

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

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|---------------------------------------|---|---|
| In the matter of: |) | |
| |) | |
| Sonoma County Water Agency |) | Order No. R1-2023-0049 (Proposed) |
| and Russian River County |) | |
| Sanitation District |) | Settlement Agreement and Stipulation for |
| |) | Entry of Order; Order (Proposed) |
| Sonoma County |) | |
| |) | |
| Administrative Civil Liability |) | |

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the North Coast Regional Water Quality Control Board (Regional Water Board) Prosecution Staff (Prosecution Team), Sonoma County Water Agency, and the Russian River County Sanitation District (collectively, the Parties) and is presented to the North Coast Regional Water Quality Control Board (Regional Water Board) for adoption as an Order (Order), by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. Sonoma County Water Agency (SCWA) is the contract operator, and the Russian River County Sanitation District (RRCSD or District) (collectively, Dischargers) is the owner of the Russian River Wastewater Treatment Facility at 18400 Neeley Road, in Guerneville. The District also owns and is responsible for the wastewater collection system, including associated infrastructure that collects and carries wastewater from the service area to the Russian River Wastewater Treatment Facility (collectively, collection system). The Treatment Facility and the collection system are subject to the requirements of multiple regulatory orders including Regional Water Board Waste Discharge Requirements (WDR) Order No. R1-2014-0002 and State Water Resources Control Board Order No. 2006-003-DWQ, Statewide General WDRs for Sanitary Sewer Systems, as amended by Order No. WQ-2013-0058-EXEC (SSS General WDRs), and the federal Clean Water Act (33 U.S.C. § 1251 et seq.).

2. The collection system consists of 34.1 miles of gravity sewers and 4.2 miles of forced mains and other pressure systems, with 2,497 service lateral connections. In 2019, the Dischargers reported multiple unauthorized discharges of raw sewage from the collection system. The Prosecution Team is identifying the spills from 2019 as spills 1.a., 1.b, and 1.c, and summarized the spills in Table 1, below.

Table 1: 2019 Spills

| Violation | Date | Location | Volume | No. of Days |
|---------------------------------------|------------------------------|-----------------------------|------------------------|--------------------|
| 1.a. (CIWQS ID 856208) | February 14-15, 2019 | 17498 Riverside Drive | 200,664 gallons | 2 |
| 1.b. (CIWQS ID 856704) | February 26-March 1, 2019 | 17496 Riverside Drive | 483,000 gallons | 4 |
| 1.c. (CIWQS ID 856715) | March 1-March 2, 2019 | 17821 Orchard Road | 202,000 gallons | 2 |
| TOTAL | | | 885,664 gallons | 8 |

3. The Prosecution Team alleges that the Dischargers discharged 885,664 gallons of raw sewage diluted with rainwater into the Russian River, a water of the United States, on February 14-15, February 26, and March 1-2, 2019, for a total of eight days.

4. These three discharges violated WDR Order R1-2014-0002, section III, Prohibition E; SSS General WDRs Order 2006-0003-DWQ, section C, Prohibitions 1 and 2; and the federal Clean Water Act section 301 (33 U.S.C. 1311).

5. These alleged acts constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).

6. To resolve by consent and without further administrative proceedings the alleged violations, the Parties have agreed to the imposition of **\$1,033,546** of liability against the Dischargers. The amount of administrative civil liability imposed pursuant to this Stipulation and Order comports with the State Water Resources Control Board Water Quality Enforcement Policy methodology as discussed in Attachment A, the terms of which are incorporated herein by reference.

7. Payment of \$147,001 to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order. The remaining \$886,545 in liability shall be suspended upon completion of an Enhanced Compliance Action (ECA) for the West County Water Quality and Recycled Water Supply Feasibility Project with Stakeholder Committee as described in Paragraph 11, below.

8. The amount of administrative civil liability imposed pursuant to this Stipulation and Order comports with the State Water Resources Control Board Water Quality Enforcement Policy methodology as discussed in Attachment A, the terms of which are incorporated herein by reference. The Prosecution Team has elected to reduce the

\$1,215,937 total base liability by 15% for uncertainty inherent in an administrative enforcement proceeding and potential litigation.

9. The Parties have engaged in settlement negotiations and agree to settle the matter without further administrative or civil litigation and by presenting this Stipulation and proposed Order to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. 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 except as provided in this Stipulation, and that this Stipulation is in the best interests of the public.

Section III: Stipulations

The Parties stipulate to the following:

10. **Administrative Civil Liability:** The Dischargers hereby agree to pay the administrative civil liability totaling \$1,033,546 as set forth in Paragraph 7 of Section II of this Stipulation. Further, the Dischargers agree that \$886,545 of this administrative civil liability shall be suspended pending completion of an enhanced compliance action as set forth in Paragraphs 11 and 14 herein and Attachment B incorporated herein by reference. Payment of \$147,001 shall be due and payable by check to the State Water Resources Control Board Cleanup and Abatement Account due 30 days after the Order is signed and becomes final and mailed to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office, ACL Payment
1001 I Street, CA 95814

The check shall reference the Order number assigned to this Stipulation and the Order. The Dischargers shall provide a copy of the check sent via mail and email at the time the payment is made to:

Jeremiah Puget, Senior Environmental Scientist/Enforcement Coordinator
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403-1072
Jeremiah.Puget@waterboards.ca.gov

11. **Description of the ECA:** The ECA project (Project) titled "West County Water Quality and Recycled Water Supply Feasibility Project with Stakeholder Committee" consists of conducting a high-level feasibility study to evaluate potential regional projects that could improve water quality, water supply reliability, Pathogen TMDL compliance, and climate change resiliency in the Russian River watershed, and address ratepayer costs for West County wastewater systems by exploring the cost savings of

regionalization. The feasibility study would be coupled with a stakeholder program to help inform and identify community support for potential regional solutions to the many wastewater challenges and water resource opportunities in west Sonoma County. The primary deliverable will be a Final Feasibility Study Report with data needed to make informed decisions for a future of resiliency supporting long-term improvements and short-term pathogen TMDL implementation. This ECA project will investigate creating regional wastewater treatment and reuse systems for more reliable and cost-effective services, study water recycling systems and pipelines, survey wastewater connection and consolidation opportunities for onsite wastewater treatment systems, and explore employing increased climate change resiliency.

12. **Time Extension for the ECA:** The Executive Officer of the Regional Water Board (or their designee) may extend the deadlines set forth in this Stipulation and Order if the Dischargers demonstrate delays from unforeseeable contingencies, provided the Dischargers continue to undertake all appropriate measures to meet their deadlines. The Dischargers shall make any deadline extension request in writing once discovered that an extension is needed, and at least 20 days prior to the applicable deadline, if practicable. Under no circumstances may the completion of the ECA extend past five (5) years from the effective date of this Stipulation and Order. Any approval of extension by the Executive Officer (or their designee) must be in writing.

13. **Certification of Expenditures:** Within sixty (60) days of completing the ECA, the Dischargers shall submit a certified statement by a responsible corporate official documenting the expenditures during the implementation of the ECA. The expenditures may be external payment to outside vendors or contractors implementing the ECA. The official may rely upon and utilize normal company project tracking systems that capture employee time expenditures and external payments to outside vendors. The Dischargers shall provide any additional information requested by the Regional Water Board that is reasonably necessary to verify the Dischargers' ECA expenditures. If requested by the Regional Water Board, the Dischargers, at their sole cost, shall submit an audit report prepared by an independent third party acceptable to the Regional Water Board documenting that the Dischargers expended the money as claimed. If requested, such information from an independent third party shall be submitted to the Regional Water Board within six (6) months of completion of the ECA. The Dischargers agree that the Regional Water Board has the right to require an audit of the funds expended by it to implement the ECA.

14. **Certification of Performance of Work:** Within sixty (60) days of completing the ECA, the Dischargers shall submit under penalty of perjury a report to the Regional Water Board stating that the ECA has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to verify the ECA's completion and costs.

15. **Regional Water Board Acceptance of Completed ECA:** Upon the Dischargers' satisfaction of their obligations under this Stipulation and Order, the completion of the

ECA, and any audits, Regional Water Board staff, with notice to Regional Water Board Enforcement Coordinator Jeremiah Puget, shall request that the Regional Water Board issue a "Satisfaction of Order." The issuance of the Satisfaction of Order shall terminate any further obligations of the Dischargers under this Stipulated Order and permanently suspend the remaining penalty amount.

16. Failure to Expend All Suspended Administrative Civil Liability Funds in Completing the ECA within Three Years: In the event that the Dischargers are not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that they have spent the entire agreed amount of \$886,545 for the completed ECA within three years from the date of issuance of this Stipulation and Order and are unable to receive an extension from the Regional Water Board, the Prosecution Staff shall issue a "Notice of Violation" that will inform the Dischargers shall pay the difference between the \$886,545 suspended administrative civil liability and the amount the Dischargers can demonstrate they actually spent on the ECA, as an administrative civil liability to the Cleanup and Abatement Account consistent with the payment method described in Paragraph 10 within 30 days of the Dischargers' receipt of such notice. If the amount due cannot be agreed upon by the Parties, the Regional Water Board shall determine the amount of suspended liability owed via a Motion for Payment of Suspended Liability. Payment of the assessed amount will satisfy the Dischargers' obligations to implement the ECA.

17. The Regional Water Board Is Not Liable: Neither the Regional Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the, its directors, officer, employees, agents, representative, or contractors in carrying out activities pursuant to this Stipulation and Order. Nor shall the Regional Water Board, its members or staff be held as parties to, or guarantors of, any contract entered into by the Dischargers, their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order, including the ECA.

18. Compliance with Applicable Laws: The Dischargers understand 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 future violations of the type alleged in the Stipulation may subject the Dischargers to further enforcement, including additional administrative civil liability.

19. Public Notice: The Dischargers understand that this Stipulation and proposed 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 proposed Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and proposed Order void and decide not to present it to the Regional Water Board or its delegate. The Dischargers agree that they may not rescind or otherwise withdraw its approval of this Stipulation and proposed Order once executed.

20. **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. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing to consider adoption of this Stipulation and proposed Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing 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 for adoption of this Order as necessary or advisable under the circumstances.

21. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from such Party's own counsel in connection with the matters set forth herein.

22. **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 Dischargers are represented by counsel in this matter.

23. **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 the Regional Water Board or its delegate.

24. **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 delegate, 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 or the proposed 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.

25. **Waiver of Hearing:** The Dischargers have 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. However, the Dischargers may appear at any Regional Water Board hearing where approval of this settlement is discussed. If the settlement is not adopted and the matter proceeds to the Regional Water Board or State Water Board for a hearing, the Dischargers do not waive their right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.

26. **Waiver of Right to Petition or Appeal:** The Dischargers hereby waive their rights to file a petition for review of the adoption of the Order to the Regional Water Board for review by the State Water Resources Control Board, and further waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

27. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Dischargers covenant 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 matter expressly addressed by this Stipulation and Order or the ECA, except that this covenant is not intended to, and does not, limit the Dischargers' right to sue over other Regional Water Board orders or limit the Dischargers' rights to defend against any other taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any state agency, or the State of California or its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.

28. **No Admission of Liability/ No Waiver of Defenses:** In settling this matter, the Dischargers do not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulation and Order or Attachment A, or admit to any violations of the Clean Water Act, the Water Code, any Regional or State Water Board order, or any other federal, state or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the State Water Board's Water Quality Enforcement Policy. By entering into this agreement, Dischargers do not waive any defenses or arguments related to any new enforcement action that may be brought by the Regional Water Board.

29. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulation and Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices

shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulation or Order.

30. **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.

31. **No Third-Party Beneficiaries:** This Stipulation and Order are 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 and Order for any cause whatsoever.

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

33. **Counterpart Signatures:** This Stipulation and 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 Stipulation and Order may be executed by electronic signature, and any such electronic signature shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature was an original signature.

34. **Effective Date:** This Stipulation and Order, including the obligations under Paragraph 7 and Attachment B, shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulation.

IT IS SO STIPULATED.

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

 Digitally signed by Claudia E. Villacorta
Date: 2023.08.28 10:40:56 -07'00'

By: Water Boards
Claudia Villacorta, Assistant Executive Officer

Date: _____

Russian River County Sanitation District

By: 
Chris Coursey, Chair

Date: 8/23/23

Sonoma County Water Agency

By: 
Grant Davis, General Manager

Date: 8.22.23

Attachment A: Administrative Civil Liability Methodology Summary
Attachment B: ECA Proposal

Order of the North Coast Regional Water Board

35. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.

36. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.

37. 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.

38. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of their obligations under this Order.

I, Valerie Quinto, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on December 13, 2023.

Valerie Quinto

Executive Officer