

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER R5-2009-0549
IN THE MATTER OF

CITY OF REDDING
JENNY CREEK ELEVATED SANITARY TRUNK SEWER
SHASTA COUNTY

This Order is issued to the City of Redding (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability (ACL). This Order is based on findings that the Discharger discharged waste to waters of the United States without a permit.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board or Board) finds, with respect to the Discharger's act, or failure to act, the following:

1. The Discharger owns and operates the City of Redding Clear Creek Wastewater Treatment Facility (WWTF) and accompanying collection, treatment and disposal systems, which provide sewerage service to a portion of the City of Redding. Treated municipal wastewater is discharged to the Sacramento River, a water of the United States.
2. On 5 September 2003, the Central Valley Water Board issued WDRs Order R5-2003-0130 to regulate discharges of wastewater from the WWTF. The Discharger owns and maintains approximately 400 miles of pipeline for the collection of raw sewage and conveyance to two Discharger-owned treatment facilities, including the subject WWTF.
3. On 2 May 2006, the State Water Board issued Order 2006-0003-DWQ, Statewide General WDRs for Sanitary Sewer Systems (Sanitary Sewer General Order). The Sanitary Sewer General Order contains, among other items, sanitary sewer overflow (SSO) requirements including monitoring and reporting requirements, Sewer System Management Plan (SSMP) requirements, and an implementation time schedule.
4. On 30 October 2006 the Discharger enrolled its sewer collection system under the Sanitary Sewer General Order. The Discharger is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows and spills in compliance with requirements of the Sanitary Sewer General Order and WDRs Order R5-2003-0130.
5. On 19 March 2009, the Assistant Executive Officer issued the Discharger Administrative Civil Liability Complaint R5-2009-0519 (Complaint), which charged the Discharger with Administrative Civil Liability in the amount of \$82,500, pursuant to CWC section 13385. The amount of the liability for the discharge violations was established based upon a review of the factors cited in CWC section 13385 and the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy.

Raw Sewage Spills

6. On 15 October 2007, the Discharger reported that between 20,000 and 64,000 gallons of raw sewage discharged from the sanitary sewer collection system to a surface water body, Jenny Creek, in Shasta County. Jenny Creek is tributary to the Sacramento River, a water of the United States. The raw sewage discharged to Jenny Creek resulted from the collapse of a 30-foot section of an elevated, 12-inch steel wrapped pipe. The sewage combined with ambient flows in Jenny Creek and could not be cleaned up once it entered the creek.
7. The 15 October 2007 sewage spill occurred within a secluded greenbelt located between Overhill Drive and Sunset Drive, north of Eureka Way in Redding. The elevated sanitary trunk sewer line (built in 1958) runs along Jenny Creek for approximately 2400 feet, ending at the Mary Street Lift Station. The original spill report to the Discharger was received at 1:15 p.m. on 15 October 2007. A resident on Sunset Drive arrived home to hear rushing water in his backyard. After investigating the noise, he saw the broken sewer line. The resident did not recall hearing the rushing water earlier that morning when he left for work. The Discharger reported that a bypass pumping system that stopped the discharge was up and running by 3:40 p.m. Temporary repairs to the pipeline were completed by 6 p.m. on 15 October 2007. The Discharger reported that the volume of the spill was between 20,155 gallons (2 hours & 25 minutes of discharge) and 63,940 gallons (7 hours & 40 minutes of discharge). A more accurate number could not be reached, due to the fact that the exact duration of the spill is unknown.
8. Once the 15 October 2007 spill was identified, the Discharger provided a timely initial notification to the California Office of Emergency Services and other state and local agencies including the Central Valley Water Board. The Discharger also issued a press release soon after the spill was discovered. Central Valley Water Board staff responding to the scene on 15 October 2007 noted significant Discharger resources responding to the incident. The Discharger initiated a sampling program to assess impacts of the discharge, and requested Board staff's input on this effort and follow-up sampling requirements. The Discharger posted warning signs along Jenny Creek, from the discharge point along to the Sacramento River and along the Sacramento River Trail.
9. Field observations and laboratory results from water samples collected by both City staff and Central Valley Water Board staff indicated impacts to Jenny Creek. Further, water quality sampling results showed elevated concentrations of fecal coliform (above background concentrations and in exceedance of Basin Plan Objectives) in Jenny Creek for approximately two months after the spill. Elevated fecal coliform concentrations were observed at multiple locations throughout Jenny Creek for a distance of approximately 3,500 feet downstream of the discharge point.
10. On 18 October 2007, the Central Valley Water Board issued a Notice of Violation (NOV) to the Discharger for the sanitary sewer overflow to Jenny Creek. The NOV required the Discharger to submit 1) a technical report detailing the cause and response to the spill, 2) a technical report detailing an immediate inspection of the elevated collection system in the Jenny Creek drainage, and 3) a technical report containing a priority list and time

schedule for interim repairs of unacceptable sections of sewer lines in the area. The discharger had inspected the elevated section of pipe in March 2007 and made numerous repairs with either cement grout or syntho-glass wrap.

11. On 22 October 2007, after reviewing water quality monitoring data that showed a high fecal Coliform bacteria count in Jenny Creek above the spill site, Central Valley Water Board staff and City staff discovered another leak in the elevated sewer collection pipe approximately 300 feet west of the spill site (upstream). This sewage leak also combined with ambient flows in Jenny Creek and could not be cleaned up once it entered the creek. Water quality sampling results in Jenny Creek indicated bacteria levels that exceeded Basin Plan Objectives (fecal coliform reported at 500 MPN/100mL to >160000 MPN/mL). The leak was estimated at 2 gallons per minute, for an unknown duration. Repairs to this section of piper were made immediately. The Discharger reported the volume of the second spill to Jenny Creek to be 2420 gallons.

12. CWC section 13376 states, in relevant 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... The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited.

13. CWC section 13385 states, in relevant part:

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

- (1) Section 13375 or 13376.
- (2) Any waste discharge requirements...issued pursuant to this chapter...

- (5) Any requirements of Section 301, 302, 306, 307,308, 318, 401, or 405 of the Clean Water Act, as amended.

(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) 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.”

14. **Minimum Civil Liability.** Pursuant to CWC section 13385(e), at a minimum, administrative civil liability charged under this section must be equivalent to the economic benefit that the Discharger gained by not implementing management and physical improvements necessary to prevent the discharge. In May 2006, the Discharger’s consultant submitted a report that indicated the Jenny Creek elevated sanitary trunk sewer “was in extremely poor condition and needed to either be rehabilitated or replaced.” In the summer of 2007, the Discharger began to plan and design a new force main and lift station that would reroute flows away from the Jenny Creek existing elevated sanitary truck sewer. The City was well aware of the poor condition of the elevated trunk sewer and the severity of the discharge could have been prevented through adequate inspections and/or the early replacement of the fifty-year old piping. The Discharger reported that they expended \$142,176 as a result of this spill including labor, pipe replacement and water quality sampling. Although they spent monies repairing the damage following the spill, they had an economic savings conservatively estimated at \$7,744 by not replacing the elevated trunk sewer sooner or by not establishing an inspection program after they received information indicating that the line was in extremely poor condition.
15. **Maximum Civil Liability.** Pursuant to CWC section 13385(c), the maximum administrative civil liability in this case may be assessed at \$10,000 per violation per day plus ten (\$10) dollars per gallon discharged that is not cleaned up minus one thousand gallons. Based on Findings 6 through 11 above there were at minimum two days of violations. The combined maximum assessment for the two spills is between **two hundred twenty-five thousand, seven hundred fifty dollars (\$225,750)** (($\$10,000$ per day x 2 days) plus (($20,155 - 1000$)+(2420-1000)) x \$10 per gallon) and **six hundred sixty-three thousand, three hundred dollars (\$663,600)** (($\$10,000$ per day x 2 days) plus (($63,940 - 1000$)+(2420-1000)) x \$10 per gallon), depending on which value is used for the volume of the 15 October 2007 spill.
16. The following table contains the factors that were considered pursuant to CWC section 13385(e) in setting the initial penalty amount:

Factors	Consideration
Nature, Circumstance, Extent, and Gravity of the Violation	The Discharger was well aware of the extremely poor condition of this elevated sewer line and the severity of the discharge could have been prevented through adequate inspections and/or the early replacement of the sewer line
Degree of Culpability	The Discharger is the owner and responsible party for operation and maintenance of the sewer line.
Voluntary Cleanup Efforts	The Discharger responded immediately and expended the necessary resources to stop and cleanup the release
Susceptibility to Cleanup or Abatement	Raw sewage, once in the water way is difficult to cleanup, however, the Discharger stopped the discharge as soon as was possible.
Degree of Toxicity	Although not toxic, the raw sewage was a health hazard and threat to public health and the City's water supply.
Prior history of Violations	The Discharger has had other raw sewage discharges and sanitary sewer overflows from other parts of their collection system.
Economic Benefit or Savings resulting from the Violation	By not replacing the sewer line earlier they had economic savings conservatively estimated at \$7,744
Ability to Pay	The Discharger has not submitted evidence of inability to pay the penalty or ability to continue in business.
Other Matters that Justice May Require	Staff cost for responding to the violation are approximately \$2,500

17. CWC section 13385 states, in part:

(l)(1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or the regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars (\$15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars (\$15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars (\$15,000)."

(2) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board that would not be undertaken in the absence of an enforcement action under this section.

18. On 19 June 2009 the Discharger submitted a letter requesting a reduction in the assessed amount of the liability and proposing to fund a project that would be managed and undertaken by the Western Shasta Resources Conservation District as a supplemental environmental project (SEP) to offset a portion of the administrative civil liability. The proposed SEP is the removal of invasive weeds along Jenny Creek and the replanting of native vegetation. The project is between Highway 299 west and the Sacramento River. Invasive plants heavily impacted Jenny Creek. These plants have a detrimental effect on the watercourse including water quantity and water quality. The project would provide for planning and labor necessary to remove invasive plants and

replanting of native plants to the extent possible. Details of the SEP are included as Attachment A, a part of this Order.

19. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 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, section 15321(a)(2).
20. On 15 March 2007, the Central Valley 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).
21. This tentative Order is set to become final on or after **29 September 2009**, provided that significant comments raising issues that would cause the Central Valley Water Board to reconsider this action are not received in the public comment period.

IT IS HEREBY ORDERED, pursuant to CWC section 13385, that:

1. The Discharger, its agents, successors and assigns, shall be assessed an Administrative Civil Liability in the amount of seventy seven thousand, five hundred dollars (\$77,500).
2. **Within 30 days of this Order becoming final**, the Discharger shall pay \$40,000 by check, which contains a reference to "ACL Order R5-2009-0549" and is made payable to the *State Water Pollution and Abatement Account*.
3. The remaining \$37,500 in administrative civil liability shall be permanently suspended, provided that the Discharger ensures that the SEP outlined in Attachment A is successfully completed by the Western Shasta Resource Conservation District. Pursuant to the State Water Resources Control Board's Policy on Supplemental Environmental Projects, the following must be done to ensure that the remaining portion of the administrative civil liability is permanently suspended:
 - a. Either the Discharger or the Western Shasta Resource Conservation District shall provide three **Quarterly Reports** to the Central Valley Water Board, Redding Office, detailing progress on the SEP. The quarterly reports shall be due on **1 November 2009, 1 February 2010, and 1 May 2010**, and may be submitted electronically. While the quarterly reports are not intended to be overly burdensome, they must contain, at a minimum, the following:
 - i. Whether work was performed on the project (if not, then disregard ii-iv),
 - ii. The dates on which work was performed,
 - iii. Receipts for cost expenditures on the project to date, and
 - iv. Photographic evidence of work undertaken pursuant to the SEP. Photos must document successful implementation of performance standards

employed for invasive-plant removal: direct removal and pesticide application.

Submitting these reports will allow the Central Valley Water Board to permanently suspend liability equal to the amount expended at the time the quarterly reports are submitted. Please note that although the Western Shasta Resource Conservation District may submit these quarterly reports, the Discharger maintains ultimate responsibility for submitting these reports in a timely manner. Failure to turn the reports in on time may result in the Executive Officer demanding payment of the remaining liability that has not yet been permanently suspended.

- b. By **1 August 2010**, the Discharger or the Western Shasta Resource Conservation District shall provide a **Final Report** to the Central Valley Water Board documenting completion of the SEP as described in Attachment A, and proof of expenditures totaling at least \$37,500. Items ii-iv, included in the quarterly reports, shall also be included in the Final Report. Again, please remember that the Discharger maintains ultimate responsibility for submitting this report in a timely manner.

The following statement, accompanied by a signature of a duly authorized agent of either the Discharger or the Western Shasta Resource Conservation District, shall accompany the Final Report:

"I certify, under penalty of perjury, that the foregoing is true and correct."

If less than \$37,500 has been expended on the SEP as of 1 August 2010, then the difference between the expenditures and \$37,500 shall be remitted to the Central Valley Water Board, Redding Office, by **31 August 2010** by check, which shall contain a reference to "ACL Order R5-2009-0549" and shall be made payable to the State Water Pollution Cleanup and Abatement Account.

- c. When publicizing the project, the Discharger shall state in a prominent manner that the project was undertaken as part of the settlement of a Board enforcement action.
- d. Should the Executive Officer determine that the goals of the project are not being met, the Executive Officer may demand payment of the difference between the expenditures at the time of the demand and the total amount of suspended liability. Upon demand, payment must be remitted to the Central Valley Water Board, Redding Office, within 30 days by check, which shall contain a reference to "ACL Order R5-2009-0549" and shall be made payable to the State Water Pollution Cleanup and Abatement Account.
- e. Should the SEP be completed before the 1 August 2010 deadline, the Discharger or the Western Shasta Resource Conservation District may provide the **Final Report** in mentioned in section 3.b early, thereby relieving the Discharger from submitting additional quarterly reports.

- f. The Western Shasta Resource Conservation District must agree to an audit of its SEP expenditures, if requested by the Central Valley Water Board.

This Order constitutes a settlement of the violations alleged in Administrative Civil Liability Complaint No. R5-2008-0509. Notice of this settlement will be published on the Central Valley Water Board's website, and will be provided to all interested parties. This Order is to become final upon expiration of the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) and upon signature.

Any person aggrieved by this action of the Central Valley Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of that this Order becomes final, except that if the thirtieth day following the date that this Order becomes final falls on a Saturday, Sunday, or state holiday (which includes furlough days), the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:

http://www.waterboards.ca.gov/public_notices/petitions/water_quality

or will be provided upon request.

PAMELA C. CREEDON, Executive Officer

Date

Attachment A
 Administrative Civil Liability Order R5-2009-0549

SEP Project Description

Project Title: Control of Invasive Weeds in Jenny Creek Drainage

Name Of Responsible Entity: Western Shasta Resource Conservation District

Estimated Cost For Project Completion: \$40,000

Contact Information:

Name Mary Mitchell
 Address 6270 Parallel Road
 City/State/Zip Anderson, CA 96007-4833
 Telephone (530) 365-4833

Brief Description Of The Project:

The area of Jenny Creek between Highway 299 and the Sacramento River is heavily impacted by invasive weeds (Himalayan blackberry, Tree of Heaven, brooms, etc) impacting water quantity and water quality. The plan is to remove and/or control invasive species with hand pulling and herbicide application appropriate for the site and replant with native species as practical.

Jenny Creek Invasive Weed Control				
Personnel	Total	Hours	Rate/hr	
Project Manager	\$528	24	\$22	
Accounting	\$360	20	\$18	
GIS specialist	\$1,150	46	\$25	
Field Sup	\$2,040	120	\$17	3 wks
Lead Tech	\$2,800	200	\$14	5 wks includes follow-up & repair
Field Tech	\$7,200	600	\$12	5 wks, 3 field techs
Subtotal	\$14,078			
Benefits/tax 30%	\$4,223			
Total personnel	\$18,301			
Supplies	\$4,150			Includes herbicides, tools, & plants
CEQA/Permits	\$3,200			Includes cultural resources
Equipment use	\$4,500			
Mileage	\$957	1740	\$0.55	58 trips @ 30 miles round trip
Subtotal	\$31,108	34783		
Indirect 15%	\$4,666	5217		
Total	\$39,998	40000		