
North Coast Regional Water Quality Control Board

Response to Written Comments Draft Settlement Agreement and Stipulation for Entry of Order Order No. R1-2023-0049 For the Sonoma County Water Agency and Russian River County Sanitation District Regional Water Quality Control Board, North Coast Region

Comments Received

The deadline for submittal of public comments regarding draft Settlement Agreement and Stipulation for Entry of Order, Order No. R1-2023-0049 (Stipulated Settlement Agreement), for the Sonoma County Water Agency (Agency) and the Russian River County Sanitation District (District) (collectively, the Parties) was September 28, 2023. Regional Water Board staff (Staff) received written form letters in opposition from 81 citizens, a letter from the Russian River Watershed Protection Committee (RRWPC), and a letter in support from the Board Chair of the Forestville Water District, regarding the Stipulated Settlement Agreement.

This Response to Comments document includes the comments received from each of these commenters, followed by responses from the Regional Water Board Prosecution staff and/or the Parties to each comment. Similar comment letters have been consolidated to a single or group response.

A. Russian River Watershed Protection Committee (RRWPC)

Comment No. A1: RRWPC requested that the Regional Water Board have a meeting to review the proposed Stipulated Settlement Agreement and address all public concerns received. If a meeting is not held, RRWPC asks that their comments be shared with the Board and all involved staff.

Response to Comment No. A1: The Prosecution Team recognizes the public interest on this enforcement action and recommends to the Advisory Team that the Regional Water Board review the matter at a public hearing.

Comment No. A2: RRWPC requested that funds be used for either the badly needed physical repairs to the District's system, or some other beneficial use that improves the current conditions of the District's collection system.

Response to Comment No. A2: RRWPC requested that the penalty amount be suspended and utilized to address existing problems in the District's collection system. The use of funds in this way is referred to in the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) as a Compliance Project (CP) which is defined as "a project designed to address problems related to the violation and bring the discharger back into compliance in a timely manner." While the District and Agency would agree with such a use of funds, the Enforcement Policy dictates that CPs can only be considered in a settlement context when expressly authorized by statute. At this time, CPs are only expressly authorized in connection with mandatory minimum penalties (MMPs) for small communities with a financial hardship.

The current Enforcement Policy does not allow a CP to be considered in connection with discretionary penalties since not expressly authorized by statute. Therefore, the option to use penalty funds in the way proposed by RRWPC is not available in this case.

Absent such statutory authorization, if the underlying problem that caused the alleged violations addressed in the Stipulated Settlement Agreement has not been corrected, compliance may be compelled through an enforcement order with injunctive terms such as a Cease and Desist Order or Time Schedule Order, and/or the inclusion of such terms in an NPDES permit.

When a CP is not authorized by statute, the Water Boards may approve a settlement with a discharger that includes suspension of a portion of the monetary liability of a discretionary action for completion of an Enhanced Compliance Action (ECA) or Supplemental Environmental Project (SEP). ECAs are projects that enable a discharger to make capital or operational improvements beyond those required by law and are separate from projects designed to merely bring a discharger into compliance. As the entirety of this enforcement action is discretionary, the settlement may only suspend a portion of the final penalty amount upon completion of an ECA or a SEP.

In this case, the Stipulated Settlement Agreement includes suspension of a portion of the of the proposed penalty amount to implement an ECA that would have the District conduct a high-level feasibility study to evaluate potential regional projects that could improve water quality, water supply reliability, Pathogen TMDL compliance, and climate change resiliency in the Russian River watershed. Additionally, the ECA is intended to address ratepayer costs for West County wastewater systems by exploring the cost savings of regionalization of wastewater collection and treatment in the region.

Furthermore, additional terms were included in the District's most recent NPDES Permit, Order No. R1-2021-0002 (Permit) that require the District to submit a plan to correct identified deficiencies in its collection system and treatment plant and to identify cost effective long-term approaches that will be implemented to eliminate, reduce, and mitigate spills as further detailed below.

Provision 6.3.6.2 of the Permit, *Flood Control and Flow Reduction Mitigation*, required the District to submit by November 1, 2021, a Summary Report detailing flood control and flow reduction measures implemented to minimize the potential for Sanitary Sewer Overflows (SSOs) and bypass events at the plant and collection system over the last five years, including an assessment of whether these measures have been effective and a time schedule for updating their Collection System Operation and Maintenance Plan with the flood control and flow reduction measures identified to be effective. The Collection System Operation and Maintenance Plan is also an element of the District's Sewer System Management Plan (SSMP) required under the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, WQO No. 2006-0003 (Sanitary Sewer Order). The District timely submitted the Summary Report (see attached).

The District reported that the flood control and flow reduction measures implemented and improved upon over the last five years have been successful in most cases, outside of major flood events. SSOs, when they do occur, only occur in a few known locations that continue to be problematic during major flood events. With removal of the peak wet weather influent flow limitation in the District's current NPDES Permit, the ability to monitor river flows, and continued efforts to isolate portions of the collection system during those significant events, the District believes it can now manage influent flow surges and continue to reduce the number of SSOs even in the problematic areas.

However, the District's Operations and Maintenance Plan does not currently contain all of the District's practices and needs to be updated. As such, the Regional Water Board staff, under delegated authority, intends to issue a 13267 investigative order requiring the District to submit an updated Operation and Maintenance Plan which would include the District's current management practices used to eliminate, reduce, and mitigate SSOs by no later than September 30, 2024.

Additionally, the District was required by the NPDES Permit to submit a Work Plan by February 1, 2023 to revise the District's System Evaluation and Capacity Assurance Plan (SECAP) in accordance with the Sanitary Sewer Order (subsequently revised as Order No. WQ 2022-0103-DWQ). The updated Statewide Sanitary Sewer General Order includes new requirements for the SECAP found within Section 8, System Evaluation, Capacity Assurance and Capital Improvements. The District timely submitted their Workplan (Attachment A), which includes identification of the design storm or wet weather event conditions that will be modeled to assess the hydraulic capacity of the collection system. The District is required to revise the SECAP in accordance with Attachment D, Provision 8 of the Sanitary Sewer Order.

Further, upon completion of their Engineering Evaluation, the District's Permit further requires them to submit a report by August 1, 2025, describing actions needed to correct the identified deficiencies in the collection system and treatment plant, including the identification of capital improvement projects needed to eliminate, reduce, and mitigate SSOs. The Prosecution Team intends to recommend Board adoption of a revised NPDES Permit in 2024, to provide additional requirements within Section 6.3.6.2, Flood Control and Flow Reduction Mitigation, that will require the District to

timely implement both short-term and long-term fixes to the collection system and treatment plant.

Provision 10.5.3 of the Permit's Monitoring and Reporting Program, *Public Spill Notification Plan (Plan)*, required the District to submit a plan by August 1, 2022. The District timely submitted the Plan (see attached). The Plan ensures that immediate and downstream community members are properly notified, and describes the notification methods to be used. After receiving comments from key stakeholders, a revised Plan was submitted to the Regional Water Board on September 15, 2022, incorporating changes based on comments received from the RRWPC, Russian River Chamber of Commerce, Lower Russian River Municipal Advisory Committee, Sonoma County Supervisor Lynda Hopkins' office, and the North Coast Regional Water Quality Control Board.

Comment No. A3: RRWPC indicated that the Stipulated Settlement Agreement does not address RRWPC's June 2019 complaint or Esa Day's provided timeline regarding the Vacation Beach sanitary sewer overflow.

Response to Comment No. A3: Regional Water Board staff wish to thank both RRWPC and Mrs. Esa Day for their efforts to bring attention to these alleged violations. The Regional Water Board has considered the information provided in both RRWPC's June 2019 complaint and Esa Day's timeline regarding the Vacation Beach SSO event, but ultimately only included the days, March 1 and 2, 2019, for which we had specific evidence to support that an overflow occurred. Regional Water Board staff reached out to both the RRWPC and Esa Day to determine if further supporting evidence could be provided, but was ultimately not provided anything additional evidence to support additional days of violation.

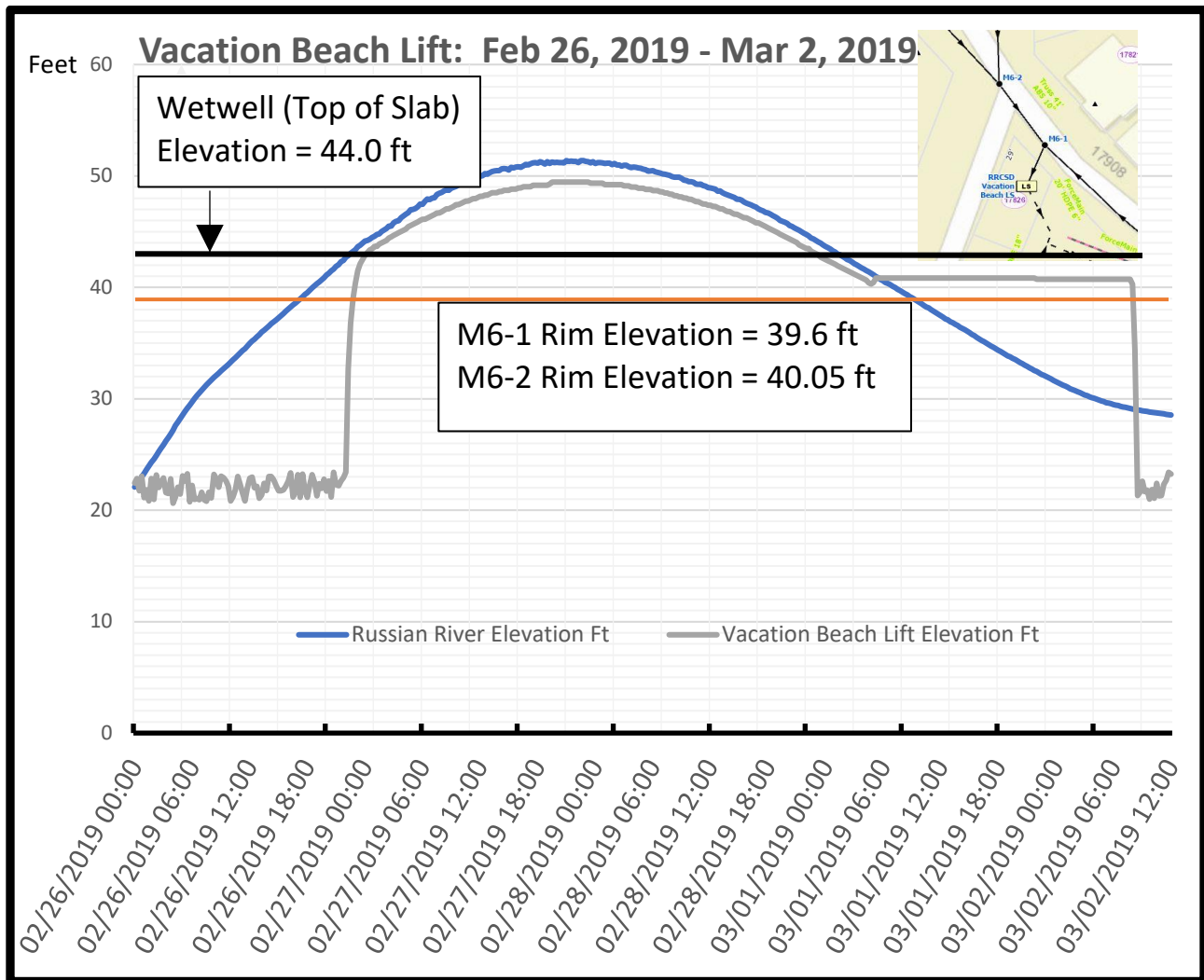
Comment No. A4: RRWPC feels that four years is an excessive amount of time to address these violations and that this process has been an unfair experience to the RRWPC, who has made numerous requests for feedback.

Response to Comment No. A4: As allowed by the Enforcement Policy, Water Boards may adjust calculated liabilities as a result of settlement negotiations with a discharger. Settlement communications are confidential in accordance with California Evidence Code sections 1152 and 1154 and Government Code section 7922.000. As such, Prosecution Team staff may not discuss the content of such negotiations with outside parties. Furthermore, settlement discussions are to remain confidential unless an agreement is made by both parties involved that details what information may be released. While Regional Water Board staff recognize that there was, and continues to be, a public interest in what occurred during these discussions, no agreement has been made to share the content of the settlement negotiations with outside parties.

Comment No. A5: RRWPC challenges the identified number of days that the Vacation Beach manhole was spilling and suggests that the violation should also include violations for February 26 through 28, 2019.

Response to Comment No. A5: Regional Water Board staff reviewed all evidence related to the Vacation Beach manhole overflow and while staff do not dismiss Esa Day's observations regarding the timing of this overflow, other evidence supports that this overflow did not occur until March 1, 2019. Specifically, the District's pumping logs and wet-well level data from the Vacation Beach Lift Station shows that before 5:00 pm on February 26, the water level in the lift station was below Manhole M6-1 (rim elevation 39.6'), and no overflow would have been occurring. Additionally, the District reported that their staff were on site February 26th, and saw no evidence of a spill, but placed signage in an abundance of caution due to impending flood conditions.

The District uses a pressure transducer to measure the water surface elevation of the wet well. After 5:00 pm on February 26, 2019, flood waters started to raise above Manhole M6-1. By 7:00 pm on February 26, Manhole M6-1 was approximately three feet under flood waters. The data also illustrates that Manhole M6-1 remained underwater until approximately 5:00 am on March 1, 2019. The depth of floodwater over the manhole reached a height of 11.5 feet during the flood event. The District submitted the below graph depicting wet well level (grey line) for the Vacation Beach lift station and the corresponding Russian River water level (blue line) over the period from February 26, 2019 through March 2, 2019.



This graph shows that the Vacation Beach Lift Station wet well level was being maintained at normal levels until after the Russian River's water level exceeded the elevation of the M6-1 manhole on February 26, 2019. The wet well's level then remained slightly lower than the Russian River's level over the next two days until the river's water level finally dropped below the M6-1 manhole's elevation on March 1, 2019. District records indicate that pumping from the Vacation Beach Lift Station continued throughout February 27 and 28, 2019, resulting in conditions that would prevent the release of sewage from the manhole during the period where flood waters covered the manhole. The wet well level then maintained at just above the M6-1 manhole's elevation during the period of documented overflow, from March 1 through March 2, 2019. The overflow condition ended on March 2, 2019, after the District was able to restart pumping from the Vacation Beach lift Station.

Comment No. A6: RRWPC raised concerns with how the penalty amount was determined and feels that it does little to make the Sonoma County Water Agency take the situation seriously enough to incentivize fixing their infrastructure.

Response to Comment No. A6: See Response to Comment A4. Per the Enforcement Policy, the liability calculated pursuant to the methodology may be adjusted in consideration of hearing and/or litigation risks, including: equitable factors, mitigating circumstances, evidentiary issues, or other weaknesses in the enforcement action that the prosecution reasonably believes may adversely affect the ability to obtain the calculated liability from the administrative hearing body. Ordinarily, these factors will not be fully known until after the issuance of an Administrative Civil Liability (ACL) complaint or through pre-complaint settlement negotiations with an alleged violator. These factors shall be generally identified in any settlement agreement or an ACL that seeks approval by a Water Board or its designated representative.

Furthermore, as identified in Response to Comment A2 above, the Discharger's current NPDES Permit includes provisions that require the District to submit a plan to correct identified deficiencies in its collection system and treatment plant, and to identify cost effective long-term approaches that will be implemented to eliminate, reduce, and mitigate spills. Upon submittal of the required revised SECAP in August 2024 and written report summarizing results of the engineering evaluation and identified CIPs, the Prosecution Team will recommend Board adoption of a revised NPDES permit in 2024, to provide additional requirements within Section 6.3.6.2, Flood Control and Flow Reduction Mitigation, that will require the timely implementation of both short-term and long-term fixes to the collection system and plant.

Comment No. A7: RRWPC raised concerns with how the dilution of sewage with rainwater is incorporated into the ACL. Specifically, they raise the question on how one would know what the proportion of sewage to rainwater is and ask how the spill volume was calculated.

Response to Comment No. A7: The proportion of sewage to rainwater may be estimated by evaluating what the normal anticipated collection system flow would be under dry weather conditions and identifying the additional flow as inflow resulting from rainwater. This calculation may be further refined by recognizing that the service area was under a mandatory evacuation order and that reduced business operation and homeowner occupancy at the times of these spills would have further reduced the sewage volume within the collection system.

Spill volumes for Violations 1.a. and 1.b. were calculated by visually estimating the flow of material being released from their respective manholes and multiplying this by the duration of time that each spill occurred. The spill volume resulting from Spill 1.c. was initially estimated using this same method, but was later updated using computer modeling undertaken by the District.

Comment No. A8: RRWPC recognized that the Prosecution Team has elected to reduce the penalty amount by 15% for uncertainty inherent in an administrative enforcement proceeding and potential litigation. They identify that this is a benefit to the

ratepayers, but also that it ultimately doesn't help future rates because the District's system is in such disrepair.

Response to Comment No. A8: Regional Water Board staff recognize RRWPC's concern, but reiterate that no portion of the penalty may be suspended upon completion of a Compliance Project, such as making repairs of the collection system, as described in Response to Comment No. A2 above. Furthermore, the Discharger's current NPDES Permit includes additional requirements, also described in Response to Comments No. A2, to ensure that the District is taking the necessary steps to identify deficiencies in the collection system and to create a plan to correct these deficiencies through engineering and contingency measures, cost-effective long-term approaches, and capital improvement projects that eliminate, reduce, and mitigate overflow events.

Comment No. A9: RRWPC identified that the October 2022 Board Meeting Packet indicated that the settlement agreement previously intended to address the 2017 sanitary sewer overflow violations and illegal discharge of May 2019. RRWPC asks if these events will be addressed through another action and what resulted in such a significant reduction in the maximum penalty amount. RRWPC would like to know more on what occurred during the settlement negotiations over the last four years.

Response to Comment No. A9: See Response to Comment A4. Additionally, the Prosecution Team exercised its discretion to not assess liability for the 2017 sanitary sewer overflow violations that occurred.

Comment No. A10: RRWPC identified that the settlement amount has been significantly reduced from the Statutory Maximum Penalty previously indicated and that none of the penalty was being put towards needed repairs of District's collection system. RRWPC reiterated that the penalty should be put towards repairs and that to do otherwise is unacceptable.

Response to Comment No. A10: See Response to Comment A2.

Comment No. A11: RRWPC feels that the 202,000-gallon spill estimate for violation 3 is based on wrong assumptions and asserted that this violation should span from February 26 through March 2, 2019, and not just March 1 through March 2, 2019. RRWPC follows this with citations from the December 6, 2019 inspection report and information provided from Esa Days' timeline to support that the spill began on February 26, 2019. It is discussed that the number of days that spills occurred, and the estimated spill volume is probably way too low.

Response to Comment No. A11: See Response to Comment A5.

Comment No. A12: RRWPC stated that, given the number of violations that have occurred from this system since it was installed, they feel that its management has not

been effective and that a higher penalty should be imposed to prevent continued mismanagement. It is further suggested that the penalty amount be taken from SCWA funds and not the District ratepayers.

Response to Comment No. A12: Comment acknowledged. The relevant management contracts make the District responsible for all District-related expenses, including payment of liabilities. Therefore, this stipulated liability order may result in a rate increase for District ratepayers.

Comment No. A13: RRWPC expressed a concern that citizens are being told that consolidation of the wastewater systems in West County communities is being sold as a means to reduce costs for rate payers, but RRWPC feels that this will instead turn the West County into an urban nightmare with few roads available to come into or out of. Additionally, RRWPC feels that consolidation would result in pipelines that would become additional environmental risks in the area's geologically unstable terrain.

Response to Comment No. A13: The proposed ECA would fund a feasibility study to evaluate potential regional projects that could improve water quality, water supply reliability, Pathogen TMDL compliance, and climate change resiliency in the Russian River. These potential projects include an evaluation of how consolidation may benefit the West County community. The proposed ECA further includes a Stakeholder Program requirement that will be used to engage the local community, as it is recognized that it will be difficult to move forward with a recommended project without stakeholder support. Implementation of projects evaluated under this ECA is not a requirement of the ECA.

Furthermore, future projects that arise from the feasibility study require CEQA review, through which the commenter's concerns and other concerns can be raised and addressed.

Comment No. A14: RRWPC suggested that expansion of recycled water would still be questionable as the Santa Rosa Laguna Treatment Plant is first obligated to provide treated wastewater to the Geysers and this may leave little recycled water behind for vineyards and other agricultural users.

Response to Comment No. A14: Consideration of the relative merits of projects that might be considered by the ECA is beyond the scope of this stipulated order. The proposed ECA is intended to identify and evaluate the feasibility of projects that may benefit western Sonoma County, but does not require implementation of those projects. Project alternatives presented in the ECA final report may include a discussion of issues of the sort raised by the commenter within the context of a project's feasibility, but projects selected for further development will subsequently include a robust environmental review under CEQA, which includes opportunity for public comment and engagement. The proposed ECA recognizes that stakeholder engagement and support is needed for any resulting projects to be successful and includes a Stakeholder

Committee to identify what projects will be supported for development. As such, the CEQA process and incorporated Stakeholder Program will ensure that concerns, such as this one, can be addressed prior to development and implementation of a recommended project.

Comment No. A15: RRWPC asked how a large-scale natural disaster would impact a consolidated wastewater system.

Response to Comment No. A15: See Response to Comment A14.

Comment No. A16: RRWPC believes that for the most effective wastewater treatment and recycling to occur and be economically feasible, it needs to be done as close to the source as possible. Further discussion is then provided that identified concerns with how breakdown events for a centralized treatment system may impact the West County as a whole and how recycled water users may be left with no resource because the Geysers get their share of the water first. Additionally, the commenter questioned who decides what is feasible and what is not, and ultimately who benefits from any identified projects if they were to move forward.

Response to Comment No. A16: See Response to Comment A14.

Comment No. A17: RRWPC concluded with a discussion on how the limited exceedances of *E. coli* bacteria in the Russian River could be more efficiently addressed through a septic system inspection program.

Response to Comment No. A17: *E. coli* exceedances in the Russian River are not specifically addressed or corrected through this enforcement action, but instead are being addressed through the Russian River Watershed Pathogen Total Maximum Daily Load (TMDL) and Prohibition against the discharge of Fecal Waste Materials (Pathogen TMDL) adopted the Regional Water Board on December 2, 2021. The Pathogen TMDL is awaiting approval from State Water Board and U.S. EPA.

B. Citizen Comment Letters in support of the Views of Russian River Watershed Protection Committee. (80 form letters received)

Comment No. B1: The proposed use of the penalty does not address the necessary repairs to the collection system and facility headworks. These parties are opposed to using the penalty funds for anything other than repairing the failing system.

Response to Comment No. B1: See Response to Comment A2.

Comment No. B2: Commenters urged the Regional Water Board to schedule a meeting regarding the proposed settlement agreement. It is further requested that the meeting include a zoom option as many property owners are from other areas and do not live in the district full-time.

Response to Comment No. B2: See Response to Comment A1.

C. Letter of Support from Mr. Matt McDermott, Board Chair, Forestville Water District

Comment No. C1: The commenter identifies the Forestville Water District's support for the proposed ECA and provides his reasoning on how the proposed feasibility study may bring significant benefits to the West County community.

Response to Comment No. C1: The Parties acknowledge this commenter's support for the proposed ECA.