

4. In addition to the effluent limitation violations set forth in paragraph 3 of this Order, the Prosecution Team also alleged that Fortuna had a sanitary sewer overflow (SSO) that began at 7:35 a.m. on February 5, 2015, and lasted until 7:35 a.m. on February 6, 2015. During the SSO event, raw sewage combined with storm water, discharged from four manhole locations located at Twelfth Street and I Street, Twelfth Street and Loni Drive, First Street and Spring Street, and a cleanout at 497 K Street. The SSO discharged to the storm drain system, ultimately reaching Rohner Creek and Strongs Creek, tributaries to the Eel River.

5. The Parties engaged in settlement negotiations and agreed to settle this 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 total amount of ninety-thousand five hundred seventy-three dollars (\$90,573.00), consisting of \$45,000 of mandatory minimum penalties and \$45,573 of discretionary penalties, against Fortuna. The Parties have further agreed that Fortuna will apply the majority of these penalties toward the cost to complete a Compliance Project (CP), in accordance with the terms of this Settlement Agreement and Stipulated Order.

6. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 adopting the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The policy can be found at:

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

7. The discretionary liability amount was determined using a factors analysis consistent with the Water Code and the Enforcement Policy. The Prosecution Team considered the methodology set forth in the Enforcement Policy for the alleged violations, as shown in Attachment B. Attachment B is incorporated herein by reference. Fortuna does not necessarily agree with the alleged violations, but accepts the penalties described herein in order to amicably settle this specific enforcement action.

8. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and meets the requirements under Water Code section 13385, subdivisions (h) and (i), and the State Water Resources Control Board's Enforcement Policy, so that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and Order, and that this Stipulation and Order are in the best interest of the public.

9. Pursuant to Water Code section 13385, subdivision (k), the Regional Water Board may, in lieu of assessing MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), allow a publicly owned treatment works (POTW) serving a small community to spend all, or a portion of, the MMPs towards the completion of a CP proposed by the POTW. The CP must conform to the requirements specified in the Enforcement Policy on Compliance Projects.

10. The Regional Water Board has determined that Fortuna meets the requirements under Water Code section 13385, subdivision (k) and the Enforcement Policy to be recognized as a "POTW serving a small community," and is therefore eligible for a CP in lieu

of all, or a portion of, the mandatory minimum penalties assessed pursuant to Water Code section 13385, subdivisions (h) and (i). Additional details regarding the financial hardship determination for Fortuna can be found in Table 2 of the "Small Disadvantaged and Financial Hardship Determination for North Coast Region Communities" Memorandum dated July 21, 2016.

Section III: Stipulations

NOW, THEREFORE, in consideration of the execution of the Settlement Agreement and Stipulated Order and the releases, satisfactions, and promises made herein, it is hereby agreed upon and the Parties stipulate to the following:

11. **Recitals Incorporated.** The preceding Recitals are incorporated herein.
12. **Jurisdiction:** The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and jurisdiction over the Parties to this Stipulation.
13. **Administrative Civil Liability:** Parties stipulate to the imposition of an administrative civil liability in the amount of ninety-thousand five hundred seventy-three dollars (\$90,573.00) with \$45,000.00 as mandatory minimum penalties and \$45,573.00 as discretionary penalties. Fortuna shall pay within 30 days of issuance of this Order \$45,573.00 to the State Water Resources Control Board Cleanup and Abatement Account. The remainder of the penalty, forty-five thousand dollars (\$45,000.00) shall be suspended (Suspended Liability) pending completion of a CP, as set forth herein and described in Exhibit C, attached hereto, and incorporated by this reference.
14. **CP Description:** Fortuna has proposed to upgrade its Wastewater Treatment Plant Communications and Programmable Logic Controller (PLC) system. This project focuses on the most prevalent issues with dichlorobromomethane and total residual chlorine, which constituted 87% of the alleged violations (13 of 15 total violations) occurring during the period covered by this Order. The purpose of the CP is to provide consistent, accurate effluent flow monitoring, which will allow for proper dosing of chemicals in the chlorination and dechlorination processes. The CP consists of four tasks:
 - (1) Hardware Design, Programming and Control Strategies
 - (2) Offsite Testing, Startup, Installation and Training
 - (3) Compliance Project Completion
 - (4) Final Report

The CP will:

- a. Allow Fortuna to modify its control strategy to increase the reliability of the Facility's effluent meters. This will provide real time effluent flow measurement and ensure the proper dosing of chemicals in the effluent.
- b. Allow Fortuna to monitor the Facility's effluent and have set points on alarms for high and low chlorine residuals. This will allow the operators to quickly detect any failures and make the necessary changes.
- c. Make it possible for the Facility's operators to make adjustments remotely through a tablet or computer. This will allow the operators to more quickly address any excursions, even when not present at the Facility.

The final report shall document CP completion and detail fund expenditures and goals achieved. The final report shall include copies of accounting records of expenditures.

The CP includes the following tasks and schedule:

TASK	DESCRIPTION	Complete By
1	Hardware Design, Programming and Control Strategies	June 1, 2017
2	Offsite Testing, Startup, Installation and Training	June 15, 2017
3	Final Compliance Project Completion	July 1, 2017
4	Submit Final Report to Regional Water Board	August 1, 2017

15. CP Costs: Fortuna has estimated the cost to be approximately \$81,477 to complete all tasks. The amount of the liability to be suspended upon completion of the CP is \$45,000 in MMPs, as authorized by Water Code section 13385, subdivision (k).

16. CP Completion Date: The CP shall be concluded by July 1, 2017 (CP Completion Date). A final report shall be provided to the Regional Water Board and the State Water Resources Control Board's Division of Financial Assistance by August 1, 2017, as specified under Task 4 in paragraph 12.

17. Failure to Complete the CP: Except as provided for in paragraph 21, if the CP as described in this Order is determined to be infeasible, or if Fortuna fails to complete the CP by the CP Completion Date, Fortuna shall be liable to pay the Suspended Liability to the State Water Pollution Cleanup and Abatement Account within 30 days of receipt of the invoice.

18. CP Oversight: Fortuna will oversee implementation of the CP. Additional oversight may be provided by the Regional Water Board.

19. CP Funding Source: As a material consideration for the Regional Water Board's acceptance of this Stipulation, Fortuna represents that it will utilize the funds as described in Exhibit C and Paragraph 13 to implement the CP in accordance with the implementation schedule set forth above. Fortuna understands that its commitment to implement the CP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement.

20. Fortuna Agreement to Implement CP: As a material consideration for the Regional Water Board's acceptance of this Stipulation, Fortuna represents and agrees that: (1) it will implement and complete the CP as described in this Settlement Agreement and Stipulated 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 CP; and (3) it will guarantee implementation of the CP identified in Paragraph 13 and Exhibit C by remaining liable for the Suspended Liability until the CP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. Fortuna agrees that the Regional Water Board has the right to require an audit of the funds expended by Fortuna to implement the CP.

21. Certification of Completion of CP: On or before July 1, 2017, Fortuna shall provide a certified statement of completion of the CP (Certification). 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 shall include the following:

- a. Certification that the CP has been completed in accordance with the terms of this Settlement Agreement and Stipulated Order. Such documentation may include plans, photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by Fortuna for the CP.
- b. Certification documenting the expenditures by Fortuna during the completion period for the CP. Expenditures may include, but are not limited to, payments to outside consultants, vendors or contractors implementing the CP. Fortuna shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.
- c. Certification that Fortuna followed all applicable environmental laws and regulations in the implementation of the CP, including but not limited to the California Environmental Quality Act (CEQA), the Federal Clean Water Act, and the Porter-Cologne Act.

22. Third Party Financial Audit of CP: At the written request of Regional Water Board staff, Fortuna, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies) professional opinion that Fortuna has expended money in the amounts claimed. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to Fortuna of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

23. Failure to Expend the Entire Suspended Liability on the Approved CP: In the event that Fortuna is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$45,000 has been spent for the completed CP, Fortuna shall pay the difference between the suspended liability of \$45,000 and the amount Fortuna can demonstrate was actually spent on the CP, as administrative civil liability. Fortuna shall be liable to pay the State Water Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that Fortuna failed to demonstrate that the entire Suspended Liability was spent to complete the CP.

24. Extension of the Implementation Schedule Deadlines: If, given written justification from Fortuna, and the Regional Water Board staff determine that a delay in the CP implementation schedule is beyond Fortuna's reasonable control, the Regional Water Board's Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Designated Regional Water Board Representative 10 working days before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the CP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide Fortuna with a new implementation schedule in writing, which shall include the date the CP will be completed (Revised CP Completion Date).

25. Completion of the CP to the Regional Water Board Staff's Satisfaction: Upon the Regional Water Board's satisfaction of the CP obligations under this Stipulation and any audit requested by the Regional Water Board, Regional Water Board staff shall send Fortuna a letter recognizing satisfactory completion of its obligations under the CP. Receipt of this letter shall terminate any further CP obligations by Fortuna and result in the dismissal of the Suspended Liability.

26. Compliance with Applicable Laws: Fortuna 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.

27. Effect of Settlement Agreement and Stipulated Order: Except as expressly provided in this Settlement Agreement and Stipulated Order, nothing in this Settlement Agreement or Stipulated Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

28. No Waiver of Right to Enforce: The absence of the Prosecution Team or Regional Water Board choosing to enforce any provision of this Settlement Agreement or Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Settlement Agreement or Stipulated Order. The absence of the Prosecution Team or Regional Water Board choosing to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Settlement Agreement or Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Settlement Agreement or Stipulated Order shall be construed to relieve any Party regarding matters covered in this Settlement Agreement or Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed in this matter.

29. Party Contacts - for Communications related to Stipulation/Order:

For the Regional Water Board:

Justin McSmith
Water Resource Control Engineer
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Justin.McSmith@waterboards.ca.gov
707-576-2082

For Fortuna:

Merritt Perry
City Engineer
City of Fortuna
182 Dinsmore Dr.
Fortuna, CA 95540
mperry@ci.fortuna.ca.us
707-725-1471

30. 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.

31. Public Notice: Fortuna understands that this Settlement Agreement and Stipulated Order will be noticed for a 30-day public comment period prior to consideration by the Regional Water Board. If the Regional Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting the Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Settlement Agreement void and decide not to present the Order to the Regional Water Board. Fortuna agrees that it may not rescind or otherwise withdraw its approval of this Settlement Agreement, except as otherwise set forth herein.

32. 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 and related Order by the public will be adequate. In the event substantive objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Order. In that event, or in the event that 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.

33. Interpretation: This Settlement Agreement and Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

34. Modification: This Settlement Agreement and Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its Executive Officer.

35. Integration: This Settlement Agreement and Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided herein.

36. 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 Stipulated 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.

37. Waiver of Hearing: Fortuna has been informed of the rights provided by Water Code section 13323, subdivision (b), and if the settlement is adopted by the Regional Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board or State Water Resources Control Board for hearing, Fortuna does not waive the right to a hearing before an order is imposed.

38. Waiver of Right to Petition: Except in the instance where the Settlement Agreement and Stipulated Order are not adopted by the Regional Water Board, Fortuna

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.

39. 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 Fortuna, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement and Stipulated Order nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Fortuna, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Settlement Agreement and Stipulated Order.

40. Covenant Not to Sue: Upon the effective date of the Stipulated Order, Fortuna shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of this action.

41. Necessity for Written Approvals: All approvals and decisions of the Regional Water Board under the terms of this Settlement Agreement and Stipulated Order shall be communicated to Fortuna 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 Fortuna of its obligation to obtain any final written approval required by this Order.

42. Authority to Bind: Each person executing this Settlement Agreement and Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement and Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

43. Severability: This Settlement Agreement and Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

44. No Third Party Beneficiaries: This Settlement Agreement and Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation for any cause whatsoever.

45. Counterpart Signatures: This Settlement Agreement and Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Settlement Agreement and Stipulated Order 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.

46. Effective Date: This Settlement Agreement is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegate, which incorporates the terms of this Stipulation.

Order R1-2017-0016
Stipulated Administrative Civil Liability Order
City of Fortuna, WWTP

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IT IS SO STIPULATED.

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

 Shin-Roei Lee
2017.02.16

Date: _____, 2017

By: _____
Shin-Roei Lee
Assistant Executive Officer

08:54:18 -08'00'

City of Fortuna

Date: 2-15, 2017

By: Randy M. Meador
Interim City Manager

Findings of the Regional Water Board:

IT IS HEREBY ORDERED:

1. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, Fortuna hereby agrees to comply with the terms and conditions of this Order.
2. The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.
3. 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, subdivision (a)(2), title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Fortuna fails to perform any of its obligations under the Order.
5. Fulfillment of the Fortuna's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Settlement Agreement in accordance with the terms of the 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, North Coast Region.



Matthias St. John
Executive Officer

Enclosures: Exhibit A – Effluent Limitation Violations Requiring Mandatory Minimum Penalties
Exhibit B – Discretionary Penalty Methodology
Exhibit C – Proposed Compliance Project

MANDATORY PENALTY ADMINISTRATIVE CIVIL LIABILITY

Fortuna City

Fortuna City WWTP

WDID No. 1B83135OHUM NPDES No. CA0022730

EXHIBIT "A"

Effluent Limitation Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	Exempted from MMP?	Exempt Reason	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	895932	12/31/2010	Copper, Total	Group 2	Monthly Average	6.2	7.6	ug/L	N		23%	07/04/2010	S	N/A	Y	13385(h)	\$ 3,000
2	892674	01/03/2011	Chlorine, Total Residual	Group 2	Daily Maximum	0.01	2.25	mg/L	N		22400%	07/07/2010	S	N/A	Y	13385(h)	\$ 3,000
3	889164	01/04/2011	Chlorine, Total Residual	Group 2	Daily Maximum	0.01	2.25	mg/L	N		22400%	07/08/2010	S	N/A	Y	13385(h)	\$ 3,000
4	905658	01/10/2011	Total Coliform	Other	Daily Maximum	230	1600	MPN/100	Y	Other ⁴	N/A	07/14/2010	E	N/A	N		\$ 0
5	892672	01/26/2011	Copper, Total	Group 2	Monthly Average	6.2	10	ug/L	N		61%	07/30/2010	S	N/A	Y	13385(h)	\$ 3,000
6	905661	03/24/2011	Dichlorobromomethane	Group 2	Monthly Average	0.6	1.8	ug/L	N		200%	09/25/2010	S	N/A	Y	13385(h)	\$ 3,000
7	905660	03/24/2011	Dichlorobromomethane	Group 2	Daily Maximum	1.1	1.8	ug/L	N		64%	09/25/2010	S	N/A	Y	13385(h)	\$ 3,000
8	905665	04/07/2011	Dichlorobromomethane	Group 2	30-Day Average	0.6	0.69	ug/L	N		15%	10/09/2010	C	9	Y	13385(j)	\$ 3,000
9	941971	12/06/2012	Dichlorobromomethane	Group 2	Daily Maximum	0.6	1	ug/L	N		67%	06/09/2012	S	N/A	Y	13385(h)	\$ 3,000
10	946108	03/07/2013	Dichlorobromomethane	Group 2	Daily Maximum	1.1	1.6	ug/L	N		45%	09/08/2012	S	N/A	Y	13385(h)	\$ 3,000
11	947563	04/09/2013	Chlorine, Total Residual	Group 2	Daily Maximum	0.02	1.8	mg/L	N		8900%	10/11/2012	S	N/A	Y	13385(h)	\$ 3,000
12	947575	04/30/2013	Chlorine, Total Residual	Group 2	Monthly Average	0.01	0.06	mg/L	N		500%	11/01/2012	S	N/A	Y	13385(h)	\$ 3,000
13	966793	03/17/2014	Chlorine, Total Residual	Group 2	Daily Maximum	0.02	0.05	mg/L	N		150%	09/18/2013	S	N/A	Y	13385(h)	\$ 3,000
14	992151	05/05/2015	Dichlorobromomethane	Group 2	Daily Maximum	1.1	2.5	ug/L	N		127%	11/06/2014	S	N/A	Y	13385(h)	\$ 3,000
15	1007891	01/12/2016	Dichlorobromomethane	Group 2	Monthly Average	0.6	1.5	ug/L	N		150%	07/16/2015	S	N/A	Y	13385(h)	\$ 3,000
16	1007892	01/31/2016	Dichlorobromomethane	Group 2	Maximum Daily	1.1	1.5	ug/L	N		36%	08/04/2015	S	N/A	Y	13385(h)	\$ 3,000

Total Penalty: \$ 45,000

1 - Violation occurs on sample date or last date of averaging period.

2 - For Group I pollutants, a violation is serious when the limit is exceeded by more than 40%

- For Group II pollutants, a violation is serious when the limit is exceeded by more than 20%

3 - When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed

4 - Exempt due to effluent being discharged to percolation ponds which are not considered surface water.

Violation period ending the last day of January 2016

Group I Violations Assessed MMP: 0

Group II Violations Assessed MMP: 15

Other Effluent Violations Assessed MMP: 0

Violations Exempt from MMP: 1

Total Violations Assessed MMP: 15

Mandatory Minimum Penalty = (14 Serious Violations + 1 Non-Serious Violations) x \$3,000 = \$45,000

Attachment B

ACL Complaint No. R1-2017-0016 Specific Factors Considered City of Fortuna Wastewater Treatment Facility

Each factor of the Enforcement Policy and its corresponding score for each violation are presented below:

1. **Violation No. 1 (Mandatory Minimum Penalties (MMPs) occurring during the period October 1, 2010 through September 31, 2016):** The \$45,000 in liability being recommended for the effluent limit exceedances alleged in the Complaint (see Attachment A) are Mandatory Minimum Penalties (MMPs) statutorily required under Water Code section 13385(h) and (i). No discretionary liability is proposed for those violations and, therefore, the consideration of liability factors under Water Code section 13385 and the methodology for assessing such liability are not applicable.

The Regional Water Board recognizes that Fortuna's Facility serves a rural county with financial hardship. Thus, per Water Code section 13385 (k), in lieu of assessing all or a portion of the MMPs pursuant to 13385 (h) and (i) against the Facility, the Regional Water Board has elected to allow Fortuna to spend an equivalent amount towards the completion of a compliance project (CP).

2. **Violation No. 2 (February 6, 2015 SSO discharge violation):** The Complaint alleges an unauthorized discharge of 134,100 gallons of raw sewage comingled with storm water from the City's collection system in violation of the discharge prohibition of NPDES Order No. R1-2011-0004 and State Water Resources Control Board Order No. 2006-003-DWQ, *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems* (Sanitary Sewer Order), and amended Monitoring and Reporting Program, Order No. WQ 2013-0058-EXEC, for the Sanitary Sewer Order (MRP Order No. WQ 2013-0058-EXEC). This violation is subject to discretionary administrative civil liability pursuant to Water Code section 13385(a)(2) and (c).
 - a. **Alleged Cause of the SSO Event:** Fortuna alleges that wet weather conditions caused localized flooding and excess storm water inflow and infiltration (I&I) into the collection system, which overwhelmed the capacity of the sanitary sewer. From 7:35 am on February 5, 2015, to 7:35 am on February 6, 2015, Fortuna received approximately 5.04 inches of rain. According to the National Oceanic and Atmospheric Administration, this amount of rain equates to a storm event that is equivalent to a 10-year frequency based on a 24-hour duration.
 - b. **SSO Event Description:** The SSO event started at 7:30 am on February 6, 2015, and ended at 2:00pm on the same day (6.5 hour duration). During the SSO event, raw sewage combined with storm water discharged from four manhole

locations located at Twelfth Street and I Street, Twelfth Street and Loni Drive, First Street and Spring Street, and a cleanout at 497 K Street. The SSO discharged to the storm drain system ultimately reaching Rhoner Creek and Strongs Creek, tributaries to the Eel River.

- c. **Enforcement Policy Scoring:** Each factor of the Enforcement Policy and its corresponding score is presented below:

Step 1. Potential for Harm for Discharge Violations

The Potential for Harm is 5. This is determined by the sum of the factors for a) the potential for harm to beneficial uses; b) the physical, chemical, biological or thermal characteristics of the discharge; and c) the susceptibility for cleanup or abatement.

a) Factor 1: Harm or Potential Harm to Beneficial Uses (1= Minor)

A minor harm is warranted because the discharges were diluted with high wet weather flows in the receiving water; and the actual recreational uses are typically less during wet weather events. Flooding of Rohner Creek resulted in highly diluted sewage due to significant I&I.

b) Factor 2: Physical, Chemical, Biological or Thermal Characteristics of the Discharge (3 = Discharged material poses an above-moderate risk or a direct threat to potential receptors)

SSOs can contain untreated domestic, industrial, and commercial wastes. SSOs include potentially high concentrations of suspended solids, biochemical oxygen demand (BOD), oils and grease, toxics, nutrients, floatables, pathogenic microorganisms, and a variety of other pollutants. Wet weather SSOs pose an above moderate risk or threat to potential receptors because, though diluted by Inflow & Infiltration (I&I), the SSOs are not at all treated and would contain bacteria at levels exceeding human health standards and potentially toxic to aquatic organisms.

c) Factor 3: Susceptibility to Cleanup or Abatement (1 = less than 50% of the discharge is susceptible to cleanup or abatement)

For I&I and capacity-related wet weather SSOs, less than 50% of these SSOs are amenable to cleanup or containment because the collection system, storm drains, and creeks were also flowing full at the time.

Final Score – Potential for Harm is 5.

Step 2. Assessment for Discharge Violations

The violation resulted in a large total volume of sewage spilled within a short duration. Thus, liability is proposed both on a per gallon and a per day basis.

d) Per Day Factor for Discharge Violation: 0.15

Discharge Prohibition D of Regional Water Board Order No. R1-2011-0004 prohibits the discharge or reclamation of untreated or partially treated waste from anywhere within the collection, treatment, or disposal facility. Prohibition C.1 of Sanitary Sewer Order prohibits any sanitary sewer overflow that results in a discharge of untreated or partially treated wastewater to waters of the United States. The violation resulted in a discharge of untreated wastewater to the Eel River or its tributaries, rendering these prohibitions ineffective.

In addition, Provision D. *Water Quality Monitoring Requirements* of MRP Order No. WQ 2013-0058-EXEC requires enrollees to assess impacts from SSOs to surface waters when 50,000 gallons or greater are spilled to surface waters. Specifically, Provision D. requires enrollees to conduct water quality sampling for ammonia and the appropriate bacterial indicators within 48 hours of becoming aware of the SSO. The Discharger failed to collect water quality samples to assess SSO impacts thus rendering this requirement ineffective. Additionally, Provision C.5. requires enrollees to submit a technical report within 45 calendar days of the SSO end date. The Discharger submitted a technical report on June 12, 2015, 126 days after the SSO end date.

For discharge violations, the Regional Water Board determines an initial liability amount on a per day basis using the Potential for Harm (5) and Deviation from Requirement factors. The Deviation from Requirement is "major" because the discharge prohibition was rendered ineffective when the SSO resulted in a discharge of 134,100 gallons of untreated sewage albeit diluted with storm water into the tributaries of the Eel River in violation of Order R1-2011-0004, the Sanitary Sewer Order, and MRP Order No. WQ 2013-0058-EXEC. The prohibition would be effective only if no SSO had occurred. Therefore, in accordance with Table 2 of the Enforcement Policy, a multiplier of 0.22 was assigned.

e) Per Gallon Factor for Discharge Violation: 0.15

As noted above, the Deviation from Requirements is major and the Potential for Harm score is 5. Therefore, in accordance with Table 1 of the Enforcement Policy, a multiplier of 0.15 was assigned.

f) High Volume Discharge: \$2 per gallon

The discharge involved a large volume sewage spill resulting from a storm event and subsequent rainfall runoff causing excessive I&I into Fortuna's collection

system. Consistent with the guidance in the Enforcement Policy regarding high volume discharges, a per gallon assessment of \$2.00 is appropriate for this sewage discharge.

g) Initial Liability Amount: \$41,430

The initial liability amount for the violation calculated on a per gallon and a per day basis are as follows:

Per Gallon Liability: 133,100 (134,100 gallons discharged - 1,000 gallons) X 0.15 (per gallon factor) X \$2.00 (amount per gallon) = \$39,930

Per Day Liability: 0.15 (per day factor) x \$10,000 (maximum per day) x 1 (day of discharge) = \$1,500

Total Initial Liability: \$39,930 (per gallon liability) + \$1,500 (per day liability) = **\$41,430**

Step 3. Per Day Assessments For Non-Discharge Violations

This step in the penalty calculator is not applicable to this discharge violation.

Step 4. Adjustment Factors

h) Culpability: 1.0

Fortuna is responsible for maintaining its collection system pipelines and has an ongoing collection system maintenance program. Each year, Fortuna rods and inspects 1/3 of its system with a CCTV camera system. The pipeline segment where the SSOs occurred was recently smoke tested and no major deficiencies were found. Fortuna has completed various rehabilitation/replacement projects over the years to address I&I and capacity-related SSOs. Fortuna is generally on track with its schedule to rehabilitate and replace collection system pipelines to address insufficient capacity, excessive I/I and aging infrastructure. Capital improvement projects are planned in the vicinity of the SSO event to add an additional manhole and lift station to facilitate wastewater flow to the Facility and to minimize SSOs from the collection system.

Accordingly, Fortuna has been assigned a neutral culpability score of 1.0.

i) Cleanup and Cooperation: 1.0

A value of 1.0 is assigned to this factor because Fortuna took reasonable steps to return to compliance after the violation occurred. Fortuna did not comply with

Provision D. 5. of MRP Order WQ-2013-0058-EXEC, which requires water quality sampling for ammonia and the appropriate bacterial indicators when more than 50,000 gallons are spilled to surface waters. However, Fortuna was unable to sample due to flooding throughout the City. Flooding in the overflow areas created an unsafe sampling environment and made it unlikely that any samples taken would be truly representative of the SSO event.

The following steps were implemented according to the Discharger's Sanitary Sewer Management Plan (SSMP) Overflow Emergency Response Plan to respond to and mitigate the SSO event:

- Staff were dispatched prior to the storm event to expedite spill response.
- When the respective SSOs were reported, staff was dispatched quickly to each discharge site.
- Call times were documented and pictures were taken.
- The proper regulatory agencies were notified.
- Staff determined, due to the nature and severity of the storm and the limited effect on public health, water sampling/testing was not feasible or necessary.
- Each spill site was blocked off with cones or barricades.
- Staff reported that it was not possible to contain any of the untreated wastewater as it was diluted with rain water and flowed into the storm drains.

As noted above, Fortuna responded to the spill, but was unable to adequately assess impacts to surface waters from the SSO event as required by MRP Order WQ-2013-0058-EXEC. Therefore, a multiplier of **1.0** is appropriate.

j) History of Violations: 1.1

Fortuna has had SSOs and unauthorized discharges in the past. The Enforcement Policy provides that where there is a history of repeat violations, a minimum multiplier of 1.1 should be imposed. Therefore, the Prosecution Team believes a multiplier of **1.1** is appropriate.

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 2.

k) Total Base Liability Amount: \$45,573

$\$41,430 \times 1.0$ (culpability) $\times 1.0$ (cleanup and cooperation) $\times 1.1$ (history of violations) = \$45,573

Step 6. Ability to Pay and Continue in Business

a) Adjusted Combined Total Base Liability Amount:

The Enforcement Policy provides that if the Regional Water Board has 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. Similarly, if a violator's ability to pay is greater than similarly-situated dischargers, it may justify an increase in the amount to provide a sufficient deterrent effect.

The Regional Water Board Prosecution Team has enough information to suggest that Fortuna has the ability to pay the proposed liability, so that the burden of rebutting this presumption shifts to the discharger. Fortuna's most recent financial statement shows that, for fiscal year ending June 30, 2015, Fortuna's net position of the wastewater enterprise fund increased by 2.8% to \$22.6 million indicating stable growth of the utility services. The wastewater fund totaled \$3,572,915 in revenue from charges for services, \$139,383 in capital grants and contributions and totaled \$3,082,638 in expenses. The net revenue for the wastewater fund resulted in \$629,660. (<http://ca-fortuna.civicplus.com/DocumentCenter/View/2422>). The Prosecution Team believes Fortuna has the ability to pay the proposed liability and continue in business. Accordingly, the Total Base Liability is not adjusted.

Step 7. Other Factors as Justice May Require

b) Adjusted Combined Total Base Liability Amount: \$45,573

The State and Regional Water Board have incurred approximately \$7,000 in staff costs, about 56 hours, associated with the investigation and enforcement of the violation alleged and described herein. The 56 hours includes staff investigation, writing, editing, attorney reviews, upper-management reviews (2 staff) and clerical. Staff costs have been removed per settlement negotiations.

Step 8. Economic Benefit

c) Water Code section 13385 requires that, at a minimum, liability be assessed at a level that recovers the economic benefit derived from the act or omission that constitutes a violation. The Enforcement Policy (pages 20-21) requires that the adjusted Total Base Liability Amount be at least 10 percent higher than any economic benefit realized by the discharger.

The Enforcement Policy requires that the economic benefit of noncompliance be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN) penalty and financial modeling program. BEN calculates a discharger's monetary interest earned from delaying or avoiding compliance with environmental statutes. Economic benefit was calculated using BEN version 5.4.0.

Subsequent to the discharge event associated with Violation No.2, Fortuna determined that upgrades were needed to the SCADA system to reduce the likelihood of future failures. Fortuna purchased new software (\$23,000) and hardware (\$5,000) totaling \$28,000 to upgrade the SCADA system. This purchase is considered a cost that Fortuna could have incurred to prevent the violation. The SCADA manufacturer, Wonderware, recommends that the software stay within two versions of their newest software. Wonderware has a major upgrade every two years. This would lead to a software update at a minimum of every four years. Fortuna stated that it last updated the SCADA software in 2004. Fortuna could have updated the software again in 2008, according to the manufacturer. The calculated economic benefit using U.S. EPA BEN model is \$6,151 assuming a one-time capital investment of \$5,000 for a new modem that has a useful life of 5 years¹ and a one-time, non-depreciable investment of \$23,000, which should have been incurred about four years ago.

Fortuna did not derive an economic benefit in regard to Violation No. 2. Fortuna has an ongoing maintenance program in the collection system. Each year, Fortuna rods and inspects one-third of its collection system with a CCTV camera system. The particular areas affected by the SSOs were recently smoke tested and no major issues were found. The North Coast can receive high intensity rain storms, but the Fortuna collection system has never had an I&I and capacity-related SSO remotely close to this volume of a spill. Since this violation is the first SSO related to I&I and a lack of capacity in the collection system, the cost of expanding the piping in the collection system does not appear to be a feasible use of the money provided by the tax base.

Step 9. Maximum and Minimum Liability Amounts

e) Minimum Liability Amount: \$6,766

The Enforcement Policy requires that the minimum liability amount imposed not be below the economic benefit plus ten percent. As discussed above, the Regional Water Board Prosecution Team's estimate of the Discharger's economic benefit obtained from the violations cited in the Complaint is \$6,766. This is considered the Minimum Liability Amount for violations two and three.

¹ Recommendation of the Win911 modem supplier is that the modem be replaced ever five years.

f) Maximum Liability Amount: \$1,341,000

The Enforcement Policy requires that the maximum liability amount be determined for comparison to the amount being proposed.

Max. Penalty for Violation No. 3: \$10,000 (1 day x \$10,000 per day) + \$133,100
((134,100 gallons - 1,000 gallons) x \$10 (per gallon)) = \$1,341,000

Total Max. Penalty for Violation 2 = \$1,341,000

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

Step 10. Final Liability Amount

The \$45,000 from Violation 1 can be put toward a valid Compliance Project as set out in the Enforcement Policy. The final liability amount proposed for Violation No. 2 is **\$45,573.**

ATTACHMENT C
ADMINISTRATIVE CIVIL LIABILITY ORDER R1-2017-0016

Compliance Project (CP) Description

Project Title:

CITY OF FORTUNA WASTE WATER TREATMENT PLANT (WWTP) COMMUNICATIONS SYSTEM UPGRADE PROJECT

Geographic Area of Interest:

CITY OF FORTUNA WWTP

Name and Contact Information for Responsible Entity:

DOUG CULBERT, CHIEF PLANT OPERATOR
707-725-1476

Estimated Cost of Project:

The total cost for the project is estimated to be \$81,477. The City will spend at least \$45,000 for the direct cost of the proposed CP. Other costs to implement this project will be borne by the City and are not considered part of this CP.

Table 1 - Costs for Communications System Upgrade Project

Description	Cost
1. Programmable Logic Controllers	\$30,792
2. Programmable Logic Controllers Programming	\$10,400
3. Software	\$6,730
Subtotal	\$47,922¹
4. Travel & Per-Diem	\$4,160
5. Project Kickoff	\$1,560
6. Project Management	\$1,315
7. Network Control Design and Management	\$1,560
8. Control Strategies (including meetings)	\$13,000
9. HMI Programming	\$5,200
10. Startup/Training	\$5,200
11. O&M's	\$1,560
Subtotal	\$33,555
Totals	\$81,477
1. The \$45,000 in liability from MMP violations will be put towards this project cost	

Project Description:

The CP is intended to upgrade the City WWTP Communications and Programmable Logic Controller (PLC) system to improve the reliability of effluent flow meters, ensure proper chemical dosing, and prevent future violations.

Link between the violations and the CP:

Effluent violations identified in the revised Attachment A are predominantly dichlorobromomethane, a disinfection by-product (DBP), and Total Chlorine Residual violations. Ammonia is added with chlorine during the disinfection process to create chloramines and reduce the creation of DBPs. Currently, the WWTP has to manually read the effluent flow and adjust the dosing in the chlorine contact basin accordingly.

The upgrade to the City WWTP PLC system will:

- Allow the City to modify its control strategy to increase the reliability of the WWTP effluent meters. This will provide real time effluent flow measurement and ensure the proper dosing of chemicals in the effluent.
- Allow the City to monitor WWTP effluent and have set points on alarms for high and low chlorine residuals. This will allow the operators to quickly detect any failures and make the necessary changes.
- Allow the WWTP operators to make adjustments remotely through a tablet or PC. This will allow the operators to immediately make the necessary process changes offsite, shorten the response time and improve permit compliance.

Water Body, Beneficial Use, or Pollutant Addressed by the Project:

The project will replace outdated hardware and networking capabilities to provide faster more efficient data control and acquisition of the WWTP components and processes which will ultimately produce higher effluent quality discharged into Strongs Creek, a tributary of the Eel River.

Project Tasks and Deliverables:

Portland Engineering will be contracted to implement the CP. Portland Engineering is prepared to complete the following Scope of Services:

1. Provide an Ethernet architecture drawing that the City can then use to specify the scope of work by a certified, City-hired electrician.
2. Replace existing Concept Quantum PLCs with Unity Quantum PLCs.
3. Replace existing Modbus Plus Communication Cards with Ethernet Modules.
4. Program New PLCs.
5. Draft Control Strategies approved by the plant operators based-on existing PLC/HMI (Human Machine Interface) programming, reprogram PLCs in Unity. This may consist of a meeting with plant staff to gain consensus on the Control Strategy design.
6. Provide a phased startup plan.
7. Modify Wonderware Intouch as required for seamless communications.
8. Provide and install Unity programming software on Plant SCADA.
9. Functionally Test, Startup and Maintain new system.
 - a. Contractors must include rate-sheet for T&M support for six (6) months after project completion.

Table 2 - Timeline to complete Communications System Upgrade Project (CP)

Task	Task Description	Complete By
1	Hardware Design, Programming and Control Strategies	May 1, 2017
2	Offsite Testing, Startup, Installation and Training	May 15, 2017
3	Final Compliance Project Completion	June 6, 2017
4	Submit Final Report to Regional Water Board	July 1, 2017

The final report shall document CP completion and detail fund expenditures and goals achieved. The final report shall include copies of accounting records of expenditures.