

State of California
California Regional Water Quality Control Board
Colorado River Basin Region

IN THE MATTER OF:)	
)	
Palm Springs Aerial Tramway)	
Mountain Station Wastewater Treatment)	
)	Settlement Agreement and Stipulations For
)	Adoption of Order R7-2019-0039
)	

This Settlement Agreement and Stipulation for Entry of Order R7-2019-0039 (Settlement Agreement or Stipulated Order) is entered into by and between the Prosecution Team (Prosecution Team) for the Colorado River Basin Regional Water Quality Control Board (Regional Water Board) and Palm Springs Aerial Tramway (Discharger)(the Regional Water Board and the Discharger are collectively referred to as the Parties) and is presented to the Regional Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violations of Water Code section 13385.

A. RECITALS

1. The Discharger, Mt. San Jacinto Winter Park Authority, also known as Palm Springs Aerial Tramway (Discharger) owns and operates a wastewater treatment disposal system (WWTF) used to treat restaurant and restroom wastewater generated by the Aerial Tramway Mountain Station (Mountain Station), located at One Tramway Road, in Palm Springs, California.
2. The Mountain Station is located in the Coachella Hydrologic Subunit. The Regional Water Board's Water Quality Control Plan, last amended in 2017, designates beneficial uses for groundwater in the Coachella Hydrologic Subunit as Municipal and Domestic Supply (MUN), Industrial Service Supply (IND), and Agricultural Supply (AGR).
3. On November 19, 2008, the Regional Water Board adopted Waste Discharge Requirements (WDRs), Order No. R7-2008-0038 to regulate discharges of treated wastewater from the Mountain Station. The WDRs specify effluent limitations, prohibitions, specifications, and provisions necessary to protect the beneficial uses of groundwaters in the Coachella Hydrologic Subunit and to prevent nuisance conditions. Among these requirements, the Mountain Station WDRs require the Discharger to submit weekly, monthly, and annual reports.
4. The Mountain Station WDRs section E.1 requires that "The Discharger shall comply with Monitoring and Reporting Program (MRP) No. R7-2008-0038, and future revisions thereto, as specified by the Regional Board's Executive Officer."

- a. Monitoring and Reporting Program No. R7-2008-0038 requires the Discharger to monitor the domestic water supply at the Mountain Station according to the following schedule:

Constituents	Units	Sampling Frequency
TDS	mg/L	Monthly
pH	pH units	Monthly
Standard Minerals ¹	mg/L	Annually
¹ Standard Minerals shall include, at a minimum, the following elements/compounds: Barium, Calcium, Magnesium, Nitrogen, Potassium, Sulfate, Total Alkalinity (including alkalinity series), and Hardness		

- b. The MRP also requires the Discharge to sample effluent at the point of discharge from the Mountain Station WWTF according to the following schedule:

Constituents	Units	Type of Sample	Sampling Frequency	Reporting Frequency
Flow	gpd ²	Calculation ³	Weekly	Monthly
pH	pH units	Grab	Monthly	Monthly
20°C BOD ₅	mg/L	Grab	Monthly	Monthly
Suspended Solids	mg/L	Grab	Monthly	Monthly
Total Nitrogen	mg/L	Grab	Monthly	Monthly
Total Dissolved Solids	mg/L	Grab	Monthly	Monthly
VOCs	µg/L	Grab	Annually	Annually
¹ When analysis show noncompliance with the limitations prescribed by Discharge Specification No. B.7, the Discharger shall increase the sampling frequency, for the constituents that are in noncompliance, to one (1) sample per week, and continue sampling at that minimum frequency until either (a) the sampling shows compliance for two consecutive months or (b) it is notified by the Executive Officer that it can resume the normal sampling schedule. ² Gallons per day ³ Average daily flow calculated from weekly meter readings.				

5. The Discharger failed to timely submit monitoring reports as required by the Mountain Station WDRs. Between June 15, 2010 and December 31, 2017 the Discharger consistently failed to submit timely Monthly Monitoring Reports resulting in a total of 1629 days of late reports. The Discharger also failed to submit a total of 3 Monthly Monitoring Reports.
6. Water Code section 13268 provides that any person who fails to furnish monitoring program reports may be subject to administrative civil liability of up to \$1,000 per day of violation.
7. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code

section 13327. The application of the Enforcement Policy to this violation is detailed in Attachment A.

8. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Enforcement Policy, as described in Attachment A. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

B. STIPULATIONS

1. **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.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **seventy thousand five hundred forty nine and a half dollars (\$70,549.50)** in the form of a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall indicate Order R7-2019-0039 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services, ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Doug Wylie
Doug.Wylie@waterboards.ca.gov

3. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order and/or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged above may subject it to further enforcement, including additional administrative civil liability.
4. **Party Contacts for Communications related to this Stipulation and Order:**

For the Regional Water Board:
Doug Wylie
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA

For the Discharger:
Nancy Nichols, General Manager
1 Tram Way
Palm Springs, CA

92260
E-mail: Doug.Wylie@waterboards.ca.gov
Phone: 760-776-8960

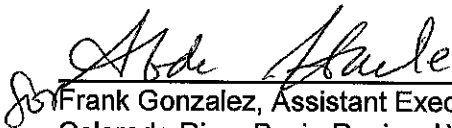
92262
E-mail: nnichols@pstramway.com
Phone: 760-325-1449

5. **Attorney's 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.
6. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement and release of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this Stipulation are expressly conditioned on Discharger's full payment of the administrative civil liability by the deadline specified in Paragraph B.2.
7. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Water Board against the Discharger.
8. **Public Notice:** The Discharger and the Regional Water Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegee. In the event objections are raised during the public review and comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.
9. **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.
10. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
11. **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 delegee.

12. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, 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 violations alleged in Attachment A 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.
13. **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.
14. **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.
15. **The Discharger's 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 this Stipulation and Order.
16. **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.
17. **Counterpart Signatures:** This Stipulation 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 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.


18. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.
19. **Incorporated Attachments:** Attachments A and B are incorporated by reference and are made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED¹:



Frank Gonzalez, Assistant Executive Officer
Colorado River Basin Regional Water Quality Control Board
Prosecution Team

4-30-2019
Date



Nancy Nichols, General Manager
Palm Springs Aerial Tramway

4/30/19
Date

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¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

PROPOSED ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE COLORADO RIVER BASIN REGIONAL WATER QUALITY CONTROL BOARD, FINDS THAT:

1. In adopting this Order, the Colorado River Basin Regional Water Quality Control Board (Regional Water Board) or its Delegee has assessed a penalty in accordance with Water Code section 13268(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board, acting through its Executive Officer, finds that 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 sections 15061(b)(3) and 15321(a)(2), of title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13268 OF THE WATER CODE AND SECTION 11415.60 OF THE GOVERNMENT CODE, THE REGIONAL WATER BOARD HEREBY ADOPTS THIS ORDER.

I, Paula Rasmussen, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region on June 13, 2019.



Paula Rasmussen
Executive Officer

SPECIFIC FACTORS CONSIDERED FOR ADMINISTRATIVE CIVIL LIABILITY

PALM SPRINGS AERIAL TRAMWAY
MOUNTAIN STATION
RIVERSIDE COUNTY

The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score.

The 2010 Enforcement Policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

VIOLATION: FAILURE TO SUBMIT MONTHLY MONITORING REPORTS
CALCULATION OF PENALTY FOR VIOLATION

Step 1. Potential for Harm for Discharge Violations

This step is not applicable.

Step 2. Assessment for Discharge Violations

This step is not applicable.

Step 3. Per Day Assessment for Non-Discharge Violations

The "per day" factor is calculated for each non-discharge violation considering the potential for harm and the extent of the deviation from the applicable requirements.

Potential for Harm

The Enforcement Policy requires a determination of whether the characteristics of the violations resulted in a minor, moderate, or major potential for harm or threat to beneficial uses.

Staff has determined that the potential for harm is **moderate**, because the characteristics of the violation present a substantial threat to beneficial uses, and the circumstances of the violation indicate a substantial potential for harm. The Discharger has undermined the efforts of the Colorado River Basin Regional Water Board's (Regional Water Board) Land Disposal Program by disregarding the requirement to submit timely reports. Discharger's compliance with reporting requirements is foundational to the Regional Water Board's efforts to protect water quality. The Land Disposal Program's Orders adopted by the Regional Water Board specify the expectations and requirements for water quality protection.

The Discharger failed to submit three Monthly Monitoring Reports as required by Waste Discharge Requirements (WDRs) Order No. R7-2008-0038 (Mountain Station WDRs). Additionally, the Discharger has submitted seventy-three late Monthly Monitoring Reports. By not submitting or submitting late monitoring reports, the Discharger has undermined the Regional Water Board's ability to analyze the reports to ensure compliance with the Mountain Station WDRs. The Discharger has therefore avoided

potential violations related to its discharge which could potentially degrade the groundwater quality and impact beneficial uses.

Additionally, the regulatory program is compromised when Regional Water Board staff resources are directed toward bringing the Palm Springs Aerial Tramway Mountain Station Wastewater Treatment Facility (Mountain Station WWTF) into compliance rather than being available for outreach and applying technical knowledge to ensure the protection of the Region's groundwater.

Deviation from Requirement

The Enforcement Policy requires a determination of whether the violation represents either a minor, moderate, or major deviation from the applicable requirements.

The deviation from requirement is **major**. To date, the Discharger has a combined 1629 days of violation for late monitoring reports and 90 days of violation for missing reports. The maximum days of violation that the Discharger could be penalized as of December 31, 2017 would be 2756 days.

The requirements in the applicable Mountain Station WDRs are rendered ineffective when the Discharger fails to meet its reporting requirements. The Discharger continuously failed to submit monitoring reports on time, or at all, since 2010. During that period, the Discharger failed to request extensions or provide an explanation for the late and missing reports to the Regional Water Board. Therefore, the deviation from requirement is major.

Table 3 of the Enforcement Policy prescribes a per day factor ranging from 0.40 to 0.70 for those violations in which the potential for harm is moderate and the deviation from requirement is major. Based on the above factors, a per day factor of **0.55** is appropriate (see Table 3 on pg. 16 of the Enforcement Policy).

Multiple Day Violations

Pursuant to the Mountain Station WDRs, the Discharger was required to submit timely monitoring reports. Between June 15, 2010 and December 31, 2017, the Discharger consistently failed to submit timely Monthly Monitoring Reports resulting in a total of 1629 days of late Monthly Monitoring Reports. The Discharger also did not submit three Monthly Monitoring Reports, which resulted in 90 days of violation. Each Monthly Monitoring Report can be assessed up to 30 days of violation.

Violations under Water Code section 13268 are assessed on a per day basis. However, the violations at issue qualify for the alternative approach to penalty calculation under the 2010 Enforcement Policy (page 18). Under the 2010 Enforcement Policy, violations that last more than thirty (30) days, can have a daily assessment that is less than the calculated daily assessment provided that it is no less than the per day economic benefit, if any, resulting from the violation.

For these cases, the Regional Water Board must make express findings that the violation: (1) is not causing daily detrimental impacts to the environment or the regulatory program; or (2) results in no economic benefit from the illegal conduct that can be measured on a daily basis; or (3) occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation.

Here, the Regional Water Board Prosecution Team finds that the Discharger's failure to submit Monthly Monitoring Reports is not causing daily detrimental impacts to the environment or the regulatory program. There is no evidence that the Discharger's late and missing reports impacted the environment on a daily basis, since submitting these reports does not result in immediate changes to practices that could be impacting water quality. There is no daily detrimental impact to the regulatory program because the Discharger submitted many of the Monthly Monitoring Reports, albeit not in a timely manner.

Due to the nature of the case, using the minimum days generated from the Multiple Day approach is appropriate, resulting in an assessment of **63** days for both late and missing reports.

Initial Liability Amount

The initial liability amount for the violations calculated on a per-day basis is as follows:

Violation, Failure to File Monitoring Reports: \$1,000/day x 63 days x 0.55 = \$ 34,650

Step 4. Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with regulatory authority, and the violator's history of violations. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the amount for each violation to determine the revised amount for that violation.

Culpability

Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier for intentional or negligent behavior. The Discharger was given the score of **1.3** for the culpability factor. It is the Discharger's responsibility to be aware of, and to comply with, the reporting requirements of the Mountain Station WDRs. The Regional Water Board expects dischargers to work with their consultants in order to ensure that monitoring requirements are met.

Despite knowledge of the regulatory requirements, the Discharger failed to come into compliance by submitting timely monitoring reports.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given the score of **1.1**. The Discharger hired a new consultant to ensure timely submission of monitoring reports. However, the Discharger was out of compliance with the Mountain Station WDRs for several years despite efforts by Regional Water Board staff, including the issuance of notices of violation, to bring the facility into compliance.

History of Violations

When there is a history of repeat violations, the Enforcement Policy assigns a neutral multiplier of 1.0. The Discharger does not have a history of violations with the Regional Water Board therefore a **1.0** is assigned.

Step 5. Determination of Total Base Liability Amount

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

Total Base Liability = Initial Liability (\$ 34,650) x Adjustments (1.3) (1.1) (1.0) = **\$ 49,549.50**

Step 6. Ability to Pay and Continue in Business

The Discharger has the ability to pay the administrative civil liability and there are no factors under this category that warrant an adjustment.

Step 7. Other Factors as Justice May Require

Regional Water Board staff member spent 60 hours to get the facility into compliance amounting to \$16,000 in staff costs. State Board staff expended an additional \$5,000 in staff costs. The total staff costs are \$21,000.

Step 8. Economic Benefit

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)¹ penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 2019.0.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

In this case, the Discharger failed to submit three monthly monitoring reports to the Regional Water Board. Regional Water Board staff estimate that each report should cost the Discharger approximately \$1,000 to complete. As a result, the Discharger avoided at least \$3,000 in reporting costs. In addition, the Discharger submitted 73 monthly monitoring reports beyond their required due dates. Although the Discharger did benefit by delaying the expense of reporting in these cases, the benefit is suspected to be negligible and therefore is not incorporated in this analysis. The noncompliance date for each report is assumed to be the day following each report's required submittal date. For calculation purposes, the penalty payment date is assumed to be the tentative hearing date, June 13, 2019. Changes to this date will affect the economic benefit calculation.

¹ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>; the Regional Water Board's application of the BEN Model to the circumstances here is summarized in Attachment B.

Based on information provided by the Discharger, in addition to standard accounting assumptions, the BEN model was used to determine the economic benefit of the avoided expenditures to be approximately \$3,351. Individual compliance actions, assumptions, and BEN output are described in Attachment B.

Step 9. Maximum and Minimum Liability Amounts

Minimum Liability Amount: \$3,686.10

Maximum Liability Amount: \$ 1,719,000

The Enforcement Policy states that the total liability shall be at least 10 percent higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” The minimum liability here is \$3,686.10. This number is derived from the economic benefit which is calculated to be \$3,351. The final liability amount is more than the economic benefit plus 10 percent, therefore, the Enforcement Policy’s requirement is met in this matter.

The maximum liability under Water Code section 13268 for the failure to submit a report under Water Code section 13267 is \$1,000 per day of violation. The Discharger was required to submit timely monthly monitoring reports beginning on June 15, 2010. As of December 31, 2017, 3 missing reports are accrued, resulting in 90 days of violation and 73 reports were submitted late with a combined total of 1629 days of violation. The discharger accrued a total of 1719 days of violation, which results in a total maximum liability of \$1,719,000.

Step 10. Final Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the final liability amount for failure to submit timely monitoring reports is **\$ 70,549.50**.

Economic Benefit Analysis
Palm Springs Aerial Tramway - Mountain Station

Income Tax Schedule:	Municipality	Total Benefit: \$	6,841
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Analyst: Bryan Elder
Date/Time of Analysis: 4/29/19 11:45

Assumptions:

Assumptions:

- 1 Cost of report estimated by Regional staff to be \$1,000 per report.
- 2 Report costs indexed using the Employment Cost Index as expenses assumed to be comprised mainly of labor.
- 3 Non-compliance date is determined to be 1 day following the report due date.
- 4 Penalty payment date is the tentative date of the board hearing.
- 5 PSAT is governed by Mount San Jacinto Winter Park Authority, a public agency.