

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

In the matter of:

)
)
)
)
)
)
)
)
)
)
)

Order R1-2013-0089

**Loleta Community Services
District
Wastewater Treatment Facility
WDID#1B80081OHUM
Complaint No. R1-2012-0086 for
Administrative Civil Liability**

**SETTLEMENT AGREEMENT AND
STIPULATION FOR 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 Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the Loleta Community Services District (the Discharger) (collectively Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger owns and operates Loleta Community Services District Waste Water Treatment Facility located at 298 Eel River Drive, Loleta, California. The facility serves the City of Loleta, located in Humboldt County. The facility discharges secondary treated municipal wastewater into the Eel River, a water of the United States.
2. The Regional Water Board has determined that the Discharger meets the requirements under California Water Code section 13385(k) and the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy (Enforcement Policy) as a publicly owned treatment works serving a small community with a financial hardship.
3. On June 28, 2001, the Regional Water Board adopted Waste Discharge Requirements (WDRs) Order No. R1-2001-0059 (effective June 28, 2011) to regulate discharges from the Discharger's waste water treatment facility to the Eel River. On March 6, 2008, the Regional Water Board adopted WDRs Order No. R1-2008-0001 (effective on May 2, 2008), which rescinded WDRs Order No. R1-2001-0059 upon the effective date of the new Order, except for enforcement purposes.
4. On July 25, 2012, the Prosecution Team issued Administrative Civil Liability Complaint No. R1-2012-0086 (Complaint) to the Discharger. The Complaint alleges that the Discharger exceeded the effluent limits for Biochemical Oxygen Demand 5-

day @ 20°C (BOD), Total Suspended Solids (TSS), BOD and TSS percent removal, Coliform Bacteria, Settleable Solids, pH and Total Residual Chlorine set forth in WDRs Order No. R1-2001-0059 and Order No. 2008-0001 on eighty- six (86) occasions, all of which are subject to mandatory minimum penalties. The Complaint recommends the imposition of administrative civil liability in the amount of \$228,000 in mandatory minimum penalties for the violations alleged in the Complaint.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Settlement Agreement and Stipulation for Entry and Order and proposing this Order (Stipulation and Order) to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. To resolve by consent and without further administrative proceedings all alleged violations of Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of \$228,000 in mandatory minimum penalties against the Discharger. The \$228,000 in mandatory minimum penalties shall be suspended upon completion of the Compliance Project set forth in this Stipulation and Order. The Discharger shall expend, at a minimum, \$228,000 to complete the Compliance Project in accordance with the terms of this Stipulation and Order.
6. The Prosecution Team believes 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(k) and the Enforcement Policy, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and Order, and that this Stipulation and Order is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.
8. **Administrative Civil Liability:** The Discharger hereby agrees to pay the administrative civil liability in the amount of \$228,000 in mandatory minimum penalties as set forth in Section II, Paragraphs 5. The \$228,000 in liability shall be suspended pending completion of the Compliance Project (Compliance Project Amount), as set forth herein and in Exhibit "A" attached hereto and incorporated by this reference. Should the Discharger fail to adequately complete the Compliance Project as described herein, the Discharger shall pay the \$228,000, or a pro-rated amount determined by the Regional Water Board or its delegate, to the State Water Pollution Cleanup and Abatement Account.
9. **Compliance with Applicable Laws:** The Discharger understands that completion of this Compliance Project or payment of liability in accordance with the terms of this

Stipulation and 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.

10. **Compliance Project Description:** The Compliance Project consists of upgrading and repairing sections of the collection system. This will help to reduce inflow and infiltration, sources of significant violations during the rainy season. Violations that can occur due to high flows are: effluent limit violations associated with Coliform, BOD, TSS, Chlorine, Settleable Solids, pH and Chlorine. Inflow is storm water that enters the sewer system from the storm drains. This water comes from runoff from the streets during the rainy season. Infiltration is groundwater that enters the sewer system through cracks or leaks in the sewer pipes. Groundwater can enter through these cracks or leaks whenever sewer lines lie beneath the water table or when the soil above the sewer systems becomes saturated. Groundwater is clean water that, when it enters the sewer system, causes high flows and unnecessary work for the treatment facility. The proposed work will eliminate cracks and leaks, and lower the inflow and infiltration to the collection system and the wastewater treatment plant.

The implementation schedule for completion of the Compliance Project is as follows:

MILESTONE	DEADLINES
Bid Preparation and Posting of Bid	4/15/14
Submit Progress Letter	4/15/14
Bid Awarded and Contract Signed	6/20/14
Submit Progress Letter	6/20/14
Construction begins	7/1/14
Submit Progress Letter	8/15/14
Submit Progress Letter	9/15/14
Submit Progress Letter	10/15/14
Submit Progress	11/15/14
Complete Compliance Project	11/15/14
Submit Report of Completion including a detailed list of expenditures	12/31/14

11. **Compliance Project Costs:** The cost is estimated to be approximately \$386,420 to upgrade and repair the collection system. The amount of the liability to be suspended upon completion of the Compliance Project is \$228,000 in mandatory minimum penalties, as expressly authorized by Water Code section 13385(k). No additional liability above and beyond the \$228,000 shall be suspended for costs incurred to complete the Compliance Project.

12. **Representation of the Discharger:** As a material consideration for the Regional Water Board's acceptance of this Stipulation and Order, the Discharger represents that it will utilize the funds as described on page 11 of the project proposal contained in Exhibit "A" to implement the Compliance Project in accordance with the implementation schedule set forth above in Section III, Paragraph 10. The Discharger understands that its promise to implement the Compliance Project, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.
13. **Agreement of Discharger to Implement Compliance Project:** The Discharger represents that: 1) it will spend the \$228,000 Compliance Project amount as described in this Stipulation and Order; 2) it will provide certified, written reports to the Regional Water Board consistent with the terms of this Stipulation and Order detailing the implementation of the Compliance Project; and 3) it will guarantee implementation of the Compliance Project by remaining liable for \$228,000 of suspended administrative liability until the Compliance Project is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation and Order. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the Compliance Project at the Discharger's cost. The Discharger shall permit inspection of the Compliance Project by the Regional Water Board staff at any time without notice.
14. **Certification of Completion of Compliance Project:** On or before December 31, 2014 the Discharger shall provide a certified statement of completion of the Compliance Project (Certification of Completion). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification of Completion shall include the following:
 - a. Certification that the Compliance Project has been completed in accordance with the terms of this Stipulation and Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the Compliance Project and the costs incurred by the Discharger.
 - b. Certification documenting the expenditures by the Discharger during the completion period for the Compliance Project. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the Compliance Project. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify Compliance Project expenditures.
 - c. Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the Compliance Project including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.

15. **Third Party Financial Audit of CP:** At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. 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 the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
16. **Failure to Expend the Entire Suspended Liability on the Approved Compliance Project:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board that the entire suspended liability of \$228,000 has been spent for the completed Compliance Project, the Discharger shall pay the difference between the suspended liability of \$228,000 and the amount the Discharger can demonstrate was actually spent on the Compliance Project, as administrative civil liability. The Discharger 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's determination that the Discharger failed to demonstrate that the entire Compliance Project amount was spent to complete the Compliance Project. Payment shall include this Order's number and submitted to the Division of Administrative Services, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812, with a copy sent to Nancy Robinson at the address below in Paragraph 20.
17. **Extension of the Implementation Schedule Deadlines:** If, given written justification from the Discharger and the Regional Water Board, staff determines that a delay in the Compliance Project implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Regional Water Board before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the Compliance Project will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide the Discharger a new implementation schedule in writing, which shall include the date the Compliance Project will be completed.
18. **Failure to Complete Compliance Project:** If the Discharger fails to complete the Compliance Project by November 15, 2014, as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the State Water Board Cleanup and Abatement Account the Suspended Liability of \$228,000 within 30 days of receipt of the NOV following the submission procedures set forth in Section III, Paragraph 16, above.

19. **Completion of the Compliance Project to the Regional Water Board's Satisfaction:** Upon the Settling Respondent's satisfaction of its obligations under this Stipulation and Order, the completion of the Compliance Project and any audits, the Regional Water Board staff 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 Settling Discharger under this Stipulation and Order.

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

For the Regional Water Board:

Nancy Robinson
Sanitary Engineering Associate
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Nancy.Robinson@waterboards.ca.gov

(707) 576-2657

For the Discharger:

Marcus Drumm, General Manager
Loleta Community Services
District
P.O. Box 236
Loleta, CA 95551

loletacsd@suddenlinkmail.com

(707) 733-1717

21. **Attorneys' Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
22. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation represents a final and binding resolution and settlement of the violations alleged in the Complaint (Covered Matters). The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, Paragraph 8 and the Discharger's full satisfaction of the Compliance Project obligations described herein.
23. **Public Notice:** The Discharger 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 Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.
24. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties

agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

25. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Regional Water Board to enforce any provision of this Stipulation and Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulation and Order.
26. **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.
27. **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 delegate.
28. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
29. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

30. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
31. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
32. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint, the Stipulation and Order, and/or the Compliance Project.
33. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Order.
34. **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.
35. **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 facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
36. **Effective Date:** The obligations under Section II, Paragraph 5 of 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.

IT IS SO STIPULATED.

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

Date: December 30, 2013

By: Original Signed By

**David F. Leland ,
Assistant Executive Officer**

Loleta Community Services District

Date: February 20, 2014

By: Original Signed By

**Jack Edward Young
President, Board of Directors**

Order of the Regional Water Board:

IT IS HEREBY ORDERED:

37. This Order incorporates the foregoing Stipulation.
38. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by Regional Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.
39. 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.
40. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under 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

Date

13_0089_LoletaCommunityServicesDistrict_Stipulated_ACL0

Attachment: Exhibit A – Loleta Community Services District Compliance Project
Proposal for Administrative Civil Liability Compliant
No. R1-2012-0086 (October 2013)