

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:)
)
City of Eureka) Order No. R1-2014-0012
Elk River Wastewater)
Treatment Facility) **Settlement Agreement and Stipulation for**
) **Entry of Administrative Civil Liability Order;**
) **Order**
_____)

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation or Order) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and the City of Eureka (Discharger) (collectively 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 Stipulation is in reference to Administrative Civil Liability (ACL) Complaint No. R1-2013-0037 (Complaint), issued May 24, 2013.

Section II: RECITALS

2. The Discharger owns and operates the Elk River Wastewater Treatment Facility (WWTF) and an associated wastewater collection system that serves a population of approximately 44,128 from the City of Eureka and unincorporated areas within the Humboldt Community Services District. The collection system consists of approximately 119 miles of gravity mains, 11 miles of pressure mains, 17 pump stations, and 9500 service laterals.
3. The Complaint proposes an administrative civil liability in the amount of \$89,122, including \$3,600 in staff costs, for alleged violations of Waste Discharge Requirements (WDRs) Order No. R1-2009-0033 (NPDES Permit No. CA0024449), State Water Resources Control Board Order No. 2006-0003-DWQ, Clean Water Act section 301 and Water Code section 13376, incurred by discharging waste into surface waters during sanitary sewer overflow(s).
4. The Parties have engaged in settlement negotiations and agree to settle the alleged violations set forth in the Complaint without administrative or civil litigation and by presenting this Stipulation and proposed Order to the Regional Water Board or its delegee for adoption pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the violations alleged in the Complaint is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning those violations except as provided in this Stipulation and that this Stipulation is in the best interest of the public.
5. To resolve by consent and without further administrative proceedings certain alleged violations set forth in the Complaint, the Parties have agreed to the imposition of

\$89,122 in stipulated administrative civil liability against the Discharger, which includes \$3,600 for staff costs.

6. Designated Representatives for Communications related to this Stipulation and Order:

For the Regional Water Board:

David Leland
Assistant Executive Officer
Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
707-576-2069
David.Leland@waterboards.ca.gov

For the Discharger:

Bruce Young
Public Works Director
City of Eureka
531 K Street
Eureka, CA 95501
707-441-4255
byoung@ci.eureka.ca.gov

Section III: STIPULATIONS

The Parties stipulate to the following:

7. **Recitals Incorporated:** The preceding Recitals are incorporated herein.
8. **Administrative Civil Liability:** A total of **\$89,122** in stipulated administrative civil liability shall be imposed against the Discharger. Of that amount, the Discharger shall pay **\$46,361** in administrative civil liability, which includes \$3,600 in staff costs. The Discharger shall pay this amount no later than 30 days following the Regional Water Board's adoption of this Order by check made payable to the SWRCB Cleanup and Abatement Account and sent to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch, 1001 I Street, 18th Floor, Sacramento, California, 95814. The check shall reference Complaint No. R1-2013-0037. The Discharger shall send copies of the check to the Regional Water Board representative listed above, and to Andrew Tauriainen, State Water Resources Control Board, Office of Enforcement, 1001 I Street, 16th Floor, Sacramento, California, 95814. The remaining **\$42,761** shall be suspended (Suspended Liability) pending completion of a Supplemental Environmental Project (SEP) as described here and in Attachment A hereto.
9. **SEP Description:** The goal of this SEP is to support and enhance the ongoing watershed education programs at Sequoia Park Zoo in the City of Eureka as described in greater detail in Attachment A. The implementation schedule for completion of the SEP is as follows:

MILESTONE	DEADLINE
Watershed Heroes Activity Comic Book	October 31, 2014
Washington Elementary Awesome Otter Club Afterschool Program	June 13, 2014
Watershed Heroes Headquarters	July 31, 2014
Watershed Play Interactives	July 31, 2014
Final Report and SEP Completion Date	August 31, 2014

10. **Extension of the Implementation Schedule Deadlines:** If, given written justification from the Discharger, the Regional Water Board determines that a delay in the SEP implementation schedule is beyond the reasonable control of the Discharger, the Executive Officer may revise the implementation schedule as appropriate. Written

justification must be received by the Designated Regional Water Board Representative before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the SEP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide the Discharger a new implementation schedule in writing, which shall include the date the SEP will be completed (Revised Completion Date).

11. **Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the SEP:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents and agrees that (1) it will implement and complete the SEP as described in this Stipulation; (2) it will provide certifications and written reports to the Regional Water Board Representative consistent with the terms of this Stipulation detailing the implementation of the SEP; and (3) it will guarantee implementation of the SEP identified here and in Attachment A by remaining liable for the Suspended Liability until the SEP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the SEP.
12. **SEP Monthly Progress Reports:** The Discharger shall provide monthly reports of progress to the Designated Regional Water Board Representative commencing 30 days after this Stipulation becomes final and continuing through submittal of the certified statement of completion of the SEP. If no activity occurred during a particular month, a monthly report so stating shall be submitted. Monthly reports are due on the 15th day of the following month.
13. **Certification of Completion of SEP:** On or before August 31, 2014, (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted) the Discharger shall provide a certified statement of completion of the SEP (Certification of Completion). The Certification of Completion shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to the Designated Regional Water Board Representative. The Certification of Completion shall include the following:
 - a. Certification that the SEP has been completed in accordance with the terms of this Stipulation, with documentation such as photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the SEP and the costs incurred by the Discharger.
 - b. Certification documenting the expenditures by the Discharger during the implementation of the SEP in order to complete the SEP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the SEP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify SEP expenditures.
 - c. Certification that the Discharger 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.

14. **Third Party Financial Audit:** At the written request of the Regional Water Board, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board providing such party's(ies') professional opinion that the Discharger has expended money in the amounts claimed by the Discharger. In the event of such an audit, the Discharger agrees that it will provide the third-party auditor with access to all documents that the auditor requests. The Regional Water Board's written request shall specify the reasons why the audit is being requested. The audit report shall be provided to the Designated Regional Water Board Representative within three (3) months of notice from Regional Water Board staff to the Discharger of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.
15. **Failure to Expend the Entire Suspended Liability on the Approved SEP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board that the entire Suspended Liability has been spent to complete the SEP as required by this Stipulation and Order, the Discharger shall pay the difference between the Suspended Liability and the amount the Discharger can demonstrate was actually spent on the completion of the SEP, as administrative civil liability. The Discharger shall pay said difference to the SWRCB Cleanup and Abatement Account within 30 days of receipt of notice of the Regional Water Board's determination that the Discharger failed to demonstrate that the entire Suspended Liability was spent to complete the SEP as required by this Stipulation and Order. Payment shall be submitted in accordance with the directions for payment of the administrative civil liability set forth above.
16. **Failure to Complete SEP:** If the Discharger fails to complete the SEP as required by this Stipulation and Order, (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted), or there has been a material failure to timely submit a progress report or the Certification of Completion as required by this Stipulation, the Regional Water Board shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the entire Suspended Liability, or some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulation, to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of receipt of the NOV.
17. **Completion of the SEP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its SEP obligations under this Stipulation and completion of the SEP and any audit requested by the Regional Water Board, the Regional Water Board shall send the Discharger a letter recognizing satisfactory completion of its obligations under this Stipulation. Receipt of this letter shall terminate any further obligations of the Discharger under this Stipulation and result in the permanent stay of the Suspended Liability.
18. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the SEP, the Discharger shall state in a **prominent manner** that the SEP is undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.
19. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulation or compliance with the terms of this Stipulation is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may be subject to further enforcement, including additional administrative civil liability.

20. **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.
21. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of all claims, violations or causes of action for the violations alleged in the Complaint, or which could have been asserted against the Discharger based on the facts alleged in the Complaint as of the date this Stipulation is signed. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified above, and the Discharger's full satisfaction of the SEP obligations described above.
22. **Public Notice:** The Parties agree that this Stipulation, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board for adoption as an Order. If the Regional Water Board receives significant new information that reasonably affects the propriety of presenting this Stipulation to the Regional Water Board for adoption as an Order by settlement, the Assistant Executive Officer may unilaterally declare this Stipulation void and decide not to present the Order to the Regional Water Board. The Discharger agrees that it may not rescind or otherwise withdraw approval of this proposed Stipulation.
23. **Addressing Objections Raised During Public Hearing:** 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.
24. **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 Parties are represented by counsel in this matter.
25. **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.
26. **If 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 delegate, 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:
 - 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 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.
27. **Waiver of Hearing:** The Discharger has been informed of the rights provided by California Water Code section 13323, subdivision (b), and hereby waives its right to an evidentiary hearing before the Regional Water Board prior to the adoption of the Order.
28. **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.
29. **Regional Water Board is Not Liable:** Neither the Regional Water Board members nor the Regional or State 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 Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation, Order, or SEP, nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulation and Order.
30. **Covenant Not to Sue:** The Discharger's covenant 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 this Stipulation and Order.
31. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of their obligation to obtain any final written approval required by this Order.
32. **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.
33. **Effective Date:** The obligations set forth in this Stipulation are effective and binding only upon the entry of an Order by the Regional Water Board which incorporates the terms of this Stipulation.
34. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
35. **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.

IT IS SO STIPULATED.

North Coast Water Quality Control Board Prosecution Team

By: Original Signed By _____
David Leland
Assistant Executive Officer

Date: February 7, 2014 _____

City of Eureka

By: Original Signed By _____
Bruce Young
Director of Public Works

Date: February 24, 2014 _____

Section IV: ORDER OF THE REGIONAL WATER BOARD

36. This Order incorporates the terms of the Stipulation.
37. The Regional Water Board has considered, where applicable, each of the factors prescribed in California Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board's staff in investigating the alleged violations or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.
38. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional 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.

IT IS HEREBY ORDERED, on behalf of the California North Coast Regional Water Quality Control Board, pursuant to California Water Code section 13323 and Government Code section 11415.60.

Original Signed By

Matthias St. John
Executive Officer

Date: April 22, 2014 _____

Attachments:

A. SEP Description

14_0012_Eureka_Stipulated_Agreement