

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

| | | |
|--|---|---|
| In the Matter of: |) | |
| |) | |
| Fort Bragg Municipal Improvement District No. 1 |) | Order No. R1-2015-0010 |
| The City of Fort Bragg |) | |
| Wastewater Treatment Facility |) | Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order; Order (Proposed) |
| WDID No. 1B84083OMEN |) | |

Complaint No. R1-2014-0035 for Administrative Civil Liability

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (“Stipulated Order” or “Stipulation and 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 Fort Bragg Municipal Improvement District No. 1, City of Fort Bragg Wastewater Treatment Facility (“Discharger”) (collectively “Parties”). This Stipulation is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60. This Stipulated Order is in reference to Administrative Civil Liability Complaint No. R1-2014-0035 (the “Complaint”), issued on May 16, 2014 to the Discharger.

Section I: Recitals

1. The Discharger owns and operates the City of Fort Bragg Wastewater Treatment Facility (WWTF) and associated collection system that serves a population of approximately 7,000 from the City of Fort Bragg and adjacent unincorporated areas. Secondary treated wastewater is currently discharged to the Pacific Ocean, via a 650-foot outfall, located west of the treatment plant. The receiving water is located within the Mendocino Coast Hydrologic Unit and is a water of the United States.
2. The Regional Water Board has determined that the Discharger meets the requirements under California Water Code section 13385(k) and the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy (Enforcement Policy) as a publicly owned treatment works serving a small community with a financial hardship. Attachment B attached hereto, incorporated herein, and made a part of this administrative civil liability order by this reference sets forth the basis of that determination.
3. On June 4, 2009, the Regional Water Board adopted Waste Discharge Requirements (“WDRs”), Order No. R1-2009-0030, NPDES No. CA0023078, for the Discharger for the discharge of wastewater from its WWTF.
4. Self-monitoring reports submitted by the Discharger show a total of 27 reported effluent limit violations of biochemical oxygen demand and total suspended solids

during the period from November 1, 2010 through December 31, 2013 of which 21 are subject to Mandatory Minimum Penalties (MMPs) pursuant to California Water Code section 13385 subdivisions (h) and (i). The violations are summarized in Attachment A of the Complaint.

5. Water Code section 13385, subdivision (h) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Pursuant to Water Code section 13385, subdivision (h)(2) a "serious violation" is defined as any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant by 20 percent or more, or for a Group I pollutant by 40 percent or more. Appendix A of Part 123.45 of Title 40 of the Code of Federal Regulations specifies the Group I and II pollutants.
6. Water Code section 13385, subdivision (i) requires the Regional Water Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation whenever the Discharger does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:
 - a. Violates a waste discharge requirement effluent limitation.
 - b. Fails to file a report pursuant to section 13260.
 - c. Files an incomplete report pursuant to section 13260.
 - d. Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.
7. The Complaint, as issued, recommends imposing an administrative civil liability, in the amount of \$63,000, which is the mandatory minimum penalty for twenty-one alleged effluent limit violations of Waste Discharge Requirements Order No. R1-2009-0030 (NPDES Permit No. CA 0023078). The Complaint covers the period from November 1, 2010 through December 31, 2013.
8. The Parties have engaged in settlement negotiations and agree to settle certain alleged violations of the California Water Code set forth in the Complaint without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board for adoption as an Order 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 these violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

9. To resolve by consent and without further administrative proceedings certain alleged violations of the Water Code set forth in the Complaint, the Parties have agreed to the imposition of a penalty of \$63,000 against the Discharger, which is the mandatory minimum penalty for the alleged violations. The full penalty amount shall be suspended upon completion of the Compliance Project in accordance with the terms of this Stipulated Order.

Section II: Stipulations

The Parties stipulate to the following:

10. **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 Stipulated Order.
11. **Administrative Civil Liability:** A total of \$63,000 in administrative civil liability shall be imposed on the Discharger. The Parties agree that the full amount (\$63,000) of this administrative civil liability shall be suspended pending completion of the Compliance Project as set forth herein, and Attachment A, incorporated herein by reference. Should the Discharger fail to complete the Compliance Project (CP) as described herein, the Discharger shall pay the \$63,000, or a pro-rated amount determined by the Regional Water Board or its delegate, to the State Water Pollution Cleanup and Abatement Account. Payment of any or the entire previously suspended amount does not relieve the Discharger of its independent obligation to take necessary actions to achieve compliance with Waste Discharge Requirements Order No. R1-2009-0030.
12. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order 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 in the Complaint may subject it to further enforcement, including additional administrative civil liability.
13. **Compliance Project Description:** The Discharger has difficulty meeting Total Suspended Solids and Biochemical Oxygen Demand effluent limits due to old trickling filters at the WWTF. The Discharger plans to retire the trickling filter units and replace them with an activated sludge treatment process. The purpose of the CP is to provide engineering design services for upgrades to the WWTF. The design services are estimated to be approximately \$750,000 with funds allocated by the Discharger. Construction will be funded by a combination of local funding and Clean Water State Revolving Fund loans, is anticipated to begin by 2016, and will take approximately 2 years to complete. The detailed CP description is attached hereto as Attachment A.

The implementation schedule for completion of the design of the CP is as follows:

| MILESTONE | DEADLINE |
|--|-----------------|
| Prepare Request For Proposal | Completed |
| Issue RFP | Completed |
| Award Contract | Completed |
| Begin Design Work | June 15, 2015 |
| Complete Plans, Specifications & Cost Estimate | April 30, 2016 |
| Submit Final Report | May 31, 2016 |

The CP (engineering design services) shall be completed in its entirety no later than May 31, 2016 (the "CP Completion Date") as indicated in the schedule above.

- 14. CP Costs:** The Discharger shall spend the \$63,000 in suspended penalties on the CP. The costs for the CP are estimated to be approximately \$750,000, as detailed in Attachment A. The Discharger is prepared to provide the balance of funds necessary to complete the project.
- 15. Extension of the Implementation Schedule Deadlines:** If the Discharger provides written justification and Regional Water Board staff concurs that a delay in the CP 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 prior to the Discharger's failure to meet a milestone deadline, must describe circumstances causing the delay, and must state when each task of the CP will be completed. If any extension of the implementation schedule is granted, Regional Water Board staff shall provide the Discharger with a new implementation schedule in writing, which shall include the date the CP will be completed ("Revised Completion Date").
- 16. Representations and Agreements of the Discharger to Implement and Complete, Report, and Guarantee Implementation of the CP:** As a material consideration for the Regional Water Board's adoption of this Stipulated Order, the Discharger represents and agrees that (1) it will implement and complete the CP as described in this Stipulated Order and Attachment A; (2) it will provide certifications and written reports to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board consistent with the terms of this Stipulation detailing the implementation of the CP; and (3) it will guarantee implementation of the CP identified in Paragraph 13 and Attachment A by remaining liable for the Suspended Liability until the CP is completed and accepted by the Regional Water Board in accordance with the terms

of this Stipulated Order. The Discharger agrees that the Regional Water Board has the right to require an audit of the funds expended by it to implement the CP.

- 17. CP Monthly Progress Reports:** The Discharger shall provide monthly reports of progress to the Designated Regional Water Board Representative and the Division of Financial Assistance of the State Water Board commencing 30 days after this Stipulated Order becomes final and continuing through submittal of the certified statement of completion of the CP described in Paragraph 13 and Attachment A. 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.
- 18. Certification of Completion of CP:** On or before May 31, 2016, (or within 60 days of the Revised Completion Date, if an extension to the Completion Date is granted pursuant to Paragraph 15) the Discharger shall provide a certified statement of completion of the CP ("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 and the Division of Financial Assistance of the State Water Board. The Certification of Completion shall include the following:

 - a.** Certification that the CP has been completed in accordance with the terms of this Stipulated Order. Such documentation may include design plans, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by the Discharger.
 - b.** Certification documenting the expenditures by the Discharger during the implementation of the CP in order to complete the CP. Expenditures may include, but are not limited to, payments to outside vendors or contractors implementing the CP. The Discharger shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.
 - c.** Certification that the Discharger followed all applicable environmental laws and regulations in the implementation of the CP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act.
- 19. Third Party Financial Audit:** At the written request of Regional Water Board staff, the Discharger, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff 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 staff'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.

- 20. Failure to Expend the Entire Suspended Liability on the Approved CP:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$63,000 has been spent to complete the CP as required by this Stipulation and Order, the Discharger shall pay the difference between the Suspended Liability of \$63,000 and the amount the Discharger can demonstrate was actually spent on the completion of the CP, as administrative civil liability. The Discharger shall be liable to pay the State Water Pollution Cleanup and Abatement Account the difference within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire Suspended Liability was spent to complete the CP as required by this Stipulation and Order. Payment shall be submitted to the Designated Regional Water Board Representative.
- 21. Failure to Complete CP:** If the Discharger fails to complete the CP by May 31, 2016, 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 pursuant to Paragraph 15), or there has been a material failure to timely submit a progress report or the Certification of Completion as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation (NOV). The Discharger shall be liable to pay the entire suspended liability of \$63,000, or some portion thereof less the value of the completion of any requirements satisfied in accordance with this Stipulation and Order, to the State Water Resources Control Board Cleanup and Abatement Account within 30 days of receipt of the NOV.
- 22. Completion of the CP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its CP obligations under this Stipulated Order, and completion of the CP and any audit requested by the Regional Water Board, Regional Water Board staff shall send the Discharger a letter recognizing satisfactory completion of its obligations under this Stipulation and Order. Receipt of this letter shall terminate any further obligations of the Discharger under this Stipulation and Order and result in the permanent stay of the Suspended Liability.
- 23. Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the CP, the Discharger shall state in a **prominent manner** that the CP is undertaken as part of the settlement of an enforcement action by the Regional Water Board against the Discharger.

- 24. Attorneys' 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.
- 25. Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged in the Complaint (Covered Matters). The provisions of this Paragraph are expressly conditioned on the Discharger's full satisfaction of the CP obligation described herein.
- 26. Public Notice:** Discharger understands that federal regulations require that the Regional Water Board publish and allow the public thirty (30) days to comment on any settlement of an enforcement action addressing NPDES permit violations (40 C.F.R. section 123.27(d)(2)(iii)). This Stipulated Order will be noticed for a 30-day public comment period prior to being presented to the Regional Water Board, or its delegee, for adoption. 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 Stipulated 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. Discharger agrees that it may not rescind or otherwise withdraw approval of this proposed Stipulated Order.
- 27. 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.
- 28. 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.
- 29. 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 the Executive Officer.
- 30. 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 it 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 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.

- 31. 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.
- 32. 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 Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
- 33. 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 CP, 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.
- 34. 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 Covered Matter.
- 35. 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 its obligation to obtain any final written approval required by this Order.

- 36. 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.
- 37. Effective Date:** The obligations under this Stipulation are effective and binding on the Parties only upon the entry of an Order by the Regional Water Board, which incorporates the terms of this Stipulation.
- 38. Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
- 39. 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.

California Regional Water Quality Control Board,
North Coast Region Prosecution Team

Original Signed By Fred Blatt For

Date: June 12, 2015

By:

David F. Leland, Assistant Executive Officer

The City of Fort Bragg

Date: June 22, 2015

By: Original Signed By

Linda Ruffing
City Manager

Order of the Regional Water Board;

IT IS HEREBY ORDERED:

- 40.** This Order incorporates the terms of the foregoing Stipulation, and includes Attachment A (CP Description).
- 41.** Pursuant to Water Code section 13385, subdivision (k), the Regional Water Board, in lieu of assessing all or a portion of mandatory minimum penalties pursuant to Water Code section 13385, subdivisions (h) and (i), may require a publicly owned treatment works serving a small community to spend all or a portion of mandatory minimum penalties towards the completion of a CP proposed by the publicly

owned treatment works. The CP must conform to the requirements specified in the State Water Board Water Quality Enforcement Policy (Enforcement Policy).

42. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.
43. Section VIII of the Enforcement Policy states that CPs shall only be considered where they are expressly authorized by statute, i.e., Water Code section 13385, subdivision (k), and may not be considered in connection with discretionary administrative civil liability.
44. 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.
45. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Order.
46. The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.
47. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

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

Matthias St. John
Executive Officer

DATE