

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL ORDER NO. R5-2007-0524

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF

RANCHO MURIETA COMMUNITY SERVICES DISTRICT
RANCHO MURIETA WASTEWATER TREATMENT FACILITY
SACRAMENTO COUNTY

This Administrative Civil Liability Order is issued to Rancho Murieta Community Services District (hereafter known as "RMCS D" or "Discharger") based on failure to comply with Waste Discharge Requirements (WDRs) Order No. 5-01-124 and Cease and Desist Order (CDO) No. R5-2006-0001. This Order is issued pursuant to California Water Code (CWC) Sections 13350 and 13385, which authorize the imposition of administrative civil liability.

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

1. Waste Discharge Requirements Order No. 5-01-124, which was adopted by the Regional Water Board on 11 May 2001, prescribes requirements for the Rancho Murieta Community Services District wastewater treatment facility (WWTF) and water reclamation at two golf courses operated by Rancho Murieta Country Club (RMCC). The WDRs set forth separate discharge requirements and specifications for each of the co-dischargers. RMCS D is solely responsible for collection and treatment of the wastewater, and RMCC is solely responsible for all systems and activities related to use of the reclaimed water for golf course irrigation.
2. The RMCS D WWTF serves the Rancho Murieta community, and comprises five clay-lined wastewater treatment ponds and two clay-lined effluent storage reservoirs covering approximately 50 acres. The WWTF relies solely on reclamation at the golf courses to dispose of all treated wastewater.
3. All wastewater receives Title 22 tertiary treatment and disinfection prior to reclamation at the golf courses. During the golf course irrigation season, tertiary disinfected wastewater is pumped to Bass Lake, Lake 10, Lake 11, Lake 16, and Lake 17 at the RMCC golf courses to serve the irrigation system.
4. During the rainy season, wastewater receives secondary treatment and is stored in two effluent storage reservoirs at the WWTF until the next golf course irrigation season.
5. The secondary treatment system capacity is 1.55 million gallons per day (mgd) average daily dry weather flow and 2.0 mgd peak wet weather flow. The tertiary treatment system capacity is 3.0 mgd.

6. WDRs Order No. 5-01-124 contains an influent flow limit of 1.5 mgd based solely on treatment capacity. However, the design storage and disposal capacity of the WWTF is approximately 0.67 mgd. The current storage and disposal capacity is significantly lower than the design capacity because RMCS D stored excess secondary effluent generated in 2003, and has not been able to dispose of that excess wastewater.
7. On 26 January 2006, the Regional Water Board adopted CDO Order No. R5-2006-0001. Pursuant to Sections 13301 and 13267 of the California Water Code, Order No. R5-2006-0001 sets forth enforceable schedules for both RMCS D and RMCC to address the following issues (the responsible party is parenthetically noted):
 - a. Continued overflow of reclaimed water from the golf course storage lakes to surface water during the rainy season (RMCC);
 - b. Inadequate wastewater storage and disposal capacity at the WWTF (RMCS D);
 - c. Complaints regarding odors emanating from the golf course storage lakes and from the golf course irrigation system (RMCC); and
 - d. Potential groundwater degradation at the WWTF (RMCS D).

RMCS D has failed to comply with its portion of the CDO and has discharged waste to surface water in violation of the WDRs.

VIOLATIONS OF CEASE AND DESIST ORDER NO. R5-2006-0001

8. Item 5 of CDO No. R5-2006-0001 states:

“Effective immediately and continuing unless and until the Regional Board adopts revised Waste Discharge Requirements or the Executive Officer approves otherwise pursuant to Item 6, the monthly average daily dry weather influent flow to the WWTF shall not exceed 0.52 mgd and the total annual influent flow shall not exceed 198 million gallons per year (as measured from 1 July to 30 June each year).”
9. Based on the Discharger’s monthly monitoring reports, the total annual influent flow to the RMCS D wastewater treatment facility was 199.2 million gallons between 1 July 2005 and 30 June 2006, 1.2 million gallons greater than the yearly total allowed by the CDO.

VIOLATIONS OF THE CDO AND WDRs

10. Item 7 of CDO No. R5-2006-0001 states:

“Effective immediately, RMCS D shall ensure continuous compliance with Discharge Prohibition A.1 and Discharge Specification B.11 of WDRs Order No. 5-01-124.”
11. Discharge Prohibition A.1 of WDRs Order No. 5-01-124 states:

“Discharge of wastes to surface waters or surface water drainage courses is prohibited.”

12. Discharge Specification B.11 of WDRs Order No. 5-01-124 states:
“The freeboard in all ponds shall never be less than two feet as measured vertically from the water surface to the lowest point of overflow.”
13. Item 6 of CDO No. R5-2006-0001 also requires that RMCS D submit an *Interim Wastewater Containment Compliance Plan* detailing specific actions that will be taken to ensure continuous compliance with Discharge Prohibition A.1 and Discharge Specification B.11 of the WDRs.
14. On 15 March 2006, RMCS D submitted the *Interim Wastewater Containment Compliance Plan*. The report stated that it was likely that RMCS D would be in violation of Discharge Specification B.11 soon, and that sprinklers had been installed around the perimeter of the largest effluent storage reservoir to enhance evaporation. The report identified the following additional measures that might be taken to ensure compliance with the WDRs and CDO:
 - a. Install aeration fountains at the WWTF to further enhance evaporation;
 - b. Increase spray irrigation at the WWTF site;
 - c. Add a new reclamation site (pending completion of environmental review and permitting);
 - d. Reduce sewer inflow/infiltration;
 - e. Implement a water conservation program; and
 - f. Haul excess wastewater off-site for disposal.
15. On 7 April 2006, the *Interim Wastewater Containment Compliance Plan* was approved, with the exception of increasing spray irrigation at the WWTF site. This measure was not approved because the areas proposed for irrigation are not part of the reclamation areas permitted in the WDRs.
16. On 6 April 2006, RMCS D informed Regional Water Board staff that the effluent storage reservoirs were filling quickly and requested permission to discharge tertiary-treated, disinfected, dechlorinated wastewater directly to the Cosumnes River at a rate of up to 2.0 mgd for not more than 30 days.
17. On 7 April 2006, staff responded to RMCS D’s request for permission to discharge treated wastewater to surface waters, and informed RMCS D that staff could not authorize such a discharge because it would be a violation of the WDRs and CDO. RMCS D was notified that it must take all measures to prevent such a discharge.
18. On 11 April 2006, RMCS D notified Regional Water Board staff and the Office of Emergency Services (OES) that RMCS D had begun discharging tertiary-treated, disinfected effluent to Bass Lake at a rate of 1,300 gallons per minute (approximately 1.9 mgd) on 10 April 2006. According to the Discharger’s final spill report, the discharge

continued at approximately the same rate through 26 April 2006¹. With the exception of 10 April 2006, the discharge was dechlorinated prior to discharge.

19. Based on the April 2006 monthly monitoring report, Bass Lake was already at capacity and/or spilling to the Cosumnes River prior to 10 April 2006. However, the Discharger's final spill report states that the overflow from Bass Lake did not reach the Cosumnes River until 18 April 2006.
20. Based on the April 2006 monthly monitoring report and the final spill report, at least 14.43 million gallons of tertiary-treated, disinfected wastewater was delivered to Bass Lake during the spill period. Based on freeboard data in the Discharger's monthly monitoring reports, Bass Lake was at capacity or spilling to the Cosumnes River when the discharge began, and continued to spill until sometime after 2 May 2006. By 10 May 2006, Bass Lake reportedly had 0.33 feet of freeboard.
21. Additionally, according to monthly monitoring reports submitted by RMCS D, between 14 March and 12 July 2006, Effluent Storage Reservoir No. 1 had less than two feet of freeboard. Likewise, between 28 March and 7 June 2006, Effluent Storage Reservoir No. 2 had less than two feet of freeboard. These violations of the CDO and Discharge Specification B.11 comprise a total of 191 days of violations.
22. On 7 December 2006, Regional Water Board staff issued a Notice of Violation to RMCS D for the violations described above, as well as violations of the Monitoring and Reporting Program. The NOV required that RMCS D submit revised monthly monitoring reports for the months of January through September 2006 and explain why the daily tertiary effluent totals reported in the April 2006 monthly monitoring report and the final spill report differ.
23. On 15 January 2007, the Discharger responded to the Notice of Violation, but did not submit revised monthly monitoring reports as required. The Discharger's response included revised freeboard values for the two effluent storage reservoirs. However, the revised freeboard data do not refute staff's assessment of the period of freeboard violations. The discharger also stated that, due to errors in preparation of the April 2006 monthly monitoring report, the volume of tertiary effluent discharged to Bass Lake during the spill period was overestimated because RMCS D staff did not subtract the volume of tertiary effluent used for the spray fountains and filter backwash that was rerouted to the primary wastewater treatment pond. The letter states that approximately 13 million gallons of tertiary effluent was discharged to Bass Lake over eleven days beginning on 14 April 2006, and that the overflow did not reach the Cosumnes River until 18 April 2006. Based on a rough calculation using overflow channel geometry and estimated surface flow velocity, the Discharger stated that the daily discharge rate to the river ranged from 1.7 to 2.7 mgd.

¹ There is a discrepancy between the daily tertiary effluent totals reported in the April 2006 Monthly Monitoring Report and the final spill report. Volumes reported in the monthly monitoring report were initially used to calculate the volume discharged.

24. In summary, the Discharger violated the total annual influent flow limitation set forth in the CDO one time, violated Discharge Specification B.11 for 191 days, and violated Discharge Prohibition A.1 for 15 days. Approximately 13 million gallons of tertiary treated effluent were discharged to the Cosumnes River.

REGULATORY CONSIDERATIONS

25. As described in the above Findings, the Discharger has violated Waste Discharge Requirements Order No. 5-01-124, and Cease and Desist Order No. R5-2006-0001 by violating the flow limitations imposed by the CDO, by discharging waste to surface waters, and by failing to maintain the required freeboard in its effluent storage reservoirs.

Discharges of Waste to Surface Waters:

26. Section 301 of the Clean Water Act and Section 13376 of the CWC prohibit the discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
27. CWC Section 13376 states, in part:
“Any person discharging pollutants or proposing 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.”
28. WDRs Order No. 5-01-124 is not an NPDES permit. Therefore, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, the Discharger has violated CWC section 13376.
29. In violating CWC Section 13376, the Discharger is also civilly liable under CWC Section 13385. CWC Section 13385(a) states, in part:
“Any person who violates any of the following shall be liable civilly in accordance with subdivisions (b), (c), (d), (e), and (f):
(1) Section 13375 or 13376.”
30. CWC Section 13385(c) states:
“ 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 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) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

Other Violations of the CDO:

31. For violations of the CDO that do not involve violation of CWC Section 13376, the Regional Water Board may assess administrative civil liability based on CWC Section 13350.
32. CWC Section 13350(e) states:
“The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.”
33. CWC Section 13350(e)(1) states:
“The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.”
34. CWC Section 13350(e)(1)(B) states:
“When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall be not less than one hundred dollars (\$100) for each day in which the violation occurs.”

CALCULATION OF LIABILITIES

35. For discharging waste to surface waters in violation of the WDRs and CDO, the Regional Water Board may assess administrative civil liability based on CWC section 13385. The maximum administrative civil liability which can be imposed by the Regional Water Board under CWC Section 13385 is \$10,000 per day of discharge plus \$10 per gallon discharged in excess of 1,000 gallons which is spilled to surface waters. As stated in the Findings, the Discharger estimates that a total of 13 million gallons of treated wastewater were discharged to the Cosumnes River via Bass Lake over a total of 15 days. Of this, a total of 12.999 million gallons were discharged in excess of 1,000 gallons per spill event. Therefore, the maximum administrative civil liability is \$150,000 (15 days times \$10,000 per day) plus \$129,990,000 (13 million gallons minus 1,000 gallons per spill event times \$10 per gallon), for a total maximum liability of \$130,140,000.
36. CWC Section 13385(e) lists a number of factors to be considered in determining administrative civil liability amount imposed under Section 13385:
“In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the

nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, 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 violation, and other matters that justice may require. 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."

37. Pursuant to CWC Section 13385(e), the minimum administrative civil liability is equivalent to the economic benefit accrued by the Discharger for not implementing management and physical improvements necessary to prevent the discharges. The 13 million-gallon discharge was the result of the Discharger's failure to provide adequate storage and disposal capacity, and the Discharger's failure to implement its own contingency plan. It is estimated that the Discharger has saved at least \$30,000 by not taking the actions required to prevent the violations described in this Complaint. This savings is based on a cost estimate of approximately \$6,000 per month for five months for rental and installation of temporary irrigation systems to allow discharge to land at a neighboring cattle pasture.
38. For violations of the flow limitations set forth in the CDO and violations of the freeboard requirement set forth in the WDRs, the maximum administrative civil liability which can be imposed by the Regional Water Board under CWC Section 13350 is \$5,000 per day. The minimum civil liability under CWC Section 13350 is \$100 per day. As stated in the Findings, the Discharger violated the flow limitation one time, and also violated the freeboard requirements for a total of 191 days. Therefore, the maximum administrative civil liability is \$960,000 (192 days times \$5,000 per day). The minimum administrative civil liability is \$19,200 (192 days times \$100 per day).
39. Considering the allowable administrative civil liabilities under both CWC Section 13385 and CWC Section 13350, the total minimum and maximum administrative civil liabilities are as follows:

Maximum: $\$130,140,000 + \$960,000 = \$131,100,000$

Minimum: $\$30,000 + \$19,200 = \$49,200$.
40. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321 (a)(2), Title 14, of the California Code of Regulations.

CONSIDERATION OF FACTORS

41. On 22 February 2007, the Executive Officer issued Administrative Civil Liability (ACL) Complaint No. R5-2007-0503 to the Discharger, proposing a \$200,000 administrative civil liability pursuant to CWC Sections 13385 and 13350. The amount of the liability was established based on a review of the factors cited in CWC Sections 13385(e) and 13327 (as applicable), as well as the State Water Resources Control Board Water Quality Enforcement Policy. The factors used to establish the amount of liability are discussed below.

Discharges of Waste to Surface Waters (CWC Section 13385):

42. *Enforcement Considerations:* Pursuant to CWC Section 13385(c), the maximum administrative civil liability that may be imposed for discharges to surface waters discussed above is \$130,140,000.
43. *Nature:* The Discharger violated Discharge Prohibition A.1 of WDRs Order No. 5-01-124 by intentionally discharging over 13 million gallons of treated effluent to the Cosumnes River over a 15-day period.
44. *Circumstances:* The circumstances are such that Regional Water Board staff formally notified the Discharger in January 2004 that the WWTF did not have sufficient storage and disposal capacity. The Discharger did not agree that the capacity problem existed. However, the Regional Water Board adopted a Cease and Desist Order that contained influent flow limitations that were consistent with the WWTF's actual capacity. Until shortly after adoption of the CDO, the Discharger made no effort to address the capacity problem. If the Discharger had exercised due care, the release to surface waters could have been avoided.
45. *Extent and Gravity:* The Discharger failed to prevent the discharge of treated wastewater to the Cosumnes River, which has high-quality water and a high level of beneficial uses including domestic water supply and contact recreation.
46. *Susceptibility of the Discharge to Cleanup and Abatement:* Due to the circumstances of the spill, once the wastewater entered Bass Lake there was no practical way to clean up.
47. *Degree of Toxicity of the Discharge:* There were no reported fish kills subsequent to the spill. The Discharger certified that the wastewater was treated to tertiary standards, disinfected to a total coliform level of less than 2.3 MPN per 100 mL, and dechlorinated prior to discharge to Bass Lake. Bass Lake receives storm water runoff from an 80-acre undeveloped watershed, and was at capacity or overflowing into the Cosumnes River at the time the discharge began. Therefore, the discharge was further diluted in an unknown volume of storm water prior to discharge to the river. Additionally, the Cosumnes River was experiencing high discharge rates, and the estimated dilution ratio based on reported flows in the river is 1,200:1. Therefore, the degree of toxicity from the discharge appears to be very low.

48. *Ability to Pay:* There has been no demonstration by the Discharger of any inability to pay the liability or any negative effect on the Discharger's ability to continue in operation. The Discharger was notified of the opportunity to provide such information when the ACL Complaint was issued and did not submit this information.
49. *Voluntary Cleanup Efforts Undertaken:* No cleanup efforts were undertaken.
50. *Prior History of Violations:* Since adoption of the CDO, the Discharger has received one Notice of Violation (NOV) for numerous violations, including those cited herein. This Order does not cite violations of the Monitoring and Reporting Program that occurred between January and October 2006. Those violations, taken alone, were relatively minor. Prior to issuance of the CDO, the Discharger had several compliance problems that led to issuance of the first CDO in 2001, but generally complied with that CDO.
51. *Degree of Culpability:* The Discharger was aware of the prohibition against discharges to surface waters. Despite warnings from Regional Water Board staff prior to issuance of the CDO, and despite the requirements of the CDO, the Discharger did not act in a timely and proactive fashion to expand storage capacity as needed, nor did the Discharger fully implement its own spill prevention contingency plan to prevent the release to the Cosumnes River. The Discharger could have taken steps to reduce sewer infiltration and inflow prior to the rainy season, and/or arranged for an emergency land discharge to neighboring pasture.
52. *Economic Benefit or Savings Resulting from the Violation:* If the Discharger had discharged the excess stored wastewater to pastureland neighboring the WWTF prior to the rainy season, the discharge to surface waters could have been avoided. The estimated cost of renting irrigation piping and sprinklers for five months (August through December 2005) is \$30,000. The energy cost to pump the water to the pasture is not considered here because the Discharger actually incurred that cost by pumping the wastewater to Bass Lake. This amount represents the minimum penalty under CWC Section 13385(e).
53. *Other Matters as Justice May Require:*
 - a. Notification of Violation: The Discharger acted properly to notify Regional Water Board staff in advance of the impending violation, and properly notified staff and the State Office of Emergency Services once the discharge began.
 - b. Degree of Cooperation: The Discharger cooperated in reporting the spill, and took reasonable steps to minimize the impacts to water quality and beneficial uses. However, the Discharger did not acknowledge and rectify the underlying capacity deficit in a timely manner.

Other Violations of the CDO:

54. *Enforcement Considerations:* Pursuant to CWC Section 13350, the maximum administrative civil liability that may be imposed for the WDR violations discussed above is \$960,000.
55. *Nature:* The Discharger violated the flow limitation set forth in the CDO one time and violated the freeboard requirement set forth in the WDRs for a combined total of 191 days in 2006.
56. *Circumstances:* As discussed above, the circumstances are such that Regional Water Board staff formally notified the Discharger in January 2004 that the WWTF did not have sufficient storage and disposal capacity. The Discharger did not comply with staff's requests to increase the storage/disposal capacity, resulting in issuance of the CDO. The Discharger could have taken steps to reduce sewer inflow and infiltration prior to the rainy season, arranged for an emergency land discharge to neighboring pasture, and/or hauled wastewater off-site for disposal. If the Discharger had exercised due care, the non-discharge violations of the CDO could have been avoided.
57. *Extent and Gravity:* The Discharger failed to prevent these violations, which ultimately led to the discharge of treated wastewater to the Cosumnes River discussed above.
58. *Susceptibility of the Discharge to Cleanup and Abatement:* Because these violations do not include a discharge, this factor does not apply.
59. *Degree of Toxicity of the Discharge:* There were no toxicity or other water quality impacts directly associated with these violations.
60. *Ability to Pay:* As noted above, there has been no demonstration by the Discharger of any inability to pay the liability or any negative effect on the Discharger's ability to continue in operation.
61. *Voluntary Cleanup Efforts Undertaken:* The Discharger made efforts to reduce the volume of stored wastewater after the CDO was adopted, but those efforts were not sufficient to prevent the violations.
62. *Prior History of Violations:* As noted above, the Discharger has received one Notice of Violation (NOV) for numerous violations since adoption of the CDO.
63. *Degree of Culpability:* The Discharger was aware of the Discharge Specifications of the WDRs and the requirements of the CDO. As discussed above, the Discharger did not act in a timely and proactive fashion to expand storage capacity as needed.

64. *Economic Benefit or Savings Resulting from the Violation:* As noted above, the violations could have been avoided with timely action and the expenditure of approximately \$30,000.
65. *Other Matters as Justice May Require:*
 - a. Notification of Violation: The Discharger acted properly to notify Regional Water Board staff in advance of the impending freeboard violation, but did not notify staff of the flow limit violation.
 - b. Degree of Cooperation: As noted above, the Discharger did not timely acknowledge and rectify the underlying capacity deficit.
66. In addition to the considerations listed above, the Executive Officer considered the costs of preparing for and prosecuting a public hearing on the allegations in ACL Complaint No. R5-2007-0503, the possible cost of responding to any request by the Discharger for administrative judicial review of an order assessing the recommended liability, the current compliance status of the Discharger, the deterrent effect of the proposed liability and the ability to recover staff costs from the amount tendered.
67. Following issuance of ACL Complaint No. R5-2007-0503, the Discharger and the Executive Officer of the Regional Water Board conferred for the purpose of settling this matter and the allegations herein without a formal hearing. After arms-length negotiations, the parties arrived at a mutually acceptable resolution of the Complaint based on information contained in the record of the Regional Water Board. The Discharger and the Executive Officer have agreed to settle the administrative civil liability for the full amount proposed in the Complaint (\$200,000). This includes \$16,000 in staff costs and \$30,000 to recover the economic benefit derived from the acts that constitute the violations.
68. The Discharger and the Executive Officer have agreed to resolve the ACL Complaint as follows: (i) Payment of fifty thousand dollars (\$50,000) to the *State Water Pollution Control Cleanup and Abatement Account*; (ii) payment of fifty thousand dollars (\$50,000) to the *Waste Discharge Permit Fund*; and (iii) completion of a Supplemental Environmental Project (SEP) as outlined in Attachment A. Expenditures for the SEP shall equal or exceed one hundred thousand dollars (\$100,000). The proposed settlement takes into account the factors cited in CWC section 13385(e) and the State Water Resources Control Board's Water Quality Enforcement Policy.
69. The Discharger has waived its right to a hearing before the Regional Water Board. This Order is issued to effectuate the parties' settlement.
70. On 15 March 2007, the Regional Water Board explicitly delegated to the Executive Officer the authority to issue orders to assess administrative civil liability where the matter is not contested by the discharger (Resolution R5-2007-0009).

71. Regional Water Board staff spent a total of 200 hours investigating the violations and preparing this Order. The total cost for staff time is \$16,000 based on a rate of \$80 per hour.
72. Issuance of this Administrative Civil Liability Order to enforce California Water Code Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with Title 14 California Code of Regulations, Enforcement Actions by Regulatory Agencies, section 15321(a)(2).
73. Public Notice of the proposed Order was posted on 23 August 2007 during a thirty (30) day period for public review and comment. The Executive Officer considered all public comments before issuing this Order.
74. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board to review this action. The State Water Board must receive the petition within thirty (30) days of issuance of this Order. Copies of the law and regulations applicable to filing petitions applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED THAT

1. Civil liability is imposed upon the Discharger in the amount of two hundred thousand dollars (\$200,000) pursuant to the settlement offer of the Discharger.
2. By **26 October 2007**, the Discharger shall pay two hundred thousand dollars (\$200,000) by check (\$100,000 made payable to the "*State Water Pollution Cleanup and Abatement Account*" and \$100,000 made payable to the "*Waste Discharge Permit Fund*"). Alternatively, the Discharger may satisfy this Order by paying one hundred thousand dollars (\$100,000) by **26 October 2007**, by check (\$50,000 made payable to the "*State Water Pollution Cleanup and Abatement Account*" and \$50,000 made payable to the "*Waste Discharge Permit Fund*") and satisfy the remaining amount (\$100,000) by timely completing the Supplemental Environmental Project ("the SEP") set forth in Attachment A of this Order. Expenditure by the Discharger on the SEP shall equal or exceed one hundred thousand dollars (\$100,000). All checks shall have written upon them the number of this ACL Order.
3. If the Discharger elects to submit \$100,000, then by **26 October 2007**, the Discharger shall provide proof of a written agreement between the Discharger and the Fishery Foundation of California, signed by the authorized persons, stating that the payments are to be expended entirely on the approved SEP project.
4. If the Discharger elects to submit \$100,000, then by **26 October 2008**, the Discharger shall provide proof that the SEP has been completed as described in Attachment A, a full

accounting of all SEP expenditures (“post-project accounting”), and a copy of the final SEP work product, if any.

5. If any task is not completed to the satisfaction of the Executive Officer by its respective due date (including any extensions approved by the Executive Officer), the amount of any suspended liability associated with that task in the SEP schedule shall be immediately due and payable to the *State Water Pollution Cleanup and Abatement Account*, with reference to this ACL Order on the check.
6. If the final cost of the successfully completed SEP is less than the amount suspended, the Discharger must remit the difference to the *State Water Pollution Cleanup and Abatement Account* within thirty (30) days after submitting the post-project accounting.
7. Whenever the Discharger or its agents or subcontractors, or any fiscal agent holding SEP funds, publicize any element of a SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action against the Discharger.

This Order is effective upon the date of signature.

PAMELA C. CREEDON, Executive Officer

26 September 2007

(Date)

Attachment A: SEP Information

ALO:10/1/07

SEP Proposal

Overview:

The Rancho Murieta Community Service District (RMCS D) and the Fishery Foundation of California (FFC) have agreed to develop a monitoring plan and to provide a full year of Chinook salmon monitoring on the Cosumnes River. The monitoring will consist of two phases: 1. Upstream adult passage and spawning distribution (Fall, 2007). 2. Spawning production and juvenile out migration (Spring, 2008). Monitoring will focus on the historic spawning reach from Dillard Road to Latrobe Falls. The proposed monitoring is an essential component for future watershed planning and targeted restoration. Additionally, the project will provide essential, basic life history data which is crucial for the management of Chinook salmon on the Cosumnes River.

Project:

The FFC will develop a monitoring plan for the Chinook salmon of the Cosumnes River. Monitoring goals will include documenting run timing and abundance, mapping spawning distribution, and estimating juvenile production via out migration surveys. The monitoring will consist of three tasks:

Task 1 - Project Management

Project management encompasses all QAQC activities, database management, quarterly and final reporting, and all necessary costs directly associated with specific project oversight. It also allows for in the field for inspection of work in progress and training purposes.

Task 2 - Escapement

Total escapement and will be estimated using the standard Peterson Index (Lincoln Index) as employed by Snider and Reavis (2000):

$$N=MC/R$$

Where,

N = estimated spawning population,

M = number of carcasses marked during the survey,

C = total number of carcasses examined during the survey, and

R = number of marked carcasses recovered during the survey.

Or

Bailey's Modification, $N=M(C+1)/(R+1)$ allows for multiple recaptures of marked fish. Escapement will also be estimated by expanding total redd counts by a factor of 2.5.

Task 3 – Outmigration

The FFC will operate a screw trap at river mile 6.7 to estimate outmigration timing and production relative to total escapement. As juvenile salmon migrate downstream, they will be intercepted at five foot rotary screw trap. The number of juvenile outmigrants will be estimated by using a trap efficiency method of releasing marked fish upstream of the trap. Fish will be

marked with Bismark Brown dye prior to being released 1 mile upstream of the trap. Trap efficiency tests will be conducted when numbers captured merit the effort (>100). Trap efficiency will be estimated using a modification to the Petersen estimate from the equation $e = (R+1)/(M+1)$, where e is the estimated trap efficiency, M is the number of marked fish released upstream of the trap, and R is the number of marked fish recaptured. Specific performance measures will be juvenile abundance relative to total escapement and outmigration timing.

As proposed, the above work is consistent with and supports the objectives of the Comprehensive Assessment and Monitoring Program (CAMP) established by Section 3406(b)(16) of the CVPIA (CAMP, 2004). The proposed work is fully supported by the USFWS and CDFG for the Cosumnes River.

Cost:

The RMCSD shall contribute \$100,000 towards the development and implementation of the proposed monitoring program.

Implementation:

Upon approval, the FFC will begin development of the monitoring plan. Upstream migration surveys will begin in October 2007 through January 2008. Outmigration surveys will begin in March 2008 and continue through late May or early June of 2008. A final report will be delivered to RMCSD no later than August 31, 2008.

Deliverable:

Within 30 days of issuance of the ACL Order. Provide a copy of the partnership agreement.

September 30, 2007. Provide a copy of the monitoring plan.

August 31, 2008. Provide a final report on the findings in scientific format.

Each calendar quarter beginning August 1, 2007 and ending August 31, 2008 provide a report on the status of the project including all invoices paid to the consultant working on the project.