

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:

)
) **Order R1-2012-0014**
)

**City of Crescent City
Wastewater Treatment Plant
Complaint No. R1-2011-0093 for
Administrative Civil Liability**

) **SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER (PROPOSED)**
)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) 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 Crescent City (the Discharger) (collectively Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger owns and operates the City of Crescent City Waste Water Treatment Facility (WWTF) located at 210 Battery Street, Crescent City, California. The WWTF serves the City of Crescent City and the County Services Area #1; both are located in Del Norte County in California. The WWTF discharges secondary treated municipal wastewater into the Pacific Ocean, a water of the United States.
2. The Regional Board has determined that the Discharger meets the requirements under California Water Code (CWC) 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 (POTW) serving a small community with a financial hardship.
3. On January 25, 2006, the Regional Water Board adopted Order No. R1-2006-0001 to regulate discharges from the Discharger's WWTF to the Pacific Ocean. Order No. R1-2006-0001 became effective on February 24, 2006. Order No. R1-2011-0019 superseded Order No. R1-2006-001 as of June 30, 2011.
4. On August 23, 2011, the Prosecution Team issued Administrative Civil Liability (ACL) Complaint No. R1-2011-0093 to the Discharger. The Complaint alleges that the Discharger exceeded the effluent limits for Biochemical Oxygen Demand 5-day @ 20°C (BOD), Ammonia, Copper, BOD percent removal, and fecal coliform set forth in WDRs Order No. R1-2006-0001 on sixty-two (62) occasions, all of which are subject to mandatory minimum penalties. The Complaint recommends the

imposition of administrative civil liability in the amount of \$186,000 in mandatory minimum penalties for the violations alleged in the Complaint.

5. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. To resolve by consent and without further administrative proceedings all alleged violations of CWC section 13385 set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the amount of \$186,000 in mandatory minimum penalties against the Discharger. The \$186,000 in mandatory minimum penalties shall be suspended upon completion of the Compliance Project (CP) set forth in this Stipulation and Order. The Discharger shall expend, at a minimum, \$186,000 to complete the CP in accordance with the terms of this Stipulation and Order.
6. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and meets the requirements under CWC section 13385(k) and the Enforcement Policy, that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation, and that this Stipulation is in the best interest of the public.

Section III: Stipulations

The Parties stipulate to the following:

7. **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.
8. **Administrative Civil Liability:** The Discharger shall be subject to administrative civil liability in the amount of \$186,000 in mandatory minimum penalties, the total of which shall be suspended pending completion of a CP (CP Amount), as set forth herein and in Attachment "A" attached hereto and incorporated by this reference.
9. **CP Description:** The CP consists of the installation of a membrane bioreactor activated sludge treatment train (MBR). This will eliminate the ammonia (and other violations if applicable) by adding nitrification capacity capable of converting the ammonia to nitrate nitrogen. The MBR process includes an aerated activated sludge treatment basin followed by membrane filters that separate the biological solids from the treated water to create a high quality effluent. The MBR process is operated with sufficient biological mass and mean cell residence time to promote the growth of nitrifying organisms that convert ammonia to nitrate nitrogen. The Crescent City process also includes an anoxic zone for the conversion of the nitrate nitrogen to nitrogen gas to promote total nitrogen removal. Completion of the CP will bring the Discharger into compliance with effluent limitations set forth in Order No. R1-2006-0001 and its current NPDES Permit, Order No. R1-2011-0019.

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

MILESTONE	DEADLINES
Design and specifications completed	December 1, 2006*
Contract Signed w/ Wahlund Construction	March 19, 2007*
CP Initiated	July 1, 2007*
Complete CP	November 15, 2010*
Submit Report of Completion including a detailed list of expenditures	December 31, 2011

* This Task has been completed.

10. **CP Costs:** The cost is estimated to be approximately \$38 million for the entire plant improvements project, of which the MBR addition was the most significant plant addition. (See Attachment "A"). The amount of the liability to be suspended upon completion of the CP is \$186,000 in mandatory minimum penalties, as expressly authorized by CWC section 13385(k). No additional liability above and beyond the \$186,000 shall be suspended for costs incurred to complete the CP.
11. **Representation of the Discharger:** As a material consideration for the Regional Water Board's acceptance of this Stipulation, the Discharger represents that it will utilize the funds outlined in Paragraph 8 to implement the CP in accordance with the implementation schedule set forth above. The Discharger understands that its promise to implement the CP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.
12. **Agreement of Discharger to Implement CP:** The Discharger represents that: 1) it will spend the CP Amount as described in this Stipulation; 2) it will provide certified, written reports to the Regional Water Board consistent with the terms of this Stipulation and Order detailing the implementation of the CP; and 3) it will guarantee implementation of the CP by remaining liable for \$186,000 of suspended administrative liability until the CP 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 CP. Discharger shall permit inspection of the CP by the Regional Water Board staff at any time without notice.
13. **Certification of Completion of CP:** On or before December 31, 2011, the Discharger shall provide a certified statement of completion of the CP (Certification of Completion). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification of Completion shall include the following:

- a. Certification that the CP has been completed in accordance with the terms of this Stipulation and 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 CP and the costs incurred by the Discharger.
 - b. Certification documenting the expenditures by the Discharger during the completion period for 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.
14. **Third Party Financial Audit of CP:** 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. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff 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 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 \$186,000 has been spent for the completed CP, the Discharger shall pay the difference between the suspended liability of \$186,000 and the amount the Discharger can demonstrate was actually spent on the CP, as administrative civil liability. The Discharger shall be liable to pay the State Water Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that the Discharger failed to demonstrate that the entire CP Amount was spent to complete the CP.
16. **Failure to Complete CP:** If the Discharger fails to complete the CP by December 31, 2011, as required by this Stipulation and Order, the Regional Water Board staff shall issue a Notice of Violation (NOV). As a consequence, the Discharger shall be liable to pay the State Water Board Cleanup and Abatement Account the Suspended Liability of \$186,000 within 30 days of receipt of the NOV.

17. **Completion of the CP to the Regional Water Board Staff's Satisfaction:** Upon the Discharger's satisfaction of its CP obligations under this Stipulation 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 the CP. Receipt of this letter shall terminate any further CP obligations of the Discharger and result in the dismissal of the Suspended Liability.
18. **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.

19. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Nancy Robinson
Sanitary Engineering Associate
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A, 1st Floor
Santa Rosa, CA 95403

nrobinson@waterboards.ca.gov

(707) 576-2657

For the Discharger:

Jim Barnts, Director of Public Works
City of Crescent City
210 Battery Street
Crescent City, CA 95531

jbarnts@crescentcity.org

(707) 464-9506 ext. 234

20. **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.
21. **Matters Addressed by Stipulation:** Upon the Regional Water Board's adoption of the Order incorporating the terms of this Stipulation, this Stipulation 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 full payment of the administrative civil liability by the deadline specified in Paragraph 8 and the Discharger's full satisfaction of the CP obligations described herein.
22. **Public Notice:** Federal law mandates that any settlement will not become final until after 30-day public notice and comment period expires, (40 CFR 123.27). On August 23, 2011 the Assistant Executive Officer issued the Complaint and provided notice to the public that the violations alleged in the Complaint could be resolved by settlement, including, but not limited to performance of a CP. Thus,

the terms of this Stipulation and Order have been properly noticed and the required public comment period expired September 22, 2011 without comment.

23. **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.
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.
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 or its delegee.
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 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.
27. **Waiver of Hearing:** The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a 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 and/or Order 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 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.
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 its 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. **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.
34. **Effective Date:** This Stipulation is effective and binding on the Parties upon the entry of this Order by the Regional Water Board, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

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

Date: _____ **By:** _____
Luis Rivera,
Assistant Executive Officer

City of Crescent City

Date: _____ **By:** _____
Jim Barnts
Director of Public Works

Order of the Regional Water Board:

IT IS HEREBY ORDERED:

35. This Order incorporates the foregoing Stipulation, set forth in Paragraphs 1 through 34 above, by this reference, as if set forth fully herein.
36. 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.
37. The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.
38. Pursuant to CWC Section 13385(k), the Regional Water Board may, in lieu of assessing all or a portion of mandatory minimum penalties pursuant to CWC Section 13385(h) and (i), 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).
39. 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

Section VIII of the Enforcement Policy states that CPs shall only be considered where they are expressly authorized by statute, i.e., CWC Section 13385(k), and may not be considered in connection with discretionary administrative civil liability.

40. The Regional Water Board held a duly noticed public hearing on this matter on January 19, 2012, at the Regional Water Quality Control Board, 5550 Skylane Blvd, Ste A, Santa Rosa, California. The documents associated with the agenda item for this matter were provided to the Discharger and made available to the public prior to the hearing. The Discharger and the public were given the opportunity to testify and present evidence regarding the proposed settlement.
41. 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.
42. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under the Order.

Pursuant to CWC 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.

Certification

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region on January 18 & 19, 2012.

Catherine Kuhlman
Executive Officer

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Attachment:

Letter from Jim Barnts, Director of Public Works for the City of Crescent City Dated October 20, 2011 and Progress Payment Summary received by the City of Crescent City on March 31, 2011