. **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.

19. **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 its delegee, or is vacated in whole or in part by the State Water Resources Control 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.

20. **Waiver of Hearing:** The Settling Respondent 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.

21. **Waiver of Right to Petition or Appeal:** The Settling Respondent hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

22. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent 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.

23. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Settling Respondent 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 Settling Respondent of its obligation to obtain any final written approval required by this Order.

24. **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.

25. **Effective Date:** The obligations in this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.

26. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

27. **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.

IT IS SO STIPULATED.

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

By: 

Shin-Roei Lee
Assistant Executive Officer

Date: 6/6/16

County of Sonoma

By: 

Veronica Ferguson
County Administrator

Date: 5/25/16

Order of the Regional Water Board

28. This Order incorporates the foregoing Stipulation.

29. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327, 13351, or 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

30. 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 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 North Coast Regional Water Quality Control Board.

Matthias St. John
Executive Officer

Date: _____

Attachments:

- A. Specific Factors Considered for the County of Sonoma
- B. SEP Proposal

Attachment A

Specific Factors Considered for the County of Sonoma

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code section 13385, subdivision (e).

Calculation of Penalty for violations associated with the failure to conduct outfall mass chemical monitoring pursuant to Waste Discharge Requirements Order No. R1-2009-0050

The County of Sonoma (Discharger or County) allegedly violated Waste Discharge Requirements Order No. R1-2009-0050 (NPDES No. CA0025054) (the Permit) and the incorporated Monitoring and Reporting Program Order No. R1-2009-0050 (MRP) by failing to conduct outfall mass chemical monitoring pursuant to MRP section A.1. From July 1, 2013 to June 30, 2014 (Complaint Period), the Discharger was responsible for collecting and analyzing samples at three outfalls within the Laguna de Santa Rosa watershed, twice during the wet season and twice during the dry season. The Discharger's 2013/2014 Annual Report reveals that the Discharger failed to collect and analyze the 12 required samples.

Pursuant to Water Code section 13385, subdivision (c), the Regional Water Board may impose administrative civil liability of up to ten thousand dollars (\$10,000) for each day in which a non-discharge Permit violation occurs. The 12 sample violations each constitute one day of violation (12 days of violation) subject to the assessment of discretionary penalties, through the application of the Enforcement Policy's administrative civil liability methodology. Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

Violation Nos. 1-12:

Steps 1 and 2. Potential for Harm for Discharge Violations and Assessments for Discharge Violations

The alleged violations are non-discharge violations. Steps 1 and 2 only apply to discharge violations.

Step 3. Per Day Assessment for Non-Discharge Violations

The per day factor is **0.55**. This factor is determined by a matrix analysis using the Potential for Harm and the Deviation from Requirement.

The Potential for Harm is **Moderate**.

The Enforcement Policy assigns “moderate” when the “characteristics of the violation present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most incidents would be considered to present a moderate potential for harm.”

As documented in the Fact Sheet of Order No. R1-2009-0050, storm water is a significant source of pollutants discharged to receiving waters (e.g., Laguna de Santa Rosa). The Laguna de Santa Rosa has been Clean Water Act section 303(d)-listed for impairments associated with several pollutants, including nutrients and indicator bacteria. County storm water runoff is likely to contain these pollutants and, when discharged into receiving waters, is likely to impact receiving water quality and beneficial uses, further contributing to the existing impairments. In 1995, the Regional Water Board adopted a Total Maximum Daily Load (TMDL) and Waste Reduction Strategy for the Laguna de Santa Rosa. This TMDL identifies storm water runoff as a significant source of nutrient loading in the Laguna de Santa Rosa. Nutrients are a primary driving factor in creating conditions of excess algal growth, low dissolved oxygen, and extreme diurnal pH and dissolved oxygen cycles, which can, in turn, contribute to shifts in the composition of aquatic species that are a primary component of a beneficial use. Ammonia as nitrogen, and nitrate plus nitrite nitrogen are biostimulatory substances that can cause or contribute to eutrophic effects impairing freshwater and wildlife habitats. Ammonia is highly toxic to fish and other aquatic life. Excessive ammonia can cause aquatic life toxicity.

Likewise, storm water is considered a source of indicator bacteria in receiving water. High levels of bacteria impair water contact recreation beneficial uses at beaches, rivers, creeks, estuaries, lagoons, and marinas. Swimming in waters with high levels of pathogens has been associated with adverse health effects.

The Permit requires the implementation of additional best management practices (BMPs) to reduce or eliminate pollution to the maximum extent practicable when sample results show values above water quality standards. As noted above, there is a high likelihood that the County’s Municipal Separate Storm Sewer System (MS4) discharges pollutants of concern into surface waters, but the concentrations of these pollutants is unknown due to the County’s failure to collect samples at its outfalls. Therefore, the County is unable to assess the quality of its MS4 discharges, and to identify and implement appropriate measures to control pollutants and improve the quality of its discharges. In addition, without the data, Regional Water Board staff is unable to determine the extent to which the County’s discharge is contributing to an exceedance of water quality standards, and staff is unable to determine the contribution being made to the impairment of beneficial uses in the Laguna de Santa Rosa. Accordingly, the Potential for Harm is “moderate” due to the direct link between storm water runoff pollutant potential and the known impact to beneficial uses.

The Deviation from Requirements is **Major**.

A “major” Deviation of Requirement is defined as one where the “requirement has been rendered ineffective (e.g., discharger disregarded the requirement, and/or the requirement is rendered ineffective in its essential functions.)”

The MRP’s primary objectives include but are not limited to: (a) assessing the chemical, and biological impacts of storm water discharges on receiving waters resulting from urban storm water discharges; (b) assessing the overall health and trends in receiving water quality; (c) assessing compliance with water quality standards; (d) characterization of the quality of storm water discharges; (e) identifying sources of pollutants; and (f) measuring and improving the effectiveness of requirements implemented under the MRP and assessing the resultant reduction in pollutant loads. Moreover, the results of the monitoring requirements must be used to refine Best Management Practices (BMPs) for the reduction of pollutant loading and the protection and enhancement of the beneficial uses of the receiving waters in the County.

The failure to meet MRP section A.1. sampling requirements during the Complaint Period rendered the requirements ineffective, defeated the MRP’s primary objectives and undermined the regulatory program.

Using Table 3 in the Enforcement Policy, the per day factor based on Potential for Harm (moderate) and Deviation from Requirement (major) is 0.55. This per day factor is used to determine the initial liability.

Initial Liability: $0.55 \text{ (per day factor)} \times 12 \text{ (days of violation)} \times \$10,000 \text{ (statutory max per day)} = \$66,000$

Step 4. Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator’s culpability, efforts to clean up or cooperate with regulatory authority, and the violator’s compliance history.

a) Culpability: 1.1

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.5 and 1.5 is to be used, with a higher multiplier for negligent behavior. The Discharger was given a multiplier value of 1.1.

The Discharger is responsible for implementing measures to maintain compliance with the Permit. The Discharger is aware of its requirements under MRP section A.1 and entered into a cooperative agreement to share MRP responsibilities with other Co-Permittees. Throughout the Permit term, the Discharger has requested changes to outfall monitoring locations and/or

requirements and has claimed it could not produce the samples due to drought conditions.

The Discharger proposed three wet weather outfalls locations in a letter to the Regional Water Board dated December 14, 2012, which the Regional Water Board approved on April 10, 2013. The Discharger contracted with an outside contractor (EBA) to manage the wet weather sampling requirements at the three locations, which required the construction of concrete enclosures for the sampling equipment. The Discharger used its Transportation & Public Works Department to construct concrete enclosures, but due to construction delays, the sampling equipment was not installed until May 15, 2014. Regional Water Board staff learned of the construction delays after reviewing the 2013/2014 Annual Report (submitted on December 15, 2014). After May 15, 2014, neither the Discharger nor EBA collected wet weather samples in the 2013/2014 fiscal year.

In regards to dry weather sampling, the Discharger visited three locations in Forestville, two locations in Guerneville, three locations in Monte Rio, and two locations in Occidental. The Discharger located two dry-weather flows and determined one to be out of the County Right of Way and the other location to be impacted by groundwater infiltration. The Discharger did not sample the groundwater because it believed that natural dry-weather flows were not eligible for sampling. However, common dry weather flow sources include groundwater, over-irrigation runoff, sewage, wash water, and other types of illicit discharges. Each of these sources is eligible for sampling. The dry weather sampling requirements are established to characterize non-storm water discharges and to assess compliance with water quality standards.

The violations resulted more from passive negligence, than from accidental or intentional action. Therefore, the culpability multiplier is 1.1, reflecting the Discharger's known responsibility to comply with the Permit, but failure to do so.

b) Cleanup and Cooperation: 1.0

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between .75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

The Discharger's cooperation with and responsiveness to Regional Water Board staff has varied since Regional Water Board staff first notified the Discharger of its failure to properly conduct outfall mass chemical monitoring in the Notice of Violation sent on November 1, 2012. The Discharger has established and re-established outfall monitoring locations throughout the Permit term, and has cooperated with Regional Water Board staff by

informing them of the efforts made to comply with the outfall chemical monitoring requirements. Specifically, the Discharger has established wet weather sampling locations and has contracted with an outside consultant to manage the related sampling. In August 2015, the Discharger also hired a new Stormwater Coordinator and expressed its commitment to work with Regional Water Board staff on Permit compliance and establish dry weather sampling locations as required by the Permit. A multiplier less than 1.0 is not appropriate because the Discharger's actions to return to compliance did not go above and beyond Permit requirements. Therefore, there is no adjustment to either lower or raise the liability amount. The cleanup and cooperation multiplier is 1.0.

c) *History of Violations: 1.1*

In 2011, the Regional Water Board issued Administrative Civil Liability Complaint No. R1-2011-0065 to the County for discharge of contaminated storm water runoff to surface waters at the Sonoma County Airport. Accordingly, the History of Violation multiplier is 1.1.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Potential for Harm determined in Step 3.

d) *Total Base Liability Amount: \$79,860*

$\$66,000 \text{ (initial liability)} \times 1.1 \text{ (culpability)} \times 1.0 \text{ (cleanup and cooperation)} \times 1.1 \text{ (history of violations)} = \$79,860$

Step 6. Ability to Pay and Continue in Business

If there is sufficient financial information to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability amount may be adjusted downward if warranted.

The Discharger has the ability to pay the proposed penalty amount and continue in business based on, but not limited to, the fact that it is a government body with the ability to levy taxes and raise revenue.

Step 7. Other Factors as Justice May Require

The amount determined using the above factors may be adjusted for the cost of investigation and enforcement.

e) *Adjusted Combined Total Base Liability Amount: \$79,860 + \$6,600 (Staff Costs) = \$86,460*

Prosecution Staff has incurred approximately \$6,600 in staff costs, about 44 hours, associated with the investigation and enforcement of the violation alleged and described herein. The 44 hours includes staff investigation, report and enforcement order preparation, management review and editing, and clerical support. An average rate of \$150 per hour was used to calculate the approximate staff costs. In accordance with the Enforcement Policy, increasing the Total Base Liability Amount by \$6,600 in consideration of investigation and enforcement costs is appropriate. Increasing the Total Base Liability Amount in this manner serves to create a more appropriate deterrent against future violations.

Step 8. Economic Benefit

Economic Benefit is any savings or monetary gain derived from the act or omission that constitutes the violation. Delayed costs and avoided costs should be considered.

f) Estimated Economic Benefit: \$15,389

The Enforcement Policy provides that the United States Environmental Protection Agency's Economic Benefit Model (BEN model) should be used to calculate the economic benefit a violator derives from delaying and/or avoiding compliance.

The economic benefit was calculated based on avoided costs. Avoided costs include expenditures for equipment or services that the Discharger should have incurred to avoid the incident of noncompliance, but that are no longer required.

During the Complaint Period, the City of Santa Rosa (Santa Rosa) was also responsible for sampling 3 outfalls during the 4 required events. Santa Rosa provided Prosecution Staff with lab costs and estimated staff costs for a year of sampling under the Permit. The Lab costs and estimated staff costs are \$4,900 and \$10,000 respectively. Using the BEN model, the estimated economic benefit associated with the avoided costs is \$5,063 for lab costs and \$10,326 for staff costs. Therefore, the Discharger received an economic benefit of \$15,389 in avoided costs from the omission that constitutes the violation.

Step 9. Maximum and Minimum Liability Amounts

g) Minimum Liability Amount: \$16,928

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Discharger received an economic benefit of \$15,389 in avoided costs from

the omission that constitutes the violation. The minimum liability amount is \$16,928 (rounded) ($\$15,389 \times 1.1$).

i) Maximum Liability Amount: \$120,000

The maximum administrative liability amount is the maximum allowed by Water Code section 13385: \$10,000 for each day of violation. The maximum liability amount is \$120,000 ($\$10,000 \times 12$ days of violation).

The proposed liability falls within these maximum and minimum liability amounts.

Step 10. Final Liability Amount

The final liability amount proposed for these violations is **\$86,460**.

Attachment B

County of Sonoma's Supplemental Environmental Project (SEP) Proposal: Making receiving water quality monitoring data, from the Russian River watershed, available online through the Contaminant Data Display and Download (CD3) tool

San Francisco Estuary Institute (SFEI)
4911 Central Avenue, Richmond, CA 94804
March 23, 2016

Project Period: One year from date of Regional Water Board's adoption of ACLO

Project Cost: \$29,950

Executive Summary

This project will enhance access to water quality monitoring data and watershed assessment by making receiving water quality monitoring data, from the Russian River watershed, available online through the Contaminant Data Display and Download (CD3) tool – cd3.sfei.org. The CD3 tool is an interactive data access, mapping, and visualization tool that allows a user to select environmental data from one or more projects to visualize on a map, summarize in charts, and download for further analyses.

Project Description

This project will demonstrate and advance data management, access, and visualization capacity in the Russian River watershed as the Russian River Regional Water Quality Monitoring Program (R3MP) governance development moves forward. The project will advance the R3MP by using online data management tools¹ that are utilized by regional monitoring programs and other water quality monitoring studies statewide. The R3MP represents a partnership between regulatory agencies and the regulated community to provide the scientific foundation to manage water quality within the watershed. Once fully implemented, the R3MP will facilitate monitoring coordination and compliance demonstration with pertinent regulatory programs on behalf of all participating stakeholders, while also providing the data management and visualization tools such that water quality data is adequately summarized, interpreted, and made available to the public.

SFEI will be the implementing party for this project. SFEI will provide an online data management training session to key stakeholders, members of the Russian River Watershed Association² (RRWA), on formatting and submitting compiled chemistry, toxicity and field collected data to SFEI's Regional Data

¹ California Environmental Data Exchange Network (CEDEN), EcoAtlas, Water Quality Exchange (WQX)

² The RRWA is a coalition of eleven cities, counties, and special districts in the Russian River Watershed to coordinate, among other things, regional programs for clean water. The County of Sonoma is a member of RRWA.

Center (RDC). Existing and formatted receiving water quality monitoring data submitted to SFEI, will be verified and uploaded to the RDC and become publicly available online through the CD3 tool.

After the receiving water monitoring data from the Russian River watershed have been added to the RDC, SFEI will develop a memo summarizing the results from the most recent Municipal Separate Storm Sewer Systems (MS4) permit cycle. The memo will characterize the location of the monitoring sites, the monitoring frequency, analytical methods, data completeness, and will compare results to compliance monitoring guidelines provided by the North Coast Regional Water Board's MS4 program. Finally, SFEI will reach out to the key and general stakeholders regarding data management tools, the RDC and CD3. The goal of the outreach is to inform stakeholders of the existing data management resources available online for water quality reporting, summarizing, and access, including the reporting compliance with EPA's federal database (WQX).

Project Justification

The advantage of submitting data to the RDC is that data are regularly exchanged with the California Environmental Data Exchange Network (CEDEN) – the statewide database that aggregates water quality data from across the state, including the Surface Water Ambient Monitoring Program's (SWAMP) data. CEDEN recently began to exchange water quality data with WQX on a weekly basis, and will continue to add new parameters to comply with federal data reporting requirements. However, CEDEN does not have data visualization tools, so the advantages of submitting data to SFEI's RDC is that 1) data can be visualized and downloaded through CD3, 2) data are made available in CEDEN, 3) data can be aggregated with data from other programs, and 4) data are exchanged with the EPA's WQX database and meet federal data reporting compliance requirements.

The project meets the requirements for a Supplemental Environmental Project (SEP) as set forth in the State Water Resources Control Board's SEP Policy. The project only consists of measures that go above and beyond the otherwise applicable obligations of Sonoma County, and it does not directly benefit, in a fiscal manner, the Regional Water Board's functions, its members, its staff, or family members of staff. While Sonoma County, among others, will receive indirect benefits from the project, Sonoma County is not required to submit monitoring data via the CD3 tool. The project demonstrates existing, online tools that enable the synthesis of surface water quality data in the Russian River watershed. There is a clear nexus between the alleged MS4 Permit monitoring violations and the project's improvement to Russian River watershed monitoring.

Project Tasks (Scope of Work)

Task 1. NPDES Water Quality Data Formatting and Upload to SFEI's RDC

- Format CEDEN templates³ with example data and finalize site-codes based on CEDEN protocols.
 - Three data entry templates will be needed to load the receiving water monitoring site data to SFEI's RDC:

³ http://www.ceden.org/ceden_datatemplates.shtml

- Chemistry - Biochemical Oxygen Demand, Total Suspended Solids, Ammonia as NH₃, TKN, Total Phosphorus, Total Orthophosphate, Nitrate as N, Nitrite as N, Total Nitrogen as N, and Bacteria (Enterococci, Fecal Coliform, and E. coli in MPN units)
 - Field Collection - Temperature, pH, Dissolved Oxygen
 - Toxicity – organism-based chronic toxicity tests with pass/fail results.
- Online RDC data formatting training – SFEI will provide an online training on formatting and submitting chemistry, toxicity and field collected data to SFEI’s RDC. Sonoma County shall attend this training, and SFEI and Sonoma County will encourage other MS4 permittees and the North Coast Regional Water Board’s MS4 program staff to attend. Optional attendees include NGOs who are conducting ongoing water quality monitoring in the Russian River watershed, volunteers, and water suppliers. The training will be scheduled and announced via email invitations.
 - Formatted receiving water quality monitoring data submitted to SFEI⁴ will be verified and uploaded to the RDC – SFEI will review the submitted data for completeness, upload the data to the RDC, and confirm that the data are accessible and displayed on CD3.

Task 2. Data Summary Memo

- SFEI will develop a memo that summarizes the receiving water monitoring frequency, analytical methods, data completeness, and compare results to compliance monitoring guidelines provided by the MS4 program.

Task 3. Outreach to North Coast Region Stakeholders on RDC and CD3

- SFEI will present the data management tools, RDC, and CD3 to the Board of Directors and Technical Work Group of the RRWA. The goal of the outreach is to inform the key stakeholders of the existing data management resources, strengths of coordinated data management and reporting - including data access, summary, and download - as well as reporting compliance with EPA's WQX data system.
- Near the end of the project, SFEI will hold an online demonstration of the data entry templates, data upload to the RDC, and the CD3 display and download tools. This demonstration will be scheduled and announced via email invitation to the Sonoma County Water Agency, RRWA, North Coast Regional Water Board’s MS4 program staff, MS4 permittees, and other entities recommended by the participants in this project. Sonoma County shall attend this demonstration.

Task 4. Project Management

- Project administration, coordination, invoicing, and progress reporting are covered under this task. Travel expenses for the workshops and outreach are included in this task.

⁴ One formatted data entry file per parameter type (e.g. chemistry, toxicity, and field collected data). Each file can include data from several years, sites, and permittees.

Budget

Task Description and Schedule	Task Cost Estimate
T1. NPDES Water Quality Data Formatting and upload to SFEI's RDC (1st 6 months)	\$10,980
- Format CEDEN data entry templates with examples.	\$1,660
- SFEI to provide key stakeholders with an online training session on data entry templates and provide ongoing phone and webEx support as warranted.	\$2,540
- SFEI data template review, upload to RDC, and checking of CD3 displays.	\$6,780
T2. Data Synthesis Memo (months 7-11)	\$7,350
- Data Analysis and Reporting	\$7,350
T3. Workshop and Outreach to key and general stakeholders on RDC and CD3 (months 10-11)	\$6,510
- Workshop to the Tech. WG of the Russian River Watershed Association.	\$4,775
- Online data formatting and CD3 overview workshop for general stakeholders.	\$1,735
T4. Project Management (ongoing throughout the one year time period)	\$5,110
- Internal & external coordination (includes \$115 for travel)	\$3,300
- Invoicing and reporting	\$1,810
TOTAL Cost	\$29,950