

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION**

In the Matter Of:

**Equilon Enterprises LLC**

ORDER R5-2013-0585

**SETTLEMENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY  
ORDER**

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Executive Officer of the Central Valley Regional Water Quality Control Board ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff") and Equilon Enterprises LLC ("Equilon" or "Settling Respondent") (collectively "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

**Section II: RECITALS**

WHEREAS, Equilon Enterprises LLC (Equilon) is alleged to have violated provisions of Cleanup and Abatement Order No. R5-2007-0728, as described in EXHIBIT A to this Stipulated Order; and

WHEREAS, the Parties have engaged in settlement negotiations and agree to fully settle the alleged violations without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The amount of administrative civil liability imposed pursuant to this Stipulated Order is less than the amount calculated by the Prosecution Staff using the State Water Resources Control Board's Water Quality Enforcement Policy, as shown in Exhibit A. The reduction in liability is justified considering the risks associated with proceeding to hearing and is consistent with the range of settlement considerations which may result in a reduction in the calculated liability specified in the State Water Board's Water Quality Enforcement Policy. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in EXHIBIT A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

### **Section III: STIPULATIONS**

The Parties stipulate to the following:

**1. Administrative Civil Liability:** Equilon hereby agrees to the imposition of an administrative civil liability totaling \$500,000.

- a. Within thirty (30) days of issuance of the Order, Equilon agrees to remit, by check, TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000), payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Order. Equilon shall send the original signed check to Russell Walls, Central Valley Regional Water Quality Control Board, 1685 E Street, Fresno, CA 93706-2007 and shall send a copy to David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.
- b. The Parties agree that \$250,000 of the administrative civil liability shall be suspended ("Suspended Liability") pending completion of: (1) the Kern River Corridor Endowment Supplemental Environmental Project (SEP) as set forth herein and EXHIBIT B (\$100,000); and (2) the West Goshen SEP as set forth herein and EXHIBIT C (\$150,000).

**2.1 SEP Descriptions:** Equilon agrees to fund the two SEPs described below:

- a. **Kern River Corridor Endowment SEP:** The goal of this project is to restore habitat on the Panorama Vista Preserve in Bakersfield, California. Panorama Vista Preserve encompasses 936 acres of the Kern River Parkway straddling 2.75 miles of river frontage property. The land is held in trust for the public by the Kern River Corridor Endowment & Holding Company Inc. The Kern River Corridor Endowment SEP will fund efforts to re-establish the riparian forest that was once on the Preserve, including re-planting native vegetation such as cottonwood, sycamore, buttonwillow, valley oak, elderberry, willow, California wild rose, bladderpod and wild grape. Detailed plans concerning how the project will be implemented, as well as an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as EXHIBIT B. The Kern River Corridor Endowment & Holding Company Inc. will implement the Kern River Corridor Endowment SEP and is considered the "Implementing Party" for purposes of this Stipulated Order.
- b. **West Goshen SEP:** The goal of this project is to fund an emergency interconnection that will connect the drinking water distribution system

of West Goshen with the drinking water supply lines owned by California Water Company. The community of West Goshen is a severely disadvantaged community, located in western Tulare County, with a median household income of \$24,083. West Goshen Mutual Water Company is the domestic water service provider for West Goshen. Between August 2012 and January 2013, West Goshen Mutual Water Company's water wells failed. The groundwater supplying the community's water supply is contaminated with nitrates in excess of the maximum contaminant level of 45 parts per million and there is an urgent need for the community to establish a reliable supply of clean water. Detailed plans concerning the West Goshen SEP, including an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as EXHIBIT C. The West Goshen Mutual Water Company will implement the West Goshen SEP and is considered the "Implementing Party" for purposes of this Stipulated Order.

## 2.2 SEP Definitions:

- a. "Designated Central Valley Water Board Representative" – the representative from the Central Valley Water Board responsible for oversight of the SEPs. That individual is:

Russell Walls, Senior Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
1685 E Street, Fresno, CA 93706-2007

- b. "Implementing Party" – An independent third party(ies) with whom the Settling Respondent has contracted or otherwise engaged to implement the SEP.
- c. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.

**2.3 SEP Completion Dates:** The Kern River Corridor Endowment SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by December 31, 2017 ("Kern River Corridor Endowment SEP Completion Date"). The West Goshen SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by November 30, 2014 ("West Goshen SEP Completion Date"). The Kern River Corridor Endowment SEP Completion Date and the West Goshen SEP Completion Date are collectively referred to as the "SEP Completion Dates." Upon a showing of good cause and upon written agreement of the Parties, the Assistant Executive Officer may extend the SEP Completion Dates.

**2.3 Agreement of Settling Respondent to Fund, Report and Guarantee Implementation of SEPs:** Equilon represents that: (1) it will fund the SEPs in the amounts as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Central Valley Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEPs; (3) it will guarantee implementation of the SEPs identified in EXHIBITS B and C by remaining liable for the Suspended Liability until the SEPs are completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulated Order; and (4) prior to the adoption of the Stipulated Order, it will provide signed agreements with each of the Implementing Parties in which the Implementing Party agrees to implement the SEP. Equilon agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEPs.

**2.4 Certification of Funding of Kern River Corridor Endowment SEP:** Equilon shall provide evidence to the Central Valley Water Board of its payment of \$100,000 to the Kern River Corridor Endowment & Holding Company Inc. in support of the Kern River Corridor Endowment SEP, no later than 30 days following the date the Central Valley Water Board enters this Stipulated Order. Failure to pay the full SEP amount by this date will result in the full SEP amount of \$100,000 being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.

**2.5 Certification of Funding of West Goshen SEP:** Equilon shall provide evidence to the Central Valley Water Board of its payment of \$150,000 to the West Goshen Mutual Water Company in support of the West Goshen SEP no later than 30 days following the date the Central Valley Water Board enters this Stipulated Order. Failure to pay the full SEP amount by this date will result in the full SEP amount of \$150,000 being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.

**2.6 SEP Progress Reports:** Equilon shall provide quarterly reports of progress on each SEP to the Designated Central Valley Water Board Representative commencing 90 days after this Stipulated Order becomes effective and continuing through submittal of the final reports described below in Paragraph 2.7. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

**2.7 Certification of Completion of SEPs and Final Reports:** On or before the applicable SEP Completion Date, the Settling Respondent shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Central Valley Water Board Representative by a responsible corporate official representing the Settling Respondent. The Certification of Completion shall include following:

- a. Certification that the SEPs have been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEPs and the costs incurred by the Settling Respondent.
- b. Certification documenting the expenditures by the Settling Respondent and the Implementing Party during the completion period for the SEPs. The Implementing Party's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the Central Valley Water Board for oversight. The Implementing Party may submit a separate certification of expenditures on the Settling Respondent's behalf. The Settling Respondent (or the Implementing Party on the Settling Respondent's behalf) shall provide any additional information requested by the Central Valley Water Board staff which is reasonably necessary to verify SEP expenditures.
- c. Certification, under penalty of perjury, that the Settling Respondent and/or the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. The Implementing Party may submit a separate certification of compliance on the Settling Respondent's behalf. To ensure compliance with CEQA where necessary, the Settling Respondent and/or the Implementing Party shall provide the Central Valley Water Board with the following documents from the lead agency prior to commencing SEP construction:
  - i. Categorical or statutory exemptions relied upon by the Implementing Party;
  - ii. Negative Declaration if there are no potentially "significant" impacts;
  - iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or

iv. Environmental Impact Report (EIR)

**3. Third Party Financial Audit:** In addition to the certification, upon completion of the SEPs and at the written request of the Central Valley Water Board Executive Officer, the Settling Respondent, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Central Valley Water Board Executive Officer providing such party's(ies') professional opinion that the Settling Respondent and/or the Implementing Party have expended money in the amounts claimed by the Settling Respondent. The audit report shall be provided to the Designated Central Valley Water Board Representative within three (3) months of notice from the Central Valley Water Board Executive Officer to the Settling Respondent of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.

**4. Central Valley Water Board Acceptance of Completed SEPs:** Upon the Settling Respondent's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEPs and any audit requested by the Central Valley Water Board, the Designated Central Valley Water Board Representative shall send the Settling Respondent a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the Settling Respondent and result in the permanent stay of the Suspended Liability.

**5. Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEPs:** In the event that Settling Respondent and/or the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board Executive Officer that the entire Suspended Liability has been spent to complete the components of the SEPs for which the Settling Respondent is financially responsible, Settling Respondent shall pay the difference between the Suspended Liability and the amount the Settling Respondent can demonstrate was actually spent on the SEPs, as an administrative civil liability. The Settling Respondent shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board Executive Officer's determination that the Settling Respondent has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.

**6. Failure to Complete the SEPs:** If the SEPs are not fully implemented within the SEP Completion Dates (as defined in Paragraph 2.3) required by this Stipulated Order, the Central Valley Water Board Assistant Executive Officer shall issue a Notice of Violation. As a consequence, the Settling Respondent shall be liable to pay the entire Suspended Liability or, if shown by Settling Respondent, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability or as agreed in writing by the Parties. Unless otherwise agreed or

determined by a Motion for Payment of Suspended Liability, the Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP(s) prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Central Valley Water Board's determination. In addition, the Settling Respondent shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEP(s).

**7. Publicity:** Should Equilon, the Implementing Party, or the agents or subcontractors of Equilon or the Implementing Party publicize one or more elements of the SEPs, they shall state in a prominent manner that the project is being funded as part of the settlement of an enforcement action by the Central Valley Water Board against Equilon.

**8. Compliance with Applicable Laws:** Equilon understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in EXHIBIT A may subject it to further enforcement, including additional administrative civil liability.

**9. Party Contacts for Communications related to Stipulated Order:**

**For the Central Valley Water Board:**

Russell Walls, Senior Water Resource Control Engineer  
Central Valley Regional Water Quality Control Board  
1685 E Street, Fresno, CA 93706-2007  
[Rwalls@waterboards.ca.gov](mailto:Rwalls@waterboards.ca.gov)

**For Equilon:**

Kevin E. Dyer, Principal Program Manager  
Shell Oil Products US  
17 Junction Drive, PMB # 399  
Glen Carbon, IL 62034  
(618) 288-7237

Kevin.dyer@shell.com

**10. Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

**11. Matters Addressed by Stipulation, Release and Covenant Not to Sue Equilon:** Upon adoption by the Central Valley Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement 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 Exhibit A or this Stipulated Order against Equilon as of the effective date of this Stipulated Order ("Covered Matters"). The Central Valley Water Board releases and covenants not to sue Equilon from and against all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Equilon's full payment of administrative civil liability by the deadline specified in Paragraph 1.

**12. Public Notice:** Equilon understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If the Central Valley Water Board Executive Officer receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. Equilon agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

**13. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated 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.

**14. No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

**15. Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.

**16. Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. Equilon is represented by counsel in this matter.

**17. Modification:** This Stipulated 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 Central Valley Water Board or its delegee.

**18. If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley 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 Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

**19. No Admission of Liability:** In settling this matter, Equilon does not admit to any of the allegations in EXHIBIT A, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance; however, Equilon agrees that in the event of any future enforcement actions by the Central Valley Water Board, the Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327.

**20. Waiver of Hearing:** Equilon has been informed of the rights provided by Water Code section 13323(b), and hereby waives its right to a hearing before the Central Valley Water Board prior to the adoption of the Stipulated Order.

**21. Waiver of Right to Petition:** Equilon hereby waives its right to petition the Central Valley Water Board's adoption of the Stipulated Order as written 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.

**22. Equilon's Covenant Not to Sue:** Equilon 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 Covered Matter.

**23. Release of Big West of California LLC:** Cleanup and Abatement Order No. R5-2007-0728 was issued to both Equilon and Big West of California LLC. Big West of California LLC filed for Chapter 11 bankruptcy in December 2008 and received a discharge in 2010. Pursuant to the terms of the bankruptcy proceedings, ALON Bakersfield Property, Inc. (ALON) assumed liability for the environmental remediation at the Bakersfield Refinery, except for certain liabilities that had been previously assumed by Equilon. Cleanup and Abatement Order R5-2007-0728 was superseded by Cleanup and Abatement Order No. R5-2012-0701, issued to ALON and Equilon on 5 May 2012, except that Cleanup and Abatement Order No. R5-2007-0728 remained in effect for enforcement purposes. In order to preclude any potential claims against Equilon by Big West of California LLC, the Central Valley Water Board agrees to release Big West of California LLC from all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order against Big West of California LLC as of the effective date of this Stipulated Order.

**24. Central Valley Water Board is Not Liable:** Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Settling Respondent or the Implementing Party, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Central Valley Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Settling Respondent or the implementing Party, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

**25. Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to

execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

**26. No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

**27. Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order. The Central Valley Water Board shall notify Equilon within 24 hours of entry of this Stipulated Order.

**28. Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**29. Incorporation of Exhibits:** Exhibits "A" through "C" are hereby incorporated by reference.

**IT IS SO STIPULATED.**

Central Valley Water Board Prosecution Staff

By:



Pamela Creedon, Executive Officer

Date:

9-23-2013

Equilon

By:

  
NAME: WE Platt III

Date:

9-9-13

**Order of the Central Valley Water Board**

**30.** In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC sections 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in

investigating the allegations described in EXHIBIT A or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public.

31. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the Central Valley Regional Water Quality Control Board.



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Ken Landau  
Assistant Executive Officer

14 November 2013

# EXHIBIT A

## ALLEGED VIOLATIONS

### BACKGROUND

1. Between 1998 and March 2005, Equilon owned and operated an oil refinery at 6451 Rosedale Highway in Bakersfield, CA (Site). From 1998 through 2001, Equilon was a joint venture between Texaco Refining and Marketing, Inc. ("TRMI"), a Delaware corporation, and Shell Oil Company, a Delaware corporation. Texaco Refining and Marketing owned and operated the refinery from at least 1988 to 1998. Shell Oil Company purchased TRMI and TRMI's interest in the refinery by stock purchase agreement dated 12 December 2001. As described in Cleanup and Abatement Order No. R5-2007-0728, findings 10, 11, 12 and 13, there were discharges of petroleum hydrocarbons to soil and/or groundwater at the Site in at least the years 1993, 1996, 1999, 2000, 2001, 2003 and 2004.
2. Big West of California, LLC ("Big West"), a Utah limited liability company, and a subsidiary of Flying J, Inc., purchased the Site from Equilon and owned the Site from March 2005 through May 2010. Big West operated the refinery until February 2009, when it was shut down because of Big West's bankruptcy.
3. The refinery processed approximately 70,000 barrels of crude oil daily before being shut down in early 2009 after Big West entered bankruptcy. Numerous pipelines exist above and below ground surface throughout the Site, including several pipelines unassociated with the refinery which traverse the Site. The Site includes many aboveground storage tanks. Operations over the years have resulted in discharges of crude oil and various refinery products and additives, including, but not limited to, diesel, gasoline, reformate, and MBTE from the tanks and pipelines. These discharges deposited petroleum hydrocarbons in soils, from which the petroleum hydrocarbons then migrated to and polluted underlying groundwater.
4. On 19 October 2007, the Central Valley Water Board issued Cleanup and Abatement Order No. R5-2007-0728 (CAO) to Equilon Enterprises LLC and Big West of California LLC. Big West of California LLC entered bankruptcy in December 2008 and the refinery was sold to ALON USA in June of 2010. Item 1 of the CAO required the dischargers to "Forthwith investigate the discharge of waste, cleanup the waste, and abate the effects of the discharge of waste, to soil and groundwater..." The CAO

also included an additional 56 specific required actions for assessment and cleanup of the site.

## ALLEGATIONS

Part 1: Remedial System Evaluation Report. Paragraph 3 of Page 10 (Order Requirement #3) of Cleanup and Abatement Order No. R5-2007-0728 requires that Equilon,

*“By 3 December 2007, submit a technical report containing a performance evaluation report on the Site remedial systems acceptable to the Executive Officer. The evaluation should be prepared in accordance with the outline as approved by a Regional Water Board letter dated 16 August 2007. Using existing data available to Big West and/or Equilon, the report shall evaluate the systems efficiency in remediating impacted groundwater and sources of impact or potential impact to groundwater. The report shall propose expansion of the existing systems or other remedial options if it is found that the SVE and/or AS systems are not efficiently treating impacted groundwater and/or source areas in all areas of the Site.”*

5. Equilon submitted the report on 30 November 2007. The report, however, did not comply with Order Requirement #3 because it did not present all necessary data and conclusions to determine whether the remedial systems were efficiently treating impacted soil and groundwater at the Site and providing adequate containment of impacted groundwater plumes.
6. In letters to Equilon dated 9 April 2008, 24 April 2008, and 14 November 2008, the Central Valley Water Board notified Equilon of the specific deficiencies in the report.
7. Equilon submitted a complete report containing all the necessary information in compliance with Order Requirement #3 on 2 February 2009. Therefore, Equilon was in violation of Order Requirement #3 for **427** days.
8. The report described in Order Requirement #3 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
9. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability. The Water Quality Enforcement Policy (Enforcement Policy) adopted by the

State Water Resources Control Board on 19 November 2009, establishes a methodology for assessing administrative civil liability pursuant to the factors in Water Code section 13327.

**Attachments A and AA** to this Exhibit indicate the proposed administrative civil liability for the violations described in Part 1, above, derived from the use of the penalty methodology in the Enforcement Policy.

10. As described in Attachments A and AA, the proposed liability for the violations described in Part 1, above, is \$39,130

Part 2: Sales Terminal - Assessment Work Plan. Paragraph 5 of Page 11 (Order Requirement #5) of Cleanup and Abatement Order No. R5-2007-0728 requires,

***“By 30 November 2007, submit a technical report containing a work plan for assessment of the lateral and vertical extent of petroleum hydrocarbon impacted groundwater downgradient from and offsite of the Sales Terminal. The work plan needs to propose sufficient sampling points to delineate the extent of impacted groundwater. The assessment needs to provide sufficient data to allow design of a remediation system to cleanup impacted groundwater offsite of refinery property and provide hydraulic control to prevent offsite migration of impacted groundwater. The work plan needs to include a time schedule for completion of the assessment.”***

11. Equilon submitted the technical report and work plan on 29 November 2007. The report, however, did not comply with Order Requirement #5. Specifically, the report was inadequate because it proposed only review of the location of existing wells which could be sampled; it did not propose additional groundwater sampling locations necessary to assess the lateral and vertical extent of impacted groundwater.
12. The Central Valley Water Board notified Equilon of these deficiencies in letters dated 19 December 2007 and 24 April 2008.
13. Equilon submitted a complete report containing all the necessary information in compliance with Order Requirement #5 on 21 May 2008. Therefore, Equilon was in violation of Order Requirement #5 for 173 days.
14. The report described in Order Requirement #5 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.

15. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
16. **Attachments B and AA** to this Exhibit indicate the proposed administrative civil liability for the violations described in Part 2 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.
17. As described in Attachments B and AA, the proposed liability for the violations described in Part 2 above, is \$5,005.

Part 3: Sales Terminal - Implementation of Work Plan. Paragraph 6 on Page 11 (Order Requirement #6) of Cleanup and Abatement Order No. R5-2007-0728 requires,

*“Within 30 days of staff concurrence with the Assessment Work Plan [described in Paragraph 5], but no later than 60 days from submittal of the plan, implement the work plan in accordance with the approved time schedule as approved or directed by the Executive Officer, which shall become part of this Order.”*

18. In a letter dated 22 August 2008, the Central Valley Water Board approved the Sales Terminal Assessment Work Plan submitted by Equilon and imposed a deadline of 1 December 2008 for Equilon to submit a report summarizing the results of the monitoring well installations proposed in the approved Work Plan.
19. Equilon failed to submit the required report by the 1 December 2008 deadline. The Central Valley Water Board notified Equilon of the violations in a letter dated 27 January 2009.
20. Equilon submitted a complete report in compliance with Order Requirement #6 on 27 February 2009. Therefore, Equilon was in violation of Order Requirement #6 for 88 days.
21. The report described in Order Requirement #5 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
22. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
23. **Attachments C and AA** to this Exhibit indicate the proposed administrative civil liability for the violations described in Part 3 above, in consideration of the

factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.

24. As described in Attachments C and AA, the proposed liability for the violations described in Part 3 above, is \$2,520.

Part 4: Blending Area - Assessment of Liquid Petroleum Hydrocarbons  
Paragraphs 12 and 14 on Page 12 (Order Requirements #12 and #14) of Cleanup and Abatement Order No. R5-2007-0728 require that Equilon,

*"12. By 15 November 2007 submit an Assessment Work Plan for assessment of the source and the lateral extent of liquid petroleum hydrocarbons in the vicinity of monitoring well B-109U. The work plan shall propose a sufficient number of borings and samples to accomplish the goal of the assessment. The work plan shall include a time schedule for implementing the work."*

*"14. Submit a technical Assessment Report defining the source and lateral extent of liquid petroleum hydrocarbons in accordance with the approved time schedule. The report shall propose remedial options for removal of liquid petroleum hydrocarbons and include a time schedule for installation of equipment required for the preferred remedial option."*

25. Equilon timely submitted the work plan, as required by Order Requirement #12. In a letter dated 27 November 2007, the Central Valley Water Board Executive Officer approved the work plan and required that Equilon submit a technical report summarizing the approved work by 1 April 2008.
26. Equilon submitted a complete report in compliance with Order Requirement #14 on 14 May 2008. Therefore, Equilon was in violation of Order Requirement #14 for 43 days.
27. The report described in Order Requirement #14 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
28. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
29. **Attachments D and AA** to this Exhibit indicate the proposed administrative civil liability for the violations described in Part 4 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.

30. As described in Attachments D and AA, the proposed liability for the violations described in Part 4 above, is \$2,695.

Part 5: Area 2 - Assessment of Liquid Petroleum Hydrocarbons In Well R3M  
Paragraph 1 on Page 10 (Order Requirement #1) of Cleanup and Abatement Order No. R5-2007-0728 requires that Equilon,

*"Forthwith investigate the discharges of waste, cleanup the waste, and abate the effects of the discharge of waste, including petroleum hydrocarbons and hazardous waste, to soil and groundwater..."*

31. In a letter dated 23 February 2009, the Central Valley Water Board Executive Officer directed Equilon, in accordance with Order Requirement #1, to submit a work plan by **24 April 2009** proposing tasks to delineate the extent and source of gasoline range liquid petroleum hydrocarbons detected in well R3M.
32. Equilon failed to produce the work plan by the deadline and in a letter dated 15 June 2009, the Central Valley Water Board notified Equilon of the violation and warned of the potential imposition of liability.
33. Equilon submitted a complete work plan on October 17, 2012. Therefore, Equilon was in violation of Order Requirement #1 for **1271** days.
34. The work plan required pursuant to Order Requirement #1 and the Executive Officer's letter dated 23 February 2009 were required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
35. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
36. **Attachments E and AA** to this Exhibit indicate the proposed administrative civil liability for the violations described in Part 5 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.
37. As described in Attachments E and AA, the proposed liability for the violations described in Part 5 above, is \$196,350.

Part 6: Area 2 - Report Evaluating Soil and Groundwater Conditions and Proposing Remedial Options  
Paragraph 1 on Page 10 (Order Requirement #1) of Cleanup and Abatement Order No. R5-2007-0728 requires that Equilon,

*“Forthwith investigate the discharges of waste, cleanup the waste, and abate the effects of the discharge of waste, including petroleum hydrocarbons and hazardous waste, to soil and groundwater...”*

38. In a letter dated 23 February 2009, the Central Valley Water Board Executive Officer directed Equilon, in accordance with Order Requirement #1, to submit a report by **10 July 2009** summarizing the soil and groundwater conditions in and west of the Area 2 Refinery and proposing remedial options for impacted soil and/or groundwater in and west of the Area 2 Refinery.
39. Equilon failed to produce the work plan by the deadline and in a letter dated 30 October 2009, the Central Valley Water Board notified Equilon of the violation and warned of the potential imposition of liability.
40. Equilon submitted a complete work plan on October 17, 2012. Therefore, Equilon was in violation of Order Requirement #1 for **1194** days.
41. The report required pursuant to Order Requirement #1 and the Executive Officer's letter dated 23 February 2009 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
42. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
43. **Attachments F and AA** to this Exhibit indicate the proposed administrative civil liability for the violations described in Part 6 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.
44. As described in Attachments F and AA, the proposed liability for the violations described in Part 6 above, is \$117,110.

Part 7: Area 2 – Separate Phase Hydrocarbon Work Plan

Paragraph 29 on Page 14 (Order Requirement #29) of Cleanup and Abatement Order No. R5-2007-0728 requires that Equilon,

*“By **2 January 2008**, submit a technical report containing a work plan for assessment of the source of liquid petroleum hydrocarbons and impacts to groundwater in the vicinity of monitoring wells ROW-2, B-12 and in any other wells in the vicinity of these wells where liquid petroleum hydrocarbons and/or high concentrations of petroleum hydrocarbons are detected in groundwater. The work*

*plan shall propose a sufficient number of borings and samples to accomplish the goal of the assessment. The work plan shall include a time schedule for implementing the work. ”*

45. Equilon submitted the technical report and work plan on 27 December 2007. The report, however, did not comply with Order Requirement #29. Specifically, the report was inadequate because it contained only an abbreviated summary of spills and assessment, and proposed compiling the historical summary that should have been included in the work plan. In addition, the report listed proposed tasks in bullet form without any detailed explanation so that its effectiveness could be evaluated.
46. The Central Valley Water Board notified Equilon of the violation in letters dated 9 April 2008, 24 April 2008, and 14 November 2008.
47. Equilon submitted a complete report containing all the necessary information on October 17, 2012. Therefore, Equilon was in violation of Order Requirement #29 for **1751** days.
48. The report described in Order Requirement #29 was required pursuant to Water Code section 13267. In accordance with Water Code section 13268, the Central Valley Water Board may impose \$1,000 in liability for each day of violation.
49. Water Code section 13327 specifies factors that the Central Valley Water Board shall consider in establishing the amount of civil liability.
50. **Attachments G and AA** to this Exhibit indicates the proposed administrative civil liability for the violations described in Part 7 above, in consideration of the factors in Water Code section 13327, derived from the use of the penalty methodology in the Enforcement Policy.
51. As described in Attachments G and AA, the proposed liability for the violations described in Part 7 above, is \$171,990.

### **MAXIMUM LIABILITY**

52. The maximum liability for the violations described in Parts 1 through 7, above, is \$4,947,000.

Part	Requirement	Days of Violation	Maximum Potential Liability
Part 1	Remedial System Evaluation Report	427	\$427,000
Part 2	Sales Terminal - Assessment Work Plan	173	\$173,000

Part 3	Sales Terminal - Implementation of Work Plan	88	\$88,000
Part 4	Blending Area - Assessment of Liquid Petroleum Hydrocarbons	43	\$43,000
Part 5	Area 2 - Assessment of Liquid Petroleum Hydrocarbons In Well R3M	1271	\$1,271,000
Part 6	Area 2 – Report Evaluating Soil and Groundwater Conditions and Proposing Remedial Options	1194	\$1,194,000
Part 7	Area 2 – Separate Phase Hydrocarbon Work Plan	1751	\$1,751,000
		<b>TOTAL</b>	<b>\$4,947,000</b>

## ATTACHMENT A

### Calculation of Liability for Violations Alleged in EXHIBIT A, Part 1: Remedial System Evaluation Report

#### 1. Step 1 - Potential for Harm for Discharge Violations

The failure to submit a complete and adequate report as required by Order Requirement #3 is a "non-discharge violation." Therefore this step does not apply.

#### 2. Step 2 – Assessments for Discharge Violations

The failure to submit a complete and adequate report as required by Order Requirement #3 is a "non-discharge violation." Therefore this step does not apply.

#### 3. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit a complete and adequate report as required by Order Requirement #3 prevented an accurate evaluation of the ability of the treatment systems to treat all significantly impacted soil and groundwater. Expansion of remediation systems was delayed due to the failure to submit an acceptable report in a timely manner.

The Extent of Deviation from applicable requirements is moderate because the intended effectiveness of the requirement has been partially compromised. Specifically, the intent of the requirement was that sufficient data and conclusions be included in the report to determine whether the remedial systems were efficiently treating impacted soil and groundwater and providing adequate containment of impacted groundwater plumes. The report lacked sufficient data and therefore its value was compromised.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (427 \text{ days of violation}) \times (\$1,000) = \$149,450$$

#### 4. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a complete and adequate report as required by Order Requirement #3 lasted 427 days. The violation did not result in an economic benefit that can be measured on a daily basis; therefore an adjustment can be made.

Although the prosecution team recommends that an alternate approach to penalty calculation be applied, the maximum reduction of days provided by the Enforcement Policy is not appropriate because the failure to submit a complete and adequate report resulted in a commensurate delay in performing remediation. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment of each 5 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 105, 110, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 195, 200, 205, 210, 215, 220, 225, 230, 235, 240, 245, 250, 255, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, 385, 390, 395, 400, 405, 410, 425, 420, and 425 days of violation. This results in the consideration of **86** days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability =  $(0.35) \times (86 \text{ days of violation}) \times (\$1,000) = \mathbf{\$30,100}$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.3 has been selected because the Discharger was provided a detailed outline of the content to be included in the report and the required content was not provided in the submitted report.

In addition, the Central Valley Water Board notified Equilon twice concerning the deficiencies in the report before a revised report was submitted.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

5. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

$$(\$30,100) \times (1.3) = \$39,130 \times (1) = \$39,130 \times (1) = \mathbf{\$39,130}$$

6. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

## ATTACHMENT B

### Calculation of Liability for Violations Alleged in EXHIBIT A, Part 2: Sales Terminal – Assessment Work Plan

#### 7. Step 1 - Potential for Harm for Discharge Violations

The failure to submit a complete and adequate work plan as required by Order Requirement #5 is a “non-discharge violation.” Therefore this step does not apply.

#### 8. Step 2 – Assessments for Discharge Violations

The failure to submit a complete and adequate work plan as required by Order Requirement #5 is a “non-discharge violation.” Therefore this step does not apply.

#### 9. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit a complete and adequate work plan as required by Order Requirement #5 prevented the timely installation of needed monitoring wells in the Sales Terminal. This lack of monitoring wells prevented the accurate assessment of groundwater conditions in that area.

The Extent of Deviation from applicable requirements is moderate because significant portions of the required report were missing. The work plan was required to propose tasks for installation of new monitoring wells and the proposed locations for those monitoring wells. Dropping water levels led to an insufficient number of monitoring wells in the area for accurate assessment of groundwater conditions.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (173 \text{ days of violation}) \times (\$1,000) = \$60,550$$

#### 10. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a complete and adequate work plan as required by Order Requirement #5 lasted 173 days. The violation did not result in daily environmental harm and did not result in an economic benefit that can be measured on a daily basis; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach the liability will be assessed for day 1, 5, 10, 15, 20, 25, 30, 60, 90, 120, and 150. This results in the consideration of 11 days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability =  $(0.35) \times (11 \text{ days of violation}) \times (\$1,000) = \mathbf{\$3,850}$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.3 has been selected because the work plan did not propose locations for or the installation of new monitoring wells, as required by and clearly stated in the CAO. In addition, the Central Valley Water Board notified Equilon twice concerning the deficiencies in the report in letters dated 19 December 2007 and 24 April 2008.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

11. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

$$(\$3,850) \times (1.3) = \$5,005 \quad (1) = \$5,005 \times (1) = \mathbf{\$5,005}$$

12. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

## ATTACHMENT C

### Calculation of Liability for Violations Alleged in EXHIBIT A, Part 3: Sales Terminal – Implementation of Work Plan

#### 13. Step 1 - Potential for Harm for Discharge Violations

The failure to timely submit the report as required by Order Requirement #6 is a "non-discharge violation." Therefore this step does not apply.

#### 14. Step 2 – Assessments for Discharge Violations

The failure to timely submit the report as required by Order Requirement #6 is a "non-discharge violation." Therefore this step does not apply.

#### 15. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy's penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to timely submit the report as required by Order Requirement #6 resulted in a continuing lack of sufficient monitoring wells in the subject area. This prevented the accurate assessment of groundwater conditions and the extent of impacted groundwater.

The Extent of Deviation from applicable requirements is moderate because the requirement to install monitoring wells and submit the report by the deadline prevented the accurate assessment of groundwater conditions and the extent of impacted groundwater.

Using "TABLE 3 – Per Day Factor" and applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (88 \text{ days of violation}) \times (\$1,000) = \$30,800$$

#### 16. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to timely submit the report required by Order Requirement #6 lasted 88 days. The violation did not result in daily environmental harm and did not result in an economic benefit that can be measure on a daily basis; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach the liability will be assessed for day 1, 5, 10, 15, 20, 25, 30, and 60. This results in the consideration of 8 days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability =  $(0.35) \times (8 \text{ days of violation}) \times (\$1,000) = \$2,800$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. Because the report was turned in less than 100 days late, and because the delay in submitting the report was caused by site access issues, a multiplier of 0.9 was used.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

17. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

$$(\$2,800) \times (0.9) = \$2,520 \times (1) = \$2,520 \times (1) = \mathbf{\$2,520}$$

18. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

## ATTACHMENT D

### Calculation of Liability for Violations Alleged in EXHIBIT A, Part 4: Blending Area – Assessment of Liquid Petroleum Hydrocarbons

#### 19. Step 1 - Potential for Harm for Discharge Violations

The failure to timely submit the report required by Order Requirement #14 is a “non-discharge violation.” Therefore this step does not apply.

#### 20. Step 2 – Assessments for Discharge Violations

The failure to timely submit the report required by Order Requirement #14 is a “non-discharge violation.” Therefore this step does not apply.

#### 21. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to timely submit the report required by Order Requirement #14 prevented the accurate assessment of the extent of liquid petroleum hydrocarbons in the vicinity of the subject site.

The Extent of Deviation from applicable requirements is moderate because the failure to timely submit the report as required by Order Requirement #14 prevented the accurate assessment of the extent of liquid petroleum hydrocarbons.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (43 \text{ days of violation}) \times (\$1,000) = \$15,050$$

#### 22. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to timely submit the report required by Order Requirement #14 lasted 43 days. The violation did not result in daily environmental harm and did not result in an economic benefit that can be measured on a daily basis; therefore an adjustment can be made.

The prosecution team recommends the alternate approach to penalty calculation described in the Enforcement Policy be applied. Using this approach the liability will be assessed for day 1, 5, 10, 15, 20, 25, and 30 days in violation. This result in the consideration of 7 days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability =  $(0.35) \times (7 \text{ days of violation}) \times (\$1,000) = \$2,450$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case, a culpability multiplier of 1.1 has been selected even though the due date for the report was clearly stated and the Discharger turned the report in late. However, because the report was turned in less than 100 days late, a multiplier of 1.1 was used instead of 1.3 as was used in Parts 1 and 2.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case,

a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

**23. Step 5 - Determination of Total Base Liability Amount**

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

$$(\$2,450) \times (1.1) = \$2,695 \times (1) = \$2,695 \times (1) = \mathbf{\$2,695}$$

**24. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.**

## ATTACHMENT E

### Calculation of Liability for Violations Alleged in EXHIBIT A, Part 5: Area 2 – Assessment of Liquid Petroleum Hydrocarbons in Well R3M

#### 25. Step 1 - Potential for Harm for Discharge Violations

The failure to submit the work plan required by Order Requirement #1 is a “non-discharge violation.” Therefore this step does not apply.

#### 26. Step 2 – Assessments for Discharge Violations

The failure to submit the work plan required by Order Requirement #1 is a “non-discharge violation.” Therefore this step does not apply.

#### 27. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit the work plan required by Order Requirement #1 prevents the assessment of the source of impact to groundwater and the extent of impact to groundwater. This presents the design of remedial options to cleanup the impacted groundwater and thus poses a substantial threat to groundwater beneficial uses.

The Extent of Deviation from applicable requirements is major because the work plan was not submitted until October 17, 2012 and the delay caused a commensurate delay in implementing remedial options for the source of liquid petroleum hydrocarbons in this area.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of moderate and an Extent of Deviation of major results in a factor of **0.55**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.55) \times (1271 \text{ days of violation}) \times (\$1,000) = \$699,050$$

#### 28. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a workplan as required by Order Requirement #1 lasted 1271 days. The violation did not result in an economic benefit that can be measured on a daily basis; therefore an adjustment can be made.

Although the prosecution team recommends that an alternate approach to penalty calculation be applied, the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to submit the workplan resulted in a commensurate delay in performing remediation. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment of each 5 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 35, 40, 45 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 105, 110, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 195, 200, 205, 210, 215, 220, 225, 230, 235, 240, 245, 250, 255, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, 385, 390, 395, 400, 405, 410, 425, 420, 425, 430, 435, 440, 445, 450, 455, 460, 465, 470, 475, 480, 485, 490, 500, 505, 510, 515, 520, 525, 530, 535, 540, 545, 550, 555, 560, 565, 570, 575, 580, 585, 590, 595, 600, 605, 610, 615, 620, 625, 630, 635, 640, 645, 650, 655, 660, 665, 670, 675, 680, 685, 690, 695, 700, 705, 710, 715, 720, 725, 730, 735, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 230, 835, 840, 845, 850, 855, 960, 865, 870, 875, 880, 885, 890, 895, 900, 905, 910, 915, 920, 925, 930, 935, 940, 945, 950, 955, 960, 965, 970, 975, 980, 985, 990, 995, 1000, 1005, 1010, 1015, 1020, 1025, 1030, 1035, 1040, 1045, 1050, 1055, 1060, 1065, 1070, 1075, 1080, 1085, 1090, 1095, 1100, 1105, 1110, 1115, 1120, 1125, 1130, 1135, 1140, 1145, 1150, 1155, 1160, 1165, 1170, 1175, 1180, 1185, 1190, 1195, 1200, 1205, 1210, 1215, 1220, 1225, 1230, 1235, 1240, 1245, 1250, 1255, 1260, 1265, and 1270, days of violation. This results in the consideration of **255** days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.55) \times (255 \text{ days of violation}) \times (\$1,000) = \mathbf{\$140,250}$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.4 has been selected because the report was submitted more than three years after the original due date. The Discharger knew of the requirement, and received a Notice of Violation stating that the report had not been received.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

29. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \times (\text{History of Violations}) = (\text{Total Base Liability Amount})$$

$$(\$140,250) \times (1.4) = \$196,350 \times (1) = \$196,350 \times (1) = \mathbf{\$196,350}$$

30. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

## ATTACHMENT F

### Calculation of Liability for Violations alleged in EXHIBIT A, Part 6: Area 2 – Report Evaluating Soil and Groundwater Conditions and Proposing Remedial Options

#### 31. Step 1 - Potential for Harm for Discharge Violations

The failure to timely submit the work plan required by Order Requirement #1 is a “non-discharge violation.” Therefore this step does not apply.

#### 32. Step 2 – Assessments for Discharge Violations

The failure to timely submit the work plan required by Order Requirement #1 is a “non-discharge violation.” Therefore this step does not apply.

#### 33. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to timely submit the work plan required by Order Requirement #1 prevented staff from accurately evaluating soil and groundwater conditions and requiring the implementation of additional remedial options in the subject area. This allowed continued impacts to groundwater.

The Extent of Deviation from applicable requirements is moderate because the intended affect to expand the remediation systems could not be accomplished due to the lack of information as stated above.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (1194 \text{ days of violation}) \times (\$1,000) = \$417,900$$

#### 34. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to timely submit the work plan required by Order Requirement #1 lasted 1194 days. The violation did not result in an economic benefit that can be measured on a daily basis; therefore an adjustment can be made.

Although the prosecution team recommends that an alternate approach to penalty calculation be applied, the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to submit the workplan resulted in a commensurate delay in performing remediation. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment of each 5 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 105, 110, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 195, 200, 205, 210, 215, 220, 225, 230, 235, 240, 245, 250, 255, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, 385, 390, 395, 400, 405, 410, 425, 420, 425, 430, 435, 440, 445, 450, 455, 460, 465, 470, 475, 480, 485, 490, 500, 505, 510, 515, 520, 525, 530, 535, 540, 545, 550, 555, 560, 565, 570, 575, 580, 585, 590, 595, 600, 605, 610, 615, 620, 625, 630, 635, 640, 645, 650, 655, 660, 665, 670, 675, 680, 685, 690, 695, 700, 705, 710, 715, 720, 725, 730, 735, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 230, 835, 840, 845, 850, 855, 960, 865, 870, 875, 880, 885, 890, 895, 900, 905, 910, 915, 920, 925, 930, 935, 940, 945, 950, 955, 960, 965, 970, 975, 980, 985, 990, 995, 1000, 1005, 1010, 1015, 1020, 1025, 1030, 1035, 1040, 1045, 1050, 1055, 1060, 1065, 1070, 1075, 1080, 1085, 1090, 1095, 1100, 1105, 1110, 1115, 1120, 1125, 1130, 1135, 1140, 1145, 1150, 1155, 1160, 1165, 1170, 1175, 1180, 1185, and 1190 days of violation. This results in the consideration of **239** days in violation.

This results in a Revised Initial Base Liability as follows:

Revised Initial Base Liability =  $(0.35) \times (239 \text{ days of violation}) \times (\$1,000) =$   
**\$83,650**

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

**b. Adjustment for Culpability**

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.4 has been selected because the Discharger was aware of the requirement for the report, was warned of the non-submittal of the report in a Notice of Violation dated 30 October 2009, and did not submit the report until October 17, 2012.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

35. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

(Revised Initial Liability) x (Culpability Multiplier) x (Cleanup and Cooperation Multiplier) x (History of Violations) = (Total Base Liability Amount)

$$(\$83,650) \times (1.4) = \$117,110 \times (1) = \$117,110 \times (1) = \mathbf{\$117,110}$$

36. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

## ATTACHMENT G

### Calculation of Liability for Violations Alleged in EXHIBIT A, Part 7: Area 2 – Separate Phase Hydrocarbon Work Plan

#### 37. Step 1 - Potential for Harm for Discharge Violations

The failure to submit a complete and adequate report as required by Order Requirement #29 is a “non-discharge violation.” Therefore this step does not apply.

#### 38. Step 2 – Assessments for Discharge Violations

The failure to submit a complete and adequate report as required by Order Requirement #29 is a “non-discharge violation.” Therefore this step does not apply.

#### 39. Step 3 – Per Day Assessments for Non-Discharge Violations

Step three of the Enforcement Policy’s penalty calculation methodology directs the Central Valley Water Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and the Extent of Deviation from the applicable requirements.

The Potential for Harm is moderate because the failure to submit a complete and adequate report as required by Order Requirement #29 prevented the accurate assessment of the source and extent of liquid petroleum hydrocarbons and thus prevented the installation of remedial options to treat the liquid petroleum hydrocarbons.

The Extent of Deviation from applicable requirements is moderate because the extent and source of liquid petroleum hydrocarbons was significantly delayed, resulting in a delay in remediation.

Using “TABLE 3 – Per Day Factor” and applying a Potential for Harm of moderate and an Extent of Deviation of moderate results in a factor of **0.35**. As a result, the Initial Base Liability is:

$$\text{Initial Base Liability} = (0.35) \times (1751 \text{ days of violation}) \times (\$1,000) = \$612,850$$

#### 40. Step 4 – Adjustment Factors

##### a. Multiple Day Violations

The Enforcement Policy provides that for violations lasting more than 30 days, the Central Valley Water Board may adjust the per-day basis for civil liability if

certain findings are made and provided that the adjusted per-day basis is no less than the per day economic benefit, if any, resulting from the violation.

The failure to submit a complete and adequate report as required by Order Requirement #29 lasted 1751 days. The violation did not result in an economic benefit that can be measured on a daily basis; therefore an adjustment can be made.

Although the prosecution team recommends that an alternate approach to penalty calculation be applied, the maximum reduction of days provided by the Enforcement policy is not appropriate because the failure to submit the workplan resulted in a commensurate delay in performing remediation. The calculation of days of violation shall include the first day of violation, plus an assessment for each five day period of violation until the 30<sup>th</sup> day, plus an assessment of each 5 days of violation thereafter. Using this approach, penalties will be assessed for day 1, 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 95, 100, 105, 110, 115, 120, 125, 130, 135, 140, 145, 150, 155, 160, 165, 170, 175, 180, 185, 190, 195, 200, 205, 210, 215, 220, 225, 230, 235, 240, 245, 250, 255, 260, 265, 270, 275, 280, 285, 290, 295, 300, 305, 310, 315, 320, 325, 330, 335, 340, 345, 350, 355, 360, 365, 370, 375, 380, 385, 390, 395, 400, 405, 410, 425, 420, 425, 430, 435, 440, 445, 450, 455, 460, 465, 470, 475, 480, 485, 490, 500, 505, 510, 515, 520, 525, 530, 535, 540, 545, 550, 555, 560, 565, 570, 575, 580, 585, 590, 595, 600, 605, 610, 615, 620, 625, 630, 635, 640, 645, 650, 655, 660, 665, 670, 675, 680, 685, 690, 695, 700, 705, 710, 715, 720, 725, 730, 735, 740, 745, 750, 755, 760, 765, 770, 775, 780, 785, 790, 795, 800, 805, 810, 815, 820, 825, 230, 835, 840, 845, 850, 855, 960, 865, 870, 875, 880, 885, 890, 895, 900, 905, 910, 915, 920, 925, 930, 935, 940, 945, 950, 955, 960, 965, 970, 975, 980, 985, 990, 995, 1000, 1005, 1010, 1015, 1020, 1025, 1030, 1035, 1040, 1045, 1050, 1055, 1060, 1065, 1070, 1075, 1080, 1085, 1090, 1095, 1100, 1105, 1110, 1115, 1120, 1125, 1130, 1135, 1140, 1145, 1150, 1155, 1160, 1165, 1170, 1175, 1180, 1185, 1190, 1195, 1200, 1205, 1210, 1215, 1220, 1225, 1230, 1235, 1240, 1245, 1250, 1255, 1260, 1265, 1270, 1275, 1280, 1285, 1290, 1295, 1300, 1305, 1310, 1315, 1320, 1325, 1330, 1335, 1340, 1345, 1350, 1355, 1360, 1365, 1370, 1375, 1380, 1385, 1390, 1295, 1400, 1405, 1410, 1415, 1420, 1425, 1430, 1435, 1440, 1445, 1450, 1455, 1460, 1465, 1470, 1475, 1480, 1485, 1490, 1495, 1500, 1505, 1510, 1515, 1520, 1525, 1530, 1535, 1540, 1545, 1550, 1555, 1560, 1565, 1570, 1575, 1580, 1585, 1590, 1595, 1600, 1605, 1610, 1615, 1620, 1625, 1630, 1635, 1640, 1645, 1650, 1655, 1260, 1665, 1670, 1675, 1680, 1685, 1690, 1695, 1700, 1705, 1710, 1715, 1720, 1725, 1730, 1735, 1740, 1745, and 1750 days of violation. This results in the consideration of **351** days in violation.

This results in a Revised Initial Base Liability as follows:

$$\text{Revised Initial Base Liability} = (0.35) \times (351 \text{ days of violation}) \times (\$1,000) = \mathbf{\$122,850}$$

The Enforcement Policy also describes three factors related to the violator's conduct that should be considered for modification of the amount of initial liability: the violator's culpability, the violator's efforts to cleanup or cooperate with regulatory authorities after the violation, and the violator's compliance history. After each of these factors is considered for the violations involved, the applicable factor should be multiplied by the proposed amount for each violation to determine the revised amount for that violation.

b. Adjustment for Culpability

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. In this case a culpability multiplier of 1.4 has been selected because the Discharger submitted a report that did not contain the information required by the CAO and after being notified that the report was deficient, did not submit an acceptable report.

Equilon was notified in a letter dated 24 April 2008 that the report did not satisfy the CAO with a detailed explanation of the deficiencies. A Central Valley Water Board letter dated 14 November 2008 noted that a revised work plan had not been received and needed to be submitted.

c. Adjustment for Cleanup and Cooperation

For cleanup and cooperation, the Enforcement Policy suggests an adjustment should result in a multiplier between 0.75 to 1.5, with the lower multiplier where there is a high degree of cleanup and cooperation.

This adjustment was not considered because this is a non-discharge violation. Therefore, a multiplier of 1 is appropriate.

d. Adjustment for History of Violations

The Enforcement Policy suggests that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used to reflect this. In this case, a multiplier of 1 is proposed because there is no history of repeat violations by the Discharger relative to this Site.

41. Step 5 - Determination of Total Base Liability Amount

The Total Base Liability amount is determined by applying the adjustment factors from Step 4b through 4d to the Revised Initial Liability Amount. Accordingly, the Total Base Liability Amount is calculated as follows:

$$(\text{Revised Initial Liability}) \times (\text{Culpability Multiplier}) \times (\text{Cleanup and Cooperation Multiplier}) \times (\text{History of Violations}) = (\text{Total Base Liability Amount})$$

$$(\$122,850) \times (1.4) = \$171,990 \times (1) = \$171,990 \times (1) = \mathbf{\$171,990}$$

42. Steps 6 through 10 apply to the Combined Total Base Liability Amount for all violations and are discussed in Attachment AA after the Total Base Liability Amounts have been determined for the remaining violations.

**ATTACHMENT AA****Application of Steps 6-10 to Combined Total Base Liabilities  
Determined in Attachments A through K****43. Step 6 – Ability to Pay and Ability to Continue in Business**

The Enforcement Policy provides that if the Central Valley Water Board has sufficient financial information necessary to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability Amount may be adjusted downward.

The Central Valley Water Board Prosecution Team has sufficient information to suggest that Equilon has the ability to pay the proposed liability based on the nature and size of the company. Therefore, no downward adjustment is appropriate.

**44. Step 7 – Other Factors As Justice May Require**

The Enforcement Policy provides that if the Central Valley Water Board believes that the amount determined using the above factors is inappropriate, the liability amount may be adjusted under the provision for "other factors as justice may require," if express findings are made. In addition, the costs of investigation should be added to the liability amount according to the Enforcement Policy.

All of the enforcement costs to date associated with the alleged violations have been paid by Equilon through the cost recovery account.

**45. Step 8 – Economic Benefit**

The Enforcement Policy directs the Central Valley Water Board to determine any economic benefit of the violations based on the best available information and suggests that the amount of the administrative civil liability should exceed this amount whether or not economic benefit is a statutory minimum.

Because Equilon has submitted all of the reports and is in compliance with the CAO, the economic benefit of the alleged violations is limited to the time value of money saved by its failure to meet the deadlines, and is therefore of nominal value. The adjusted total base liability amount suggested would recover the economic benefit.

**46. Step 9 – Maximum and Minimum Liability Amounts**

The Enforcement Policy directs the Central Valley Water Board to consider and maximum or minimum liability amounts set forth in the applicable statutes.

As described in Paragraph 52 of EXHIBIT A, the maximum potential liability for the alleged violations is \$4,947,000.

There is no statutory minimum liability for a violation of Water Code section 13267 or 13350. However, the enforcement policy directs the Central Valley Water Board to recover, at a minimum, ten percent more than the economic benefit. Given the nominal economic benefit in this case, the total base liability exceeds the economic benefit, plus ten percent.

#### 47. Step 10 -- Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the various violations was performed as follows:

$(\text{Total Base Liability Amount}) + (\text{Staff Costs}) = (\text{Final Liability Amount})$

**$\text{Final Liability Amount} = (\$534,800) + (0) = \$534,800$**



# EXHIBIT B

## MEMORANDUM OF UNDERSTANDING

This document shall serve as a Memorandum of Understanding by and between the Kern River Corridor Endowment & Holding Co. Inc. ("Kern River Corridor Endowment") and Equilon Enterprises LLC ("Equilon") for the Supplemental Environmental Project ("SEP") to restore and maintain eight (8) acres of open space habitat at the Panorama Vista Preserve in Bakersfield, California, including purchase of a John Deere utility gator ("Project").

1. Pursuant to the terms of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order entered into between the California Regional Water Quality Control Board (Central Valley Region) and Equilon in the Matter of Equilon Enterprises LLC (the "Order"), Equilon agrees to donate, and Kern River Corridor Endowment commits to receive funding in the amount of \$100,000 ("Funding") to be utilized for implementation of the Project.
2. As a condition to the donation, Kern River Corridor Endowment agrees as follows:
  - a. to serve as the Implementing Party for the Project, as detailed in the Order, consistent with the Letter to Kevin E. Dyer dated April 26, 2013, the Memorandum titled Restoration Budgeting at Panorama Vista Preserve dated April 17, 2013, and Product Quotation from Kern Machinery dated April 24, 2013, together attached hereto as Exhibit 1 and attached as Exhibit B to the Order;
  - b. to cooperate with Equilon to meet the SEP requirements set forth in the Order, the terms of which are attached hereto as Exhibit 2, including, but not limited to, Kern River Corridor Endowment's: completion of the Project and submission of a final report to the Central Valley Regional Water Quality Control Board ("Central Valley Regional Board") by December 31, 2017 (the "Kern River Corridor Endowment SEP Completion Date"); providing quarterly reports of Project progress to designated representatives of Equilon, the Central Valley Regional Board, and the California State Water Resources Control Board Division of Financial Assurance; maintaining documentation of SEP expenditures on the Project and providing said documentation or further information regarding expenditures to the Central Valley Regional Board if so requested; documenting Project completion as requested by Equilon or the Regional Board; complying with all applicable environmental laws and regulations in the implementation of the Project, including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act; and providing certification of expenditures of the Funding on the Project meeting the

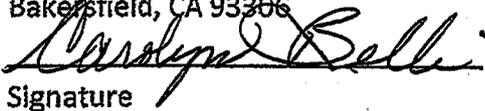
requirements of Section 2.7.b of the Order and compliance with environmental laws and regulations (and any required supporting documentation) in implementing the project meeting the requirements of Section 2.7.c of the Order to the Central Valley Regional Board and State Water Board Division of Financial Assistance;

- c. to return to Equilon any unexpended portion of the Funding to the extent not spent on the Project; and
  - d. to complete the receipt attached hereto as Exhibit 3, and return to Equilon in accordance with the instructions contained therein within [10] business days of receipt of the donation.
3. The goal of the Project, as set forth in detail in Section 2.1.a of Exhibit 2 hereof, is the restoration and maintenance of 8 acres of open space habitat as described in this Memorandum of Understanding. Kern River Corridor and Endowment has had significant success in other similar restoration and maintenance projects that it has undertaken. However, Equilon acknowledges and agrees that Kern River Corridor is not guaranteeing or otherwise warranting that the goal of the Project will be fully or even partially achieved. Kern River Corridor Endowment's obligation is to carry out the Project in a reasonable and prudent manner, performing the tasks and meeting the milestones set out in the Restoration Plan proposed on April 26, 2013 (Letter to Kevin Dyer), attached hereto in Exhibit 1, using the Funding and accounting for the Funding as set forth in this Memorandum of Understanding. Kern River Corridor cannot and will not guarantee or otherwise be obligated to achieve any particular outcome.
  4. Kern River Corridor Endowment agrees that should it publicize the Project it shall state in a prominent manner that the Project is being funded as part of a settlement of an enforcement action by the Central Valley Water Board against Equilon.
  5. This Memorandum of Understanding and the parties' relations shall be construed and governed by the laws of the State of California without regard to conflicts-of-laws rules or principles.
  6. Nothing contained in this Memorandum of Understanding shall at any time constitute, be deemed to constitute or be construed to create a relationship among Equilon and Kern River Corridor Endowment of partnership, joint venture, agency, or any other relationship creating fiduciary, quasi-fiduciary, or similar duties and obligations, or that would otherwise subject Equilon and Kern River Corridor Endowment to joint and several or vicarious liability in favor of any third party.
  7. Kern River Corridor Endowment acknowledges that the Funding is the full extent of Equilon's obligation hereunder and that Kern River Corridor Endowment is responsible for securing sufficient other resources as may be needed to complete the Project by the deadline identified in paragraph 2.

8. This Memorandum of Understanding may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument

The parties have executed this Agreement effective as of this \_\_\_\_\_ day of August of 2013.

Kern River Corridor Endowment  
5025 Panorama Dr  
Bakersfield, CA 93306

  
Signature

CAROLYN BELLI  
PRESIDENT

Equilon Enterprises LLC

  
Signature

Exhibit 1

Letter to Kevin E. Dyer dated April 26, 2013; Budgeting at Panorama Vista Preserve dated April 17, 2013; and Product Quotation from Kern Machinery dated April 24, 2013



Kern River Corridor Endowment & Holding Co. Inc.  
5025 Panorama Drive Bakersfield, CA 93306 (661) 872-3569 Tax ID#77-0500760

Kevin E. Dyer  
Principal Program Manager  
Shell Oil Products US  
17 Junction Drive PMB#399  
Glen Carbon, IL 62034

April 26, 2013

**PANORAMA VISTA PRESERVE**  
**SHELL OIL PRODUCTS U.S. RESTORATION PLAN**

**Background**

Panorama Vista Preserve is a 936.8 acre open space Preserve in Bakersfield, California, below Panorama Bluffs. It extends from China Grade Loop on the east to near Manor Drive on the west and from the Beardsley Canal on the north to the top of the bluffs on the south and comprises 2 1/2 miles of the Kern River. The Panorama Vista Preserve, established in 1998, is owned and Operated by the Kern River Corridor Endowment (KRCE) a 501 (c) (3) public benefit non profit organization.

It is considered by the U.S. Fish and Wildlife services as an important component in the Pacific Flyway, the largest migratory bird corridor in the Western North America. It is a critical piece in the water management puzzle of the southern San Joaquin Valley hosting the Kern River and the Carrier and Beardsley Canals. It is also considered an important critical component of endangered species recovery strategies of Kern County.

The Preserve was once considered "the jungle below the bluffs" because of its density of vegetation. When Lake Isabella Dam was constructed in 1953, the river at the Preserve, which previously had spread to numerous rivulets with spring runoff, was then channeled into one river. This opened a large

area for agriculture and oil production and gradually the forest became mostly trees and foliage along the river. One of the major goals of the KRCE is to restore the Preserve to its original state allowing for increased bird and animal population and providing a large recreational and educational area for the community.

### **Introduction to Project**

The Kern River Corridor Endowment contracts with River Partners, a non-profit organization that specializes in habitat restoration in California to plant acreage on the Panorama Vista Preserve. They prepared a Conceptual Restoration Plan after months of hydrology, soils and habitat studies on the Preserve. This plan is the basis to all restoration projects on the Panorama Vista Preserve.

They have been involved in a 30 acre habitat restoration site, along with many community volunteers. They are currently in the planning stage of a 129 acre restoration on the Preserve. KRCE has discussed with them the possibility of adding the Shell project acreage to their current restoration plan so the work could be done simultaneously, possibly cutting down on overhead.

Attached is their breakdown of the planting process explaining which each phase involves in a four year project. Judging from studies done and growth in the 30 acre site and a previous mitigation site, the taproot of the trees, shrubs and vines should reach the water table between four and five years. At that time they would no longer need to be irrigated.

As the acreage of habitat restoration increases the need for a farm utility vehicle increases in order to cover all the necessary ground to manage the water needs and repair lines that have been damaged by rodents. At present the Preserve's only vehicle, a tractor, is being used to take irrigation supplies and planting materials into the field which is not an efficient usage of the tractor. There is one part time employee at the Preserve in addition to volunteers and college interns who assist in field work. In addition to irrigation maintenance, they replace young trees, etc. that have not made it throughout the restoration groves; they water at the nursery and gather seeds and cuttings as needed. A utility vehicle would greatly facilitate in the irrigation and maintenance of the groves.

## **The Plan**

Restoration and maintenance of 8 acres of open space with approximately 704 native trees and 816 native shrubs and vines; including sycamore, willow, cottonwood, elderberry, wild rose, wild berry. The restoration includes planning, site preparation, irrigation installation, planting, maintenance, monitoring and management over a four year period at an estimated cost of \$82,600. (See attached breakdown)

The proposal also includes a John Deere 2013 XUV 855D G&Y utility gator at the cost of \$14,967. The remaining \$2,433 would be for contingencies and/or maintenance past year four. (See attached quote).

## **Alternate**

In the event Shell Oil Co. does not wish to fund a utility gator, the alternate proposal would be 10 acres of restoration for \$100,000.

## **Timeline**

### **Year 1**

Gather seeds and cuttings, grow out in the nursery, prepare irrigation plan and planting plan, prepare land and installation of irrigation.

### **Year 2**

Plant trees, mulch, irrigate, monitor the young trees, weed control

### **Year 3**

Replace trees that did not take or are unhealthy, irrigate, weed control.  
Monitor and maintenance

### **Year 4**

Irrigate, weed control, mulch, maintenance, monitor & final report.

KRCE Contact: Carolyn Belli, President  
phone (661) 872-3569, cell (661) 319-2652, jgbelli@bak.rr.com

## Restoration Budgeting at Panorama Vista Preserve

April 17, 2013

### Background:

In 2012, KRCE submitted a letter of inquiry to the Shell Oil Company to secure funds for restoration and associated activities at Panorama Vista Preserve in Bakersfield. In 2013, KRCE received notification of Shell's intent to award funds in the amount of \$100,000. KRCE has requested this cost estimate/description of restoration tasks to assist in the negotiation of this grant award from Shell Oil Company.

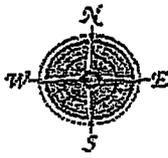
Typically, River Partners riparian habitat restoration projects include the following tasks. A per acre cost for each task is provided based upon historical costs for similar projects. Economies of scale can reduce these per acre cost estimates considerably with larger projects showing smaller per acre costs for fixed price items such as management and planning. The following estimates are provided with some assumptions:

- 1) no new water delivery infrastructure (well, turn-out or similar) is required for project implementation,
- 2) the project is at Panorama Vista Preserve and staff used on adjacent projects can be used for this project,
- 3) necessary earthworks are limited in scope and cost – fit within the site preparation task,
- 4) water and power costs are comparable to those of the existing drip/well system, and
- 5) level of effort for administration of the project does not exceed level of effort required to administer state and federal grants.

Task	Description
Planning \$5,000 / LS	A detailed restoration planting plan will be developed for the site indicating the planned location of all restoration actions including possible earthwork, planting, and maintenance. This plan also includes a description of monitoring and performance standards for the project.
Site Preparation \$400 / acre	The site is cleared of weeds and debris, and prepared for planting through furrowing, augering, or other means as needed.
Irrigation Installation \$1,500 / acre	A drip irrigation system is installed to service the designed restoration project. The system is designed and installed by a local irrigation vendor.
Planting \$1,500 / acre	Native plants are propagated from local plant material – majority of plant material is collected on site at Panorama Vista Preserve. A portion of the needed plants are contract-grown at an area native plant nursery and at the on-site Panorama Vista Preserve nursery. A portion of the needed plants are propagated vegetatively from cuttings collected on site. These plants may be started at the nursery, or planted directly on site depending on season and site conditions.

Task	Description
Maintenance \$4,000 / acre	The restoration project is maintained for three growing seasons through irrigation and targeted weed control. Irrigation operation includes the electricity and water expenses (utilities) required to irrigate the site as well as the labor to operate and repair, and the supplies needed to repair the system from normal wear and tear. Weed control includes regular mowing or discing of the site during the growing season to cultivate desirable native species. Spot treatment with appropriate herbicides may be performed in some cases, when invasive species are particularly problematic. All weed control activities are overseen by a certified Pest Control Advisor, and workers are trained in native plant identification and ecology.
Monitoring \$1300 / acre	Project performance is gauged through performance monitoring. At the end of each growing season, monitoring data is collected (per methods described in the restoration plan) and analyzed to provide adaptive management recommendations to the implementation team. Annual reports are prepared documenting the results of monitoring and recommendations for the following year. Monitoring also includes photo documentation of the development of the site over time. Photo monitoring can be valuable in illustrating the development of the site over time.
Management \$8,000 / LS	Project Management includes tracking hours, equipment usage and supply expenses in a standard tracking system, collating monthly or bi-monthly invoices, communication with funders and project partners, and general budget tracking and management to ensure project deliverables are met and project developments are communicated with all partners and funders.

LS = lump sum, cost estimate does not fluctuate with acreage



# KERN MACHINERY

520 S. Mt. Vernon Avenue  
Bakersfield, CA 93307  
Phone: (661) 833-9900  
Fax: (661) 833-9911



Date: April 24, 2013

## PRODUCT QUOTATION

Name: Kern River Corridor Endowment & Holding Company INC.  
Contact Person: Joe Belli  
Address: \_\_\_\_\_  
City, State, Zip: Bakersfield  
Phone #: email: joebelli@bak.rr.com

New   
Used   
Rental   
Cash Sale   
Contract / Lease

Qty	Description	Unit price	Extension
1	2013 XUV 855D G&Y Power Steering with Canopy	15,210.00	\$13,916.31
	SN:1M0855DEEDM060457		
	Community Service Discount: \$1,293.68		
	quoted price is good til 5/23/13		

Prices quoted are good for 15 days,  
unless otherwise specified.

Sub-Total		\$13,916.31
Sales Tax	7.50%	1,043.72
CA Tire Tax	\$1.75 ea	\$7.00
<b>TOTAL CASH PRICE</b>		<b>\$14,967.03</b>

Trade-in Equipment	

Proposed Financing: **BALANCE DUE** \$14,967.03

APR: \_\_\_\_\_ Year(s) /Month(s): \_\_\_\_\_ Insurance: \_\_\_\_\_  
Down Payment: \_\_\_\_\_ Amount Financed: \_\_\_\_\_ Payments: \_\_\_\_\_  
Warranty Available: **YES** Year(s) up to: **12 months** Hours: **1000**

Kern Machinery backs each product it sells with the best parts and shop service available to give even greater value to your purchase. We look forward to serving you!

Prepared By: David Tuitt

Exhibit 2

SEP Conditions

**2.1 SEP Descriptions:** Equilon agrees to fund the two SEPs described below:

a. **Kern River Corridor Endowment SEP:** The goal of this project is to restore habitat on the Panorama Vista Preserve in Bakersfield, California. Panorama Vista Preserve encompasses 936 acres of the Kern River Parkway straddling 2.75 miles of river frontage property. The land is held in trust for the public by the Kern River Corridor Endowment & Holding Company Inc. The Kern River Corridor Endowment SEP will fund efforts to re-establish the riparian forest that was once on the Preserve, including re-planting native vegetation such as cottonwood, sycamore, buttonwillow, valley oak, elderberry, willow, California wild rose, bladderpod and wild grape. Detailed plans concerning how the project will be implemented, as well as an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as EXHIBIT B. The Kern River Corridor Endowment & Holding Company Inc. will implement the Kern River Corridor Endowment SEP and is considered the "Implementing Party" for purposes of this Stipulated Order.

b. [Redacted].

**2.2 SEP Definitions:**

a. "Designated Central Valley Water Board Representative" – the representative from the Central Valley Water Board responsible for oversight of the SEPs. That individual is:

Russell Walls, Senior Water Resource Control Engineer

Central Valley Regional Water Quality Control Board

1685 E Street, Fresno, CA 93706-2007

b. "Implementing Party" – An independent third party(ies) with whom the Settling Respondent has contracted or otherwise engaged to implement the SEP.

c. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.

**2.3 SEP Completion Dates:** The Kern River Corridor Endowment SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by December 31, 2017 ("Kern River Corridor Endowment SEP Completion Date"). [...]. The Kern River Corridor Endowment SEP Completion Date and the West Goshen SEP Completion Date are collectively referred to as the "SEP Completion Dates." Upon a showing of good cause and

upon written agreement of the Parties, the Assistant Executive Officer may extend the SEP Completion Dates .

**2.3 Agreement of Settling Respondent to Fund, Report and Guarantee Implementation of SEPs:** Equilon represents that: (1) it will fund the SEPs in the amounts as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Central Valley Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEPs; (3) it will guarantee implementation of the SEPs identified in EXHIBITS B and C by remaining liable for the Suspended Liability until the SEPs are completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulated Order; and (4) prior to the adoption of the Stipulated Order, it will provide signed agreements with each of the Implementing Parties in which the Implementing Party agrees to implement the SEP. Equilon agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEPs.

**2.4 Certification of Funding of Kern River Corridor Endowment SEP:** Equilon shall provide evidence to the Central Valley Water Board of its payment of \$100,000 to the Kern River Corridor Endowment & Holding Company Inc. in support of the Kern River Corridor Endowment SEP, no later than 30 days following the date the Central Valley Water Board enters this Stipulated Order. Failure to pay the full SEP amount by this date will result in the full SEP amount of \$100,000 being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.

**2.5 [Redacted]**

**2.6 SEP Progress Reports:** Equilon shall provide quarterly reports of progress on each SEP to the Designated Central Valley Water Board Representative commencing 90 days after this Stipulated Order becomes effective and continuing through submittal of the final reports described below in Paragraph 2.7. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

**2.7 Certification of Completion of SEPs and Final Reports:** On or before the applicable SEP Completion Date, the Settling Respondent shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Central Valley Water Board Representative by a responsible corporate official representing the Settling Respondent. The Certification of Completion shall include following:

- a. Certification that the SEPs have been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEPs and the costs incurred by the Settling Respondent.
- b. Certification documenting the expenditures by the Settling Respondent and the Implementing Party during the completion period for the SEPs. The Implementing Party's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not

address any costs incurred by the Central Valley Water Board for oversight. The Implementing Party may submit a separate certification of expenditures on the Settling Respondent's behalf. The Settling Respondent (or the Implementing Party on the Settling Respondent's behalf) shall provide any additional information requested by the Central Valley Water Board staff which is reasonably necessary to verify SEP expenditures.

- c. Certification, under penalty of perjury, that the Settling Respondent and/or the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. The Implementing Party may submit a separate certification of compliance on the Settling Respondent's behalf. To ensure compliance with CEQA where necessary, the Settling Respondent and/or the Implementing Party shall provide the Central Valley Water Board with the following documents from the lead agency prior to commencing SEP construction:

- i. Categorical or statutory exemptions relied upon by the Implementing Party;
- ii. Negative Declaration if there are no potentially "significant" impacts;
- iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
- iv. Environmental Impact Report (EIR)

3. **Third Party Financial Audit:** In addition to the certification, upon completion of the SEPs and at the written request of the Central Valley Water Board Executive Officer, the Settling Respondent, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Central Valley Water Board Executive Officer providing such party's(ies)' professional opinion that the Settling Respondent and/or the Implementing Party have expended money in the amounts claimed by the Settling Respondent. The audit report shall be provided to the Designated Central Valley Water Board Representative within three (3) months of notice from the Central Valley Water Board Executive Officer to the Settling Respondent of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.
4. **Central Valley Water Board Acceptance of Completed SEPs:** Upon the Settling Respondent's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEPs and any audit requested by the Central Valley Water Board, the Designated Central Valley Water Board Representative shall send the Settling Respondent a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the Settling Respondent and result in the permanent stay of the Suspended Liability.
5. **Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEPs:** In the event that Settling Respondent and/or the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board Executive Officer that the entire Suspended Liability has been spent to complete the

components of the SEPs for which the Settling Respondent is financially responsible, Settling Respondent shall pay the difference between the Suspended Liability and the amount the Settling Respondent can demonstrate was actually spent on the SEPs, as an administrative civil liability. The Settling Respondent shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board Executive Officer's determination that the Settling Respondent has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.

6. **Failure to Complete the SEPs:** If the SEPs are not fully implemented within the SEP Completion Dates (as defined in Paragraph 2.3) required by this Stipulated Order, the Central Valley Water Board Assistant Executive Officer shall issue a Notice of Violation. As a consequence, the Settling Respondent shall be liable to pay the entire Suspended Liability or, if shown by Settling Respondent, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability or as agreed in writing by the Parties. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP(s) prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Central Valley Water Board's determination. In addition, the Settling Respondent shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEP(s).

Exhibit 3

Receipt

Receipt

Your organization has received a contribution/donation from Shell. Please complete the information below and mail this form to:

Equilon Enterprises LLC d/b/a Shell Oil Products US  
Environmental Services  
Attn: Kevin Dyer  
17 Junction Drive PMB# 399  
Glen Carbon, IL 62034

*Please complete and return with 10 days of receipt of funds. Thank you.*

ORGANIZATION NAME: KERN RIVER CORRIDOR ENDOWMENT & HOLDING CO. INC.

REPRESENTATIVE: \_\_\_\_\_ TITLE: \_\_\_\_\_

PHONE NUMBER: ( ) \_\_\_\_\_ TAX ID: \_\_\_\_\_

DATE OF DONATION: \_\_\_\_\_ (MM/DD/YYYY)

DONATION TYPE:

CASH AMOUNT: \$ 100,000.00  
CHECK NO: \_\_\_\_\_

NON-CASH ITEM(S) DESCRIPTION AND LOCATION: \_\_\_\_\_

Panorama Vista Preserve Restoration Project

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

*(If you have any questions concerning the completion of this form, please contact Kevin E. Dyer At 618-288-7237).*

**(INTERNAL USE ONLY: VENDOR NUMBER Vendor number)**



# EXHIBIT C

## MEMORANDUM OF UNDERSTANDING

This document shall serve as a Memorandum of Understanding by and between the West Goshen Mutual Water Company ("WGMWC") and Equilon Enterprises LLC ("Equilon") for the Supplemental Environmental Project ("SEP") West Goshen Emergency Interconnection to California Water Service Company ("Project").

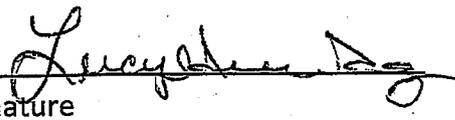
1. Pursuant to the terms of the Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order entered into between the California Regional Water Quality Control Board (Central Valley Region) and Equilon in the Matter of Equilon Enterprises LLC (the "Order"), Equilon agrees to donate, and WGMWC commits to receive funding in the amount of \$150,000 ("Funding") to be utilized for implementation of the Project.
2. As a condition to the donation, WGMWC agrees as follows:
  - a. to serve as the Implementing Party for the Project, as detailed in the Order, consistent with the Memorandum dated March 2013 to Russell Walls from Jessi Snyder of Self-Help Enterprises, regarding the Proposed Supplemental Environmental Project: West Goshen Emergency Interconnection to California Water Service Company, attached hereto as Exhibit 1;
  - b. to cooperate with Equilon to meet the SEP requirements set forth in the Order, the terms of which are attached hereto as Exhibit 2, including, but not limited to, WGMWC's: completion of the Project and submission of a final report to the Central Valley Regional Water Quality Control Board ("Central Valley Regional Board") by November 30, 2014; providing quarterly reports of Project progress to designated representatives of Equilon, the Central Valley Regional Board, and the California State Water Resources Control Board Division of Financial Assurance; maintaining documentation of SEP expenditures on the Project and providing said documentation or further information regarding expenditures to the Central Valley Regional Board if so requested; documenting Project completion as requested by Equilon or the Regional Board; complying with all applicable environmental laws and regulations in the implementation of the Project, including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act; and providing certification of expenditures of the Funding on the Project meeting the requirements of Section 2.7.b of the Order and compliance with environmental laws and regulations (and any required supporting documentation) in implementing the project meeting the requirements of Section 2.7.c of the Order

to the Central Valley Regional Board and State Water Board Division of Financial Assistance;

- c. to return to Equilon any unexpended portion of the Funding to the extent not spent on the Project; and
  - d. to complete the receipt attached hereto as Exhibit 3, and return to Equilon in accordance with the instructions contained therein within [10] business days of receipt of the donation.
3. WGMWC agrees that should it publicize the Project it shall state in a prominent manner that the Project is being funded as part of a settlement of an enforcement action by the Central Valley Water Board against Equilon.
  4. This Memorandum of Understanding and the parties' relations shall be construed and governed by the laws of the State of California without regard to conflicts-of-laws rules or principles.
  5. Nothing contained in this Memorandum of Understanding shall at any time constitute, be deemed to constitute or be construed to create a relationship among Equilon and WGMWC of partnership, joint venture, agency, or any other relationship creating fiduciary, quasi-fiduciary, or similar duties and obligations, or that would otherwise subject Equilon and WGMWC to joint and several or vicarious liability in favor of any third party.
  6. WGMWC acknowledges that the Funding is the full extent of Equilon's obligation hereunder and that WGMWC is responsible for securing sufficient other resources as may be needed to complete the Project by the deadline identified in paragraph 2.
  7. This Memorandum of Understanding may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one and the same instrument.

The parties have executed this Agreement effective as of this \_\_\_\_\_ day of August of 2013.

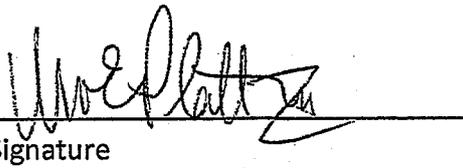
West Goshen Mutual Water Company  
PO Box 547  
Goshen, CA 93227

  
\_\_\_\_\_

Signature

LUCY HERNANDEZ  
PRESIDENT

Equilon Enterprises LLC

  
\_\_\_\_\_

Signature

**Exhibit 1**

**Memorandum dated March 2013 to Russell Walls from Jessi Snyder, regarding the Proposed Supplemental Environmental Project: West Goshen Emergency Interconnection to California Water Service Company**



# SELF-HELP ENTERPRISES

8445 West Elowin Court • Post Office Box 6520 • Visalia CA 93290  
(559) 651-1000 • FAX (559) 651-3634

DATE: March 1, 2013 (originally February 14, 2013)  
TO: Russell Walls, Regional Water Quality Control Board  
FROM: Jessi Snyder, Community Development Specialist  
SUBJECT: Proposed Supplemental Environmental Project:  
West Goshen Mutual Water Company Emergency Interconnection to California Water Service Company

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## Project Description and Proposal

The West Goshen Mutual Water Company (Mutual) is the domestic water service provider for the small Tulare County community of West Goshen, located in western Tulare County, about 2 miles west of the town of Goshen. The groundwater supplying the community's water supply is contaminated with nitrates in excess of the Maximum Contaminant Level of 45 parts per million. The water system currently serves about eighty active connections.

Beginning in August 2012, the mutual began to experience failure of its two fifty-year old water wells. First the primary well failed due to compression breaks and sand intrusion, which destroyed the pump bowls. The mutual switched to using its backup well; that pump failed in late October because of its age and poor condition. The pump was replaced and the community continued to rely on the backup well while pursuing options for repairing or replacing the primary well. The final blow came in January 2013 when an apparent collapse of the backup well's casing caused the new pump to begin pumping sand. The system had to be shut down and it took more than forty-eight hours to restore service. Water mains and the pressure tank had to be opened up and cleared of sand, and a temporary pump was placed into the primary well. The temporary pump was placed as shallow as possible, above the worst of the compression breaks, and it is fervently hoped that this temporary solution will last until a permanent connection to California Water Service can be made. (The water is still not considered drinkable, as contamination by coliform bacteria persists three weeks after the original failure, and also because the community's water wells have exceeded the maximum contaminant level for nitrates for the past year.)

The community elected to accept an offer from California Water Service (Cal Water) for an emergency interconnection that will supply the entire community with high-quality, reliable water through a 12" water main extending 1.3 miles from Goshen. Cal Water is the water utility provider for Visalia and most of Goshen, and their distribution system extends to a point just over a mile from West Goshen's current well site. This will be a master meter service, where water is sold in bulk to the Mutual, which will in turn bill its customers for their share of the monthly Cal Water bill.

West Goshen is a severely disadvantaged community, with a median household income (MHI) of \$24,083, or about 39% of the statewide MHI. With a small and impoverished ratepayer base, they have struggled to build up a reserve fund, and the emergencies they have experienced have depleted their savings. The Mutual does not have any funds of its own to pay for the connection to Cal Water.

The Mutual is eligible for, and has secured, emergency funding of \$250,000 from the California Department of Public Health (CDPH). The interconnection to Cal Water is anticipated to cost upwards of \$400,000.

Supplemental Environmental Project (SEP) funding is requested to leverage the CDPH Emergency Grant and provide sufficient funding to complete the project. Without additional funding, the interconnection will not be possible as it cannot be completed within the budget of the CDPH grant. Up to \$150,000 in SEP funding is needed.

### General SEP Qualification Criteria

The following discusses the qualifications of the proposed project based upon the State Water Resources Control Board's Policy on Supplemental Environmental Projects, dated February 3, 2009.

1. ***The SEP shall only consist of measures that go above and beyond the otherwise applicable obligations of the discharger.*** The proposed project benefits a community and entity (the Mutual) that are completely independent of the discharger. The discharger is not involved in the provision of potable domestic water and has no obligation to the Mutual or its customers.
2. ***The SEP shall directly benefit or study groundwater or surface water quality or quantity and the beneficial uses of waters of the State.*** The proposed project relieves a disadvantaged community from its reliance on groundwater contaminated by nitrates. The project will consolidate a small private water system with a larger system, creating greater economy of scale and consolidating water consumption of the smaller community with that of the larger community. Groundwater levels in West Goshen have been falling in recent years, and ceasing use of the Mutual's two wells should contribute to a reduction in overdraft. It will also make more water available for agricultural uses in the area and decrease competition between municipal and agricultural users.
3. ***A SEP should never directly benefit, in a fiscal manner, a Water Board's functions, its members, its staff, or family of members and staff.*** No such benefit will occur; no relationship between the aforementioned parties and the community of West Goshen is known to exist.
4. ***As contemplated by this policy, a SEP is a project or group of projects, the scope of which is defined at the time the SEP is authorized by a Water Board...*** The proposed project scope is described herein and in the attached documentation. The SEP will comply with all other rules established within the 2009 Policy.

### Additional SEP Qualification Criteria

1. ***Does the SEP include documented support by other public agencies, public groups and affected persons?*** Yes. The Mutual's board of directors passed a resolution authorizing the project (attached). The resolution was passed after an informal vote of shareholders in attendance at a community meeting held on February 6, 2013. In addition, the project is supported by the California Department of Public Health, which is providing \$250,000 in emergency funding. The County of Tulare is in support of this project to benefit the disadvantaged community of West Goshen in resolving this critical and immediate water supply and quality crisis.
2. ***Does the SEP directly benefit the area where the harm occurred or provide a region-wide or statewide use or benefit?*** The SEP is located within the Tulare hydrologic basin, a portion of the Central Valley aquifer, as is the area where the harm occurred. Both the discharger and SEP community lie within the same groundwater basin, which has no outlet. The boundaries of the Tulare Basin are described as "bounded by the Sierra Nevada on the east, the Tehachapi mountains on the south, and by the Coast Ranges on the west. The northern extent... generally corresponds to the Kings River." (Faunt, 2009) The project also implements a long-term, statewide goal of the California Department of Public Health: consolidating small community water systems with larger systems that possess the technical, managerial and financial capacity to manage self-sufficient, sustainable water systems.
3. ***Does the SEP proposal...include documentation that the project complies with the California Environmental Quality Act?*** The SEP is considered to be statutorily exempt from CEQA per the CEQA guidelines, Title 14 Section 15269 (c): *Specific actions necessary to prevent or mitigate an emergency.* A Notice of Exemption has been prepared and will be filed by the California Department of Public Health on behalf of the West Goshen Mutual Water Company (see attached).
4. ***Does the SEP proposal address whether it can be the basis for additional funding from other sources?*** The SEP funding is essential for successful completion of the interconnection project.

- CDPH emergency funding is available but is insufficient to construct the project. Only with commitment of funding from both funding sources can the project move forward.
5. ***Does the entity identified as responsible for completing the SEP have the institutional stability and capacity to carry out the SEP?*** The West Goshen Mutual Water Company has been operating the community's water system for over fifty years. The Mutual recently paid off a forty-year loan from USDA Rural Development for infrastructure improvements. The Mutual is supported in its project management by Self-Help Enterprises (SHE), a non-profit housing and community development organization based in Visalia. Self-Help Enterprises has over forty years' experience developing and managing rural development projects throughout the San Joaquin Valley, utilizing a broad spectrum of public and private loans and grants. SHE is committed to being a primary point of contact and coordination for this project, including such functions as preparation of payment claims and completion of any necessary reports.
  6. ***Does the SEP proposal include, where appropriate, success criteria and requirements for monitoring to track the long-term success of the project?*** The success of the proposed project will be clearly demonstrated by the successful installation of a water main and a master meter service connection, through which high-quality drinking water, meeting all state and federal drinking water standards, shall be delivered to West Goshen residents.

### Nexus Criteria

The proposed SEP relieves a disadvantaged rural community from its dependence on contaminated groundwater. While it is true that the nature of the discharger's pollution is related to petroleum refinement and not to nitrates, the problem of groundwater contamination in the San Joaquin Valley is vast, complex and interconnected. The Central Valley is one continuous heterogeneous aquifer system (Williamson, Prudic, & Swain, 1989) where water moves great distances over time and where contamination is pervasive.

Hundreds of small communities rely on groundwater that has been contaminated by one industrial use or another and the responsibility to remediate this problem is not limited to any specific sector. The nexus between the discharger's offense and the SEP's benefit is found in the parity of ending a rural community's dependence on contaminated groundwater by one who has contributed to the contamination of Valley groundwater.

### Contact Information

Lucy Hernandez, President, West Goshen Mutual Water Company (No e-mail)	559-393-8675
Lance Love, Operator/Director, West Goshen Mutual Water Company <a href="mailto:lance.love@delmonte.com">lance.love@delmonte.com</a>	559-309-0479
Tricia Wathen, District Engineer, CA Department of Public Health <a href="mailto:tricia.wathen@cdph.ca.gov">tricia.wathen@cdph.ca.gov</a>	559-447-3398
Scott Bailey, District Manager, California Water Service Co. <a href="mailto:sbailey@calwater.com">sbailey@calwater.com</a>	559-624-1600
Miguel Herrera, Tulare County Environmental Health Department <a href="mailto:mherrera@tularehhsa.org">mherrera@tularehhsa.org</a>	559-624-7413
Jessi Snyder, Self-Help Enterprises <a href="mailto:jessis@selfhelpenterprises.org">jessis@selfhelpenterprises.org</a>	559-802-1693

### References Cited

- Faunt, C. e. (2009). *Groundwater Availability of the Central Valley Aquifer, California*. U.S. Geological Survey.
- Williamson, A., Prudic, D., & Swain, L. (1989). *Ground-water flow in the Central Valley, California*. U.S. Geological Survey.

**WEST GOSHEN / CAL WATER EMERGENCY INTERCONNECTION  
PROJECT BUDGET  
Friday, February 15, 2013**

*Budget numbers are approximate and may decrease based upon construction bids received.*

**ESTIMATED COSTS**

MATERIAL COST	\$ 205,500.00
LABOR & EQUIPMENT COST	\$ 221,500.00
EMERGENCY WATER, TEMP REPAIRS	\$ 10,000.00
<b>TOTAL ESTIMATED EXPENSES</b>	<b>\$ 437,000.00</b>

**ESTIMATED FUNDING SOURCES**

CDPH Emergency Grant	\$ 250,000.00
In-Kind (Cal-Water)	\$ 20,000.00
In-Kind (County or Other)	\$ 17,000.00
Regional Board SEP Grant	\$ 150,000.00
<b>TOTAL FUNDING SOURCES</b>	<b>\$ 437,000.00</b>

**Notice of Exemption**

*Appendix E*

To:  Office of Planning and Research  
1400 Tenth Street, Room 121  
Sacramento, CA 95814

From: (Public Agency) California Dep't of Public Health  
Drinking Water Program, Environmental Review Unit  
1616 Capitol Avenue, Sacramento CA 95899-7377  
(Address)

County Clerk  
County of \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Title: West Goshen Emergency Interconnection

Project Location - Specific: Unincorporated community of West Goshen, located in western Tulare County; pipeline is to be installed along Avenue 308 between Road 64 and Road 52

Project Location - City: (uninc) West Goshen Project Location - County: Tulare

**Description of Nature, Purpose, and Beneficiaries of Project:**

The project is an emergency interconnection that will connect the drinking water distribution system of West Goshen with the drinking water supply lines owned by California Water Service Company. The project is essential due to the failure of the two wells that provide drinking water to West Goshen; all users of the mutual water system shall benefit.

Name of Public Agency Approving Project: California Department of Public Health

Name of Person or Agency Carrying Out Project: West Goshen Mutual Water Company

**Exempt Status: (check one)**

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number:
- Statutory Exemptions. State code number: CCR Title 14, Section 15269 (c)

Reasons why project is exempt: The project conforms to the definition of an emergency project per the above-named section: 15269 (c): Specific actions necessary to prevent or mitigate an emergency.

**Lead Agency**

Contact Person: Tricia Wathen, CDPH Visalia District Area Code/Telephone/Extension: 559-447-3398

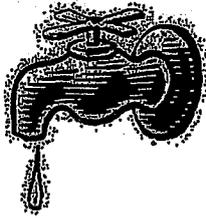
**If filed by applicant:**

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

- Signed by Lead Agency Date received for filing at OPR:
- Signed by Applicant

*Revised October 1989*



**West Goshen Mutual Water Company**  
PO Box 547  
Goshen, CA 93227

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**RESOLUTION NO. 020613**

A RESOLUTION OF THE BOARD OF DIRECTORS OF WEST GOSHEN MUTUAL WATER COMPANY AUTHORIZING AN EMERGENCY INTERCONNECTION TO CALIFORNIA WATER SERVICE COMPANY AND IMPLEMENTING A CORRESPONDING RATE INCREASE NECESSARY TO MEET ACTUAL COSTS.

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WHEREAS, West Goshen Mutual Water Company is the domestic water provider to the Tulare County subdivision known as West Goshen and which is described in the incorporation documents of West Goshen Mutual Water Company; and

WHEREAS, the failure of both groundwater wells has caused the mutual water system to be without a reliable and safe source of potable water; and

WHEREAS, California Water Service Company (Cal Water), Visalia District is willing and able to provide potable water to the mutual water system through the use of a master meter; and

WHEREAS, individual homes are currently not equipped with water meters that measure household consumption of water:

NOW, THEREFORE BE IT RESOLVED AND ORDERED, the Board of Directors of the West Goshen Mutual Water Company hereby accepts Cal Water's proposal to construct an interconnection from Cal Water's existing water main near the town of Goshen to a central distribution location within the mutual water system, pending the availability of sufficient funding; and

BE IT FURTHER RESOLVED AND ORDERED, the President of the Board of Directors is hereby authorized to sign a service agreement between West Goshen Mutual Water Company and California Water Service, making West Goshen Mutual Water Company a customer of California Water Service; and

BE IT FURTHER RESOLVED AND ORDERED, the Board will pursue all available options to install household water meters; and

BE IT FURTHER RESOLVED AND ORDERED, in order to ensure prompt and full payment of the monthly water usage bill from Cal Water, the water rate for all residential customers is hereby increased to \$75, effective immediately and until such time as water meters can be installed and a metered rate schedule adopted.

\*\*\*\*\*

Passed and adopted by the Board of Directors of West Goshen Mutual Water Company  
on February 6, 2013 by the following vote:

AYES: Directors Lucy Hernandez, Ruth Jimenez, Joe Ruiz, Lance L

NOES: Directors \_\_\_\_\_

ABSENT: Directors Cathy Candy Silva

Lucy Hernandez, President  
Lucy Hernandez

ATTEST:

Joe Ruiz, Secretary  
Joe Ruiz

of the West Goshen Mutual Water Company

Exhibit 2

SEP Conditions

**2.1 SEP Descriptions:** Equilon agrees to fund the two SEPs described below:

a. [Redacted]

b. **West Goshen SEP:** The goal of this project is to fund an emergency interconnection that will connect the drinking water distribution system of West Goshen with the drinking water supply lines owned by California Water Company. The community of West Goshen is a severely disadvantaged community, located in western Tulare County, with a median household income of \$24,083. West Goshen Mutual Water Company is the domestic water service provider for West Goshen. Between August 2012 and January 2013, West Goshen Mutual Water Company's water wells failed. The groundwater supplying the community's water supply is contaminated with nitrates in excess of the maximum contaminant level of 45 parts per million and there is an urgent need for the community to establish a reliable supply of clean water. Detailed plans concerning the West Goshen SEP, including an implementation schedule, milestone dates and budget are provided in the SEP proposal included herein as EXHIBIT C. The West Goshen Mutual Water Company will implement the West Goshen SEP and is considered the "Implementing Party" for purposes of this Stipulated Order.

**2.2 SEP Definitions:**

a. "Designated Central Valley Water Board Representative" – the representative from the Central Valley Water Board responsible for oversight of the SEPs. That individual is:

Russell Walls, Senior Water Resource Control Engineer

Central Valley Regional Water Quality Control Board

1685 E Street, Fresno, CA 93706-2007

b. "Implementing Party" – An independent third party(ies) with whom the Settling Respondent has contracted or otherwise engaged to implement the SEP.

c. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.

**2.3 SEP Completion Dates:** [...] The West Goshen SEP shall be concluded, and a final report shall be provided to the Central Valley Water Board by November 30, 2014 ("West Goshen SEP Completion Date"). The Kern River Corridor Endowment SEP Completion Date and the West Goshen SEP Completion Date are collectively referred to as the "SEP Completion

Dates." Upon a showing of good cause and upon written agreement of the Parties, the Assistant Executive Officer may extend the SEP Completion Dates.

**2.3 Agreement of Settling Respondent to Fund, Report and Guarantee Implementation of SEPs:** Equilon represents that: (1) it will fund the SEPs in the amounts as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated Central Valley Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEPs; (3) it will guarantee implementation of the SEPs identified in EXHIBITS B and C by remaining liable for the Suspended Liability until the SEPs are completed and accepted by the Central Valley Water Board in accordance with the terms of this Stipulated Order; and (4) prior to the adoption of the Stipulated Order, it will provide signed agreements with each of the Implementing Parties in which the Implementing Party agrees to implement the SEP. Equilon agrees that the Central Valley Water Board has the right to require an audit of the funds expended by it to implement the SEPs.

**2.4 [Redacted]**

**2.5 Certification of Funding of West Goshen SEP:** Equilon shall provide evidence to the Central Valley Water Board of its payment of \$150,000 to the West Goshen Mutual Water Company in support of the West Goshen SEP no later than 30 days following the date the Central Valley Water Board enters this Stipulated Order. Failure to pay the full SEP amount by this date will result in the full SEP amount of \$150,000 being immediately due and payable to the State Water Resources Control Board for deposit into the Cleanup and Abatement Account.

**2.6 SEP Progress Reports:** Equilon shall provide quarterly reports of progress on each SEP to the Designated Central Valley Water Board Representative commencing 90 days after this Stipulated Order becomes effective and continuing through submittal of the final reports described below in Paragraph 2.7. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

**2.7 Certification of Completion of SEPs and Final Reports:** On or before the applicable SEP Completion Date, the Settling Respondent shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated Central Valley Water Board Representative by a responsible corporate official representing the Settling Respondent. The Certification of Completion shall include following:

- a. Certification that the SEPs have been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEPs and the costs incurred by the Settling Respondent.
- b. Certification documenting the expenditures by the Settling Respondent and the Implementing Party during the completion period for the SEPs. The Implementing Party's expenditures may include external payments to outside vendors or contractors performing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not

address any costs incurred by the Central Valley Water Board for oversight. The Implementing Party may submit a separate certification of expenditures on the Settling Respondent's behalf. The Settling Respondent (or the Implementing Party on the Settling Respondent's behalf) shall provide any additional information requested by the Central Valley Water Board staff which is reasonably necessary to verify SEP expenditures.

- c. Certification, under penalty of perjury, that the Settling Respondent and/or the Implementing Party followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. The Implementing Party may submit a separate certification of compliance on the Settling Respondent's behalf. To ensure compliance with CEQA where necessary, the Settling Respondent and/or the Implementing Party shall provide the Central Valley Water Board with the following documents from the lead agency prior to commencing SEP construction:
    - i. Categorical or statutory exemptions relied upon by the Implementing Party;
    - ii. Negative Declaration if there are no potentially "significant" impacts;
    - iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
    - iv. Environmental Impact Report (EIR)
3. **Third Party Financial Audit:** In addition to the certification, upon completion of the SEPs and at the written request of the Central Valley Water Board Executive Officer, the Settling Respondent, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Central Valley Water Board Executive Officer providing such party's(ies') professional opinion that the Settling Respondent and/or the Implementing Party have expended money in the amounts claimed by the Settling Respondent. The audit report shall be provided to the Designated Central Valley Water Board Representative within three (3) months of notice from the Central Valley Water Board Executive Officer to the Settling Respondent of the need for an independent third party financial audit. The audit need not address any costs incurred by the Central Valley Water Board for oversight.
  4. **Central Valley Water Board Acceptance of Completed SEPs:** Upon the Settling Respondent's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEPs and any audit requested by the Central Valley Water Board, the Designated Central Valley Water Board Representative shall send the Settling Respondent a letter recognizing satisfactory completion of its obligations under the SEPs. This letter shall terminate any further SEP obligations of the Settling Respondent and result in the permanent stay of the Suspended Liability.
  5. **Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEPs:** In the event that Settling Respondent and/or the Implementing Party is not able to demonstrate to the reasonable satisfaction of the Central Valley Water Board Executive Officer that the entire Suspended Liability has been spent to complete the

components of the SEPs for which the Settling Respondent is financially responsible, Settling Respondent shall pay the difference between the Suspended Liability and the amount the Settling Respondent can demonstrate was actually spent on the SEPs, as an administrative civil liability. The Settling Respondent shall pay the additional administrative liability within 30 days of its receipt of notice of the Central Valley Water Board Executive Officer's determination that the Settling Respondent has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.

6. **Failure to Complete the SEPs:** If the SEPs are not fully implemented within the SEP Completion Dates (as defined in Paragraph 2.3) required by this Stipulated Order, the Central Valley Water Board Assistant Executive Officer shall issue a Notice of Violation. As a consequence, the Settling Respondent shall be liable to pay the entire Suspended Liability or, if shown by Settling Respondent, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability or as agreed in writing by the Parties. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the Central Valley Water Board for expenditures made on the SEP(s) prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a "Motion for Payment of Suspended Liability" before the Central Valley Water Board, or its delegee. Upon a determination by the Central Valley Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Cleanup and Abatement Account within thirty (30) days after the service of the Central Valley Water Board's determination. In addition, the Settling Respondent shall be liable for the Central Valley Water Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Settling Respondent's obligations to implement the SEP(s).

**Exhibit 3**

**Receipt**

**Receipt**

Your organization has received a contribution/donation from Shell. Please complete the information below and mail this form to:

**Equilon Enterprises LLC d/b/a Shell Oil Products US  
Environmental Services**

**Attn: Kevin Dyer  
17 Junction Drive PMB # 399  
Glen Carbon, IL 62034**

***Please complete and return with 10 days of receipt of funds. Thank you.***

ORGANIZATION NAME: **WEST GOSHEN MUTUAL WATER COMPANY**

REPRESENTATIVE:

TITLE:

PHONE NUMBER: ( )

TAX ID:

DATE OF DONATION:

(MM/DD/YYYY)

DONATION TYPE:

CASH

AMOUNT: **\$ 150,000.00**

CHECK NO:

NON-CASH ITEM(S)

DESCRIPTION AND LOCATION:

**West Goshen Emergency Interconnection to California Water Service  
Company**

SIGNATURE:

DATE:

***(If you have any questions concerning the completion of this form, please contact Kevin E. Dyer at 618-288-7237).***

***(INTERNAL USE ONLY: VENDOR NUMBER Vendor number)***