

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2012-0537

IN THE MATTER OF

CITY OF GRASS VALLEY  
SANITARY SEWER OVERFLOWS  
NEVADA COUNTY

This Administrative Civil Liability Complaint is issued to the City of Grass Valley (hereafter "Discharger") pursuant to California Water Code section 13385, which authorizes the imposition of administrative civil liability. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements ("WDRs") Order R5-2009-0067 (NPDES CA0079898).

The Executive Officer of the Central Valley Regional Water Quality Control Board ("Central Valley Water Board") finds the following:

**Background**

1. The Discharger owns and operates a wastewater collection, treatment, and disposal system. The wastewater treatment plant (WWTP) provides sewerage service for the City of Grass Valley, and also treats water that discharges from an abandoned mine portal (Drew Tunnel) located within the WWTP property. Treated wastewater is discharged to Wolf Creek, tributary to the Bear River, both of which are considered waters of the United States.
2. On 12 June 2009, effective 31 July 2009, the Central Valley Water Board issued WDRs Order R5-2009-0067, which rescinded WDRs Order R5-2003-0089 and prescribes requirements for the discharge of wastewater from the Discharger's WWTP. The WDRs contain, among other items, prohibitions, effluent limitations, and monitoring and reporting requirements with which the Discharger must comply.
3. On 2 May 2006, the State Water Board issued Order 2006-0003-DWQ, the *Statewide General Waste Discharge Requirements for Sanitary Sewer Systems*. The General Order prohibits discharges from, and prescribes requirements for, sanitary sewer systems. The Discharger obtained coverage under the General Order as of 25 July 2006 and is required to operate and maintain its sewage collection system in compliance with the permit.
4. WDRs Order R5-2009-0067 includes Prohibition III.A, which states: "*Discharge of wastewater at a location or manner different from that described in the Findings is prohibited.*"

### Chronology of Relevant Events<sup>1</sup>

5. On 19 October 2011, the Discharger notified the Central Valley Water Board of a sanitary sewer overflow (SSO) that occurred at a lift station at 100 Joyce Drive. After investigation<sup>2</sup>, the Discharger reported that the SSO started on 18 October 2011 and that approximately 67,000 gallons of raw sewage was released from the lift station. The Discharger was able to recover approximately 60 gallons of the spill; however, an estimated 66,940 gallons of reached Wolf Creek. The spill was due to human error during upgrades to the lift station. When the crew left for the night, a power switch was not turned on and therefore there lift station pumps were unable to operate. In addition, the battery backup system for the auto dialer did not function because the battery terminals were corroded. The spill was reported and stopped after the crew reported to work the next morning.
6. On 16 March 2012, the Discharger notified the Central Valley Water Board of an SSO that occurred from a manhole near 450 Mill Street. The Discharger determined that 120 gallons of raw sewage was spilled over an hour period. The spill reached a storm drain which empties into Wolf Creek. According to the spill report, the spill was a result of excessive quantities of rain in a short period of time, and infiltration into the sewer system that exceeded the sewer system's capacity.
7. On 16 March 2012, the Discharger notified the Central Valley Water Board of another SSO that occurred from a manhole near 450 Mill Street. The Discharger determined that 900 gallons of raw sewage spilled over an hour period. The spill reached a storm drain which empties into Wolf Creek. According to the spill report, the spill was the result of a rain event that exceeded the Discharger's sewer system capacity.
8. On 19 March 2012, the Discharger notified the Central Valley Water Board of an SSO that occurred from a private lateral cleanout near 535 East Main Street. The Discharger determined that 3,600 gallons of raw sewage spilled. The Discharger was able to recover approximately 50 gallons, but 3,550 gallons reached a storm drain that connects to Matson Creek and Wolf Creek. The spill lasted for 2.5 days, and was a result of a plugged main line. According to the spill report, a large rain event occurred during this period which may have contributed to the event.

### Regulatory Authority and Alleged Violations

9. As described above, the Discharger discharged untreated sewage to waters of the United States in violation of Prohibition III.A of WDRs Order R5-2009-0067.

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<sup>1</sup> Findings 5 through 8 are summarized from the electronic self monitoring reports submitted by the Discharger to the CIWQS Sanitary Sewer Overflow Database. These reports are available to the public at [http://www.waterboards.ca.gov/water\\_issues/programs/ciwqs/publicreports.shtml#sso](http://www.waterboards.ca.gov/water_issues/programs/ciwqs/publicreports.shtml#sso).

<sup>2</sup> Described in the Discharger's 9 January 2012 response to the Board's 12 December 2012 Notice of Violation.

10. Water Code section 13376 states, in part:

A person who discharges pollutants or proposes to discharge pollutants to the navigable waters of the United States ... shall file a report of the discharge in compliance with the procedures set forth in Section 13260..." and "The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.

11. Order R5-2009-0067 does not allow the discharge of raw sewage. Therefore, by failing to file a report of waste discharge as set forth in Water Code section 13276 for these four SSOs, and failing to obtain an NPDES permit authorizing these four SSO discharges prior to the causing the discharges described in the above Findings, the Discharger has violated Water Code sections 13376 and 13385(a)(1) and/or section 13385(a)(2). Water Code section 13385(c) authorizes the imposition of administrative civil liability for such violations.
12. The Discharger violated WDRs Order R5-2009-0067 Prohibition III.A and Water Code section 13385(a)(2) during the four discharges described in Findings 5 through 8, above. The Discharger is liable pursuant to Water Code section 13385(c).

### REGULATORY CONSIDERATIONS

13. The *Water Quality Control Plan for the Sacramento River and San Joaquin River Basins, Fourth Edition* (hereafter Basin Plan) designates beneficial uses, establishes water quality objectives, contains implementation plans and policies for protecting waters of the basin, and incorporates by reference plans and policies adopted by the State Water Resources Control Board.
14. Surface water drainage from the plant is to Wolf Creek, which is a tributary to the Bear River.
15. The Basin Plan designates the beneficial uses of the Bear River as municipal and domestic supply; agricultural supply; hydropower generation; water contact recreation; noncontact water recreation; warm freshwater habitat; cold freshwater habitat; ground water recharge; freshwater replenishment; migration of aquatic organisms; spawning, reproduction and/or early development; and wildlife habitat.
16. Administrative civil liabilities may be sought and imposed for violations of a discharger's WDR permit and/or applicable Board orders pursuant to the procedures described in Water Code section 13323. This Administrative Civil Liability Complaint alleges the Discharger's acts and/or failure to act constitutes violations of the WDRS R5-2009-0067, and seeks administrative civil liabilities under Water Code section 13385.
17. Issuance of this Administrative Civil Liability Complaint to enforce Division 7, Chapter 5.5 of the Water Code is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code § 21000 et seq.), in accordance with California

Code of Regulations, title 14, sections 15307, 15308, 15321(a)(2) and all applicable law.

### **CALCULATION OF CIVIL LIABILITIES UNDER WATER CODE SECTION 13385**

18. California Water Code section 13385 states, in relevant part:

(a) A person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) A waste discharge requirement . . .

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(e) At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

19. **Maximum Civil Liability for Discharge to Surface Waters:** Per Water Code section 13385, civil liability administratively imposed by the Central Valley Water Board may not exceed \$10,000 per violation per day, plus \$10 per gallon for each gallon of waste discharged over 1,000 gallons. The Discharger spilled 71,510 gallons of raw sewage over a six day period. As shown in Attachment A to this Complaint, over the seven days of spills, a total of 68,490 gallons were discharged in excess of 1,000 gallons per spill event. Therefore, at \$10 per gallon for discharges in excess of 1,000 gallons, and at \$10,000 per day for each day of the discharge, the maximum administrative civil liability that may be assessed pursuant to section 13385 is **seven hundred fifty four thousand nine hundred dollars (\$754,900)**.

20. **Minimum Civil Liability for Discharge to Surface Waters:** Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. The Joyce Drive sanitary sewer overflow was due to human error and the failure to adequately maintain the backup system for the autodialer. The three other spills were due to a lack of capacity within the collection system. The economic benefit gained by non-compliance has been calculated using the US EPA's BEN model. The economic benefit is calculated to be approximately **twenty five**

**thousand five hundred sixty one dollars (\$25,561)**, which becomes the minimum civil liability which must be assessed pursuant to section 13385.

### **PROPOSED ADMINISTRATIVE CIVIL LIABILITY**

21. Pursuant to Water Code section 13385, subdivision (e), in determining the amount of any civil liability imposed under Water Code section 13385, subdivision (c), the Board is required to take into account the nature, circumstances, extent, and gravity of the violations, whether the discharges are susceptible to cleanup or abatement, the degree of toxicity of the discharges, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations, and other matters that justice may require.
22. On 17 November 2010, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on 20 May 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. The use of this methodology addresses the factors that are required to be considered when imposing a civil liability as outlined in CWC sections 13327 and 13385(e). The entire Enforcement Policy can be found at: [http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final11179.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final11179.pdf)
23. The recommended administrative civil liability was derived from the use of the penalty methodology in the Enforcement Policy, and Water Code sections 13327 and 13385(e), as explained in detail in Attachment B. The proposed civil liability takes into account such factors as the Discharger's culpability, history of violations, ability to pay and continue in business, and other factors as justice may require.
24. As described above, the maximum penalty for the violations is \$754,900 and the minimum penalty is \$25,561. The Enforcement Policy requires that the minimum liability imposed be at least 10% higher than the economic benefit so that liabilities are not construed as the cost of doing business and that the assessed liability provides a meaningful deterrent to future violations. Based on consideration of the above facts, after applying the penalty methodology, and considering the Discharger's ability to pay, the Executive Officer of the Central Valley Water Board proposes that civil liability be imposed administratively on the Discharger in the amount of **\$110,850**. The specific factors considered in this penalty are detailed in Attachment B.
25. Notwithstanding the issuance of this Complaint, the Central Valley Water Board retains the authority to assess additional penalties for violations of the requirements of the Discharger's waste discharge requirements for which penalties have not yet been assessed or for violations that may subsequently occur.

**CITY OF GRASS VALLEY IS HEREBY GIVEN NOTICE THAT:**

1. The Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **one hundred ten thousand eight hundred fifty dollars (\$110,850)**. The amount of the proposed liability is based upon a review of the factors cited in CWC sections 13327 and 13385, as well as the State Water Resources Control Board's 2010 Water Quality Enforcement Policy, and includes consideration of the economic benefit or savings resulting from the violations.
2. A hearing on this matter will be conducted at the Central Valley Water Board meeting scheduled on **3/4/5 October 2012**, unless one of the following occurs by **6 August 2012**:
  - a) The Discharger waives the hearing by completing the attached form (checking the box next to Option #1) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **one hundred ten thousand eight hundred fifty dollars (\$110,850)**; or
  - b) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests to engage in settlement discussions by checking the box next to Option #2 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed; or
  - c) The Central Valley Water Board agrees to postpone any necessary hearing after the Discharger requests a delay by checking the box next to Option #3 on the attached form, and returns it to the Board along with a letter describing the issues to be discussed.
3. If a hearing is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. If this matter proceeds to hearing, the Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to, increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this Complaint through completion of the hearing.

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PAMELA C. CREEDON, Executive Officer

6 July 2012

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Date

Attachment A: Table of Total Maximum Penalty Calculations

Attachment B: Penalty Calculations

lo/wsw: 5 July-12

**WAIVER FORM  
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent the City of Grass Valley (hereafter Discharger) in connection with Administrative Civil Liability Complaint R5-2012-0537 (hereafter Complaint). I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing."

**(OPTION 1: Check here if the Discharger waives the hearing requirement and will pay in full.)**

- a. I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board.
- b. I certify that the Discharger will remit payment for the proposed civil liability in the full amount of **one hundred ten thousand eight hundred fifty dollars (\$110,850)** by check that references "ACL Complaint R5-2012-0537" made payable to the *State Water Pollution Cleanup and Abatement Account*. Payment must be received by the Central Valley Water Board by **6 August 2012**.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after a 30-day public *notice and comment period*. *Should the Central Valley Water Board receive significant new information or comments during this comment period, the Central Valley Water Board's Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I also understand that approval of the settlement will result in the Discharger having waived the right to contest the allegations in the Complaint and the imposition of civil liability.*
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

**(OPTION 2: Check here if the Discharger waives the 90-day hearing requirement in order to engage in settlement discussions.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Discharger will promptly engage the Central Valley Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and the Prosecution Team can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under "Option 1."

**(OPTION 3: Check here if the Discharger waives the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.)** I hereby waive any right the Discharger may have to a hearing before the Central Valley Water Board within 90 days after service of the complaint. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing and/or hearing deadlines so that the Discharger may have additional time to prepare for the hearing. It remains within the discretion of the Central Valley Water Board to approve the extension.

\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)