

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

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

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

A. RECITALS

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

4. The Mountain Station WDRs section E.1 requires that “The Discharger shall comply with Monitoring and Reporting Program (MRP) No. R7-2008-0038, and future revisions thereto, as specified by the Regional Board’s Executive Officer.”

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

| Constituents | Units | Sampling Frequency |
|--------------------------------|----------|--------------------|
| TDS | mg/L | Monthly |
| pH | pH units | Monthly |
| Standard Minerals ¹ | mg/L | Annually |

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

| Constituents | Units | Type of Sample | Sampling Frequency ² | Reporting Frequency |
|------------------------|------------------|--------------------------|---------------------------------|---------------------|
| Flow | gpd ³ | Calculation ⁴ | Weekly | Monthly |
| pH | pH units | Grab | Monthly | Monthly |
| 20°C BOD5 | mg/L | Grab | Monthly | Monthly |
| Suspended Solids | mg/L | Grab | Monthly | Monthly |
| Total Nitrogen | mg/L | Grab | Monthly | Monthly |
| Total Dissolved Solids | mg/L | Grab | Monthly | Monthly |
| VOCs | µg/L | Grab | Annually | Annually |

5. The Discharger failed to timely submit monitoring reports as required by the Mountain Station WDRs. Between June 15, 2010 and December 31, 2017 the Discharger consistently failed to submit timely Monthly Monitoring Reports resulting in a total of 1629 days of late reports. The Discharger also failed to submit a total of 3 Monthly Monitoring Reports.

¹ Standard Minerals shall include, at a minimum, the following elements/compounds: Barium, Calcium, Magnesium, Nitrogen, Potassium, Sulfate, Total Alkalinity (including alkalinity series), and Hardness

² When analysis show noncompliance with the limitations prescribed by Discharge Specification No. B.7, the Discharger shall increase the sampling frequency, for the constituents that are in noncompliance, to one (1) sample per week, and continue sampling at that minimum frequency until either (a) the sampling shows compliance for two consecutive months or (b) it is notified by the Executive Officer that it can resume the normal sampling schedule.

³ Gallons per day

⁴ Average daily flow calculated from weekly meter readings.

6. Water Code section 13268 provides that any person who fails to furnish monitoring program reports may be subject to administrative civil liability of up to \$1,000 per day of violation.
7. The State Water Resources Control Board's *Water Quality Enforcement Policy* (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under Water Code section 13327. The application of the Enforcement Policy to this violation is detailed in Attachment A.
8. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Enforcement Policy, as described in Attachment A. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

B. STIPULATIONS

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

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

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

Doug Wylie
Doug.Wylie@waterboards.ca.gov

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

For the Regional Water Board:

Doug Wylie
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA

92260

E-mail: Doug.Wylie@waterboards.ca.gov
nnichols@pstramway.com

Phone: 760-776-8960

For the Discharger:

Nancy Nichols, General Manager
1 Tram Way
Palm Springs, CA

92262

E-mail:

Phone: 760-325-1449

5. **Attorney's Fees and Costs:** Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
6. **Matters Covered by this Stipulation:** Upon adoption by the Regional Water Board, or its delegee, as an Order, this Stipulation represents a final and binding resolution and settlement and release of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against the Discharger as of the effective date of this Stipulated Order. The provisions of this Stipulation are expressly conditioned on Discharger's full payment of the administrative civil liability by the deadline specified in Paragraph B.2.
7. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Water Board against the Discharger.
8. **Public Notice:** The Discharger and the Regional Water Board Prosecution Team understand that this Stipulation and Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegee. In the event objections are raised during the public review and

comment period, the Regional Water Board or its delegee may, under certain circumstances, require a public hearing regarding the Stipulation and Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the proposed Order as necessary or advisable under the circumstances.

9. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
10. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.
11. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegee.
12. **If the Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:
 - A. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged in Attachment A in this matter; or

B. Laches or delay or other equitable defenses based on the time-period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

13. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
14. **Waiver of Right to Petition:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
15. **The Discharger's Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
16. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.
17. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
18. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegee, which incorporates the terms of this Stipulation.
19. **Incorporated Attachments:** Attachments A and B are incorporated by reference and are made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED⁵:

⁵ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

Frank Gonzalez, Assistant Executive Officer

Date

Colorado River Basin Regional Water Quality Control Board
Prosecution Team

Nancy Nichols, General Manager
Palm Springs Aerial Tramway

Date

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PROPOSED ORDER

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

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

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of title 14 of the California Code of Regulations.

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

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

Paula Rasmussen
Executive Officer