

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION**

In the Matter of:

**City of Grass Valley
Grass Valley City Wastewater
Treatment Plant
Nevada County**

ORDER R5-2023-0511

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region (Central Valley Water Board), on behalf of the Central Valley Water Board Prosecution Team (Prosecution Team), and the City of Grass Valley (Discharger) (collectively known as the Parties) and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger owns and operates the City of Grass Valley Wastewater Treatment Plant (Facility), a wastewater collection, treatment, and disposal system, which provides sewerage service to the City of Grass Valley. Treated municipal wastewater is discharged to Wolf Creek, a water of the United States.
3. On 1 February 2022, the Central Valley Water Board enrolled the Facility under the General Order for Municipal Wastewater Dischargers That Meet Objectives/Criteria at the Point of Discharge to Surface Water Order R5-2017-0085-01 (Municipal General Order) (NPDES Permit No. CAG585001). The Facility was assigned Municipal General Order enrollee number R5-2017-0085-019.
4. Notice of Applicability (NOA) R5-2017-0085-019, section V, includes, in part, the following effluent limitation at Discharge Point 001:

Table 1. Effluent Limitations

Parameter	Units	Average Monthly	Average Weekly	Maximum Daily
Biochemical oxygen demand (BOD)	mg/L	10	15	--

5. NOA R5-2017-0085-019, section V.3, includes the following effluent limitations at Discharge Point 001:

- e. Total Coliform Organisms (Municipal General Order section V.A.1.a.ii.(c))**
(Measured at UVS-002). Effluent total coliform organisms shall not exceed:
- i. 2.2 most probable number (MPN) per 100 mL, as a 7-day median;
 - ii. 23 MPN/100 mL, more than once in any 30-day period; and
 - iii. 240 MPN/100 mL, at any time.

6. This Stipulated Order addresses violations that occurred between 1 February 2022 and 31 December 2022. On 24 April 2023, Central Valley Water Board staff issued a Notice of Violation and Record of Violations (ROV) to the Discharger for effluent violations relating to BOD and total coliform exceedances occurring between 1 February 2022 and 31 December 2022. The Discharger responded on 24 April 2023 and agreed with the violations detailed in the ROV. These violations are subject to penalties as described below.
7. This Order addresses an administrative civil liability (ACL) for effluent limitation violations that occurred between 1 February 2022 and 31 December 2022. These violations are specifically identified in Attachment A, Record of Violations, to this Order as subject to mandatory minimum penalties (MMPs). Attachment A to this Order is attached hereto and incorporated herein by this reference.
8. Water Code section 13385, subdivisions (h) and (i) require the assessment of MMPs and state, in part, the following:

Water Code section 13385, subdivision (h)(1) states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

Water Code section 13385, subdivision (h)(2) states:

For the purposes of this section, a “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

Water Code section 13385, subdivision (i)(1) states, in part:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person 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.
9. According to the Discharger's self-monitoring reports, and as shown in Attachment A, the Discharger committed six (6) non-serious BOD and total coliform violations. Of the six (6) non-serious violations, four (4) are subject to MMPs under Water Code section 13385, subdivision (i)(1) because these violations were preceded by three or more effluent limit violations within a 180-day period. The remaining two (2) non-serious violations are not subject to MMPs because they fall within the first three violations within a 180-day period.
10. The total MMP assessed for the alleged effluent violations is **twelve thousand dollars (\$12,000)**.
11. Water Code section 13385, subdivision (k) states:
- (1) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to Water Code section 13385 subdivisions (h) and (i) against a publicly owned treatment works serving a small community, the state board or the regional board may elect to require the publicly owned treatment works to spend an equivalent amount towards the completion of a compliance project proposed by the publicly owned treatment works, if the state board or the regional board finds all of the following:
 - (A) The compliance project is designed to correct the violations within five years.
 - (B) The compliance project is in accordance with the enforcement policy of the state board, excluding any provision in the policy that is inconsistent with this section.
 - (C) The publicly owned treatment works has prepared a financing plan to complete the compliance project.
 - (2) For the purposes of this subdivision, "a publicly owned treatment works serving a small community" means a publicly owned treatment works serving a population of 20,000 persons or fewer or a rural county, with a financial hardship as determined by the State Water Resources Control Board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works.

12. Under the State Water Resources Control Board's (State Water Board) Water Quality Enforcement Policy (Enforcement Policy), a publicly owned treatment work (POTW) serving a small community is a POTW serving a community that has a financial hardship and has a population of 10,000 or fewer people or lies completely within one or more rural counties.
13. Adoption of the Enforcement Policy preceded an amendment to Water Code section 13385, subdivision (k)(2), which was amended to raise the population threshold to 20,000 or fewer people.
14. Under the State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy), "financial hardship" means that the community served by the POTW meets one of the following criteria:
 - a. Median household income for the community is less than 80 percent of the California median household income;
 - b. The community has an unemployment rate of 10 percent or greater; or
 - c. Twenty percent of the population is below the poverty level.
15. The Central Valley Water Board finds that the Discharger is eligible for a compliance project because the Facility is a publicly owned treatment works serving a small community with a financial hardship. It is located in Nevada County, which is a qualified rural county based on the 2013 United States Department of Agriculture Rural-Urban Continuum Codes for California. In addition, the Facility serves a population with a median income of \$44,906 according to the 2021 American Community Survey 5-Year Estimate, which is less than 80% of the California median household income, according to the 2021 American Community Survey 5-Year Estimate.
16. On 28 December 2022, the Central Valley Water Board issued Administrative Civil Liability Order (ACLO) R5-2022-0506 assessing a \$18,000 MMP to the Discharger for effluent violations occurring between 1 January 2021 and 31 January 2022. Under ACLO R5-2022-0506, the Discharger was able to apply the full MMP amount toward a compliance project designed to improve water quality by reducing ammonia and total coliform. The Discharger submitted documentation showing that it spent \$124,195.15—which exceeded the \$18,000 penalty by \$106,195.15—to replace the aeration basin diffuser membranes and improve the ultraviolet disinfection system.
17. Since the compliance project described in ACLO R5-2022-0506 was designed to correct ammonia and total coliform violations, and since reducing ammonia will have the corollary effect of reducing biological oxygen demand (BOD), the compliance project is expected to correct the violations identified in Attachment A. Therefore this Order allows the total \$12,000 MMP to be applied toward the compliance project described in ACLO R5-2022-0506. Applying the MMP to that compliance project is consistent with the Enforcement Policy because the violations in this Order occurred prior to the completion of the project on 31 March 2023.

18. The Parties have engaged in confidential settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60. To resolve the violations set forth in Attachment A, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an ACL in the amount of **twelve thousand dollars (\$12,000)** in MMPs against the Discharger.
19. The Central Valley Water Board Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

20. **Jurisdiction:** The Parties agree that the Central Valley Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
21. **Administrative Civil Liability:**
 - a. The Discharger hereby agrees to the imposition of an ACL in the amount of **twelve thousand dollars (\$12,000)** to the Central Valley Water Board to resolve the violations specifically alleged in Attachment A to this Order.
 - b. The full penalty amount has been satisfied through the completion of the compliance project described in ACLO R5-2022-0506. The project was completed on 31 March 2023.
22. **Publicity:** Whenever the Discharger or its agents or subcontractors publicizes one or more elements of the Compliance Project, it shall state in a prominent manner that the Compliance Project is being undertaken as part of the settlement of an enforcement action by the Central Valley Water Board against the Discharger.
23. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an ACL in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional ACLs. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

24. Party Contacts for Communications Related to Stipulated Order:

For the Central Valley Water Board:

Xuan Luo, Ph.D., P.E.
Senior Water Resources Control Engineer
NPDES/Forest Activities Compliance and Enforcement
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670
(916) 464-4606
Xuan.Luo@waterboards.ca.gov

For the Discharger:

Trever van Noort
Utilities Manager
City of Grass Valley
125 East Main Street
Grass Valley, CA 95945
(530) 274-4371
trevern@cityofgrassvalley.com

- 25. 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.
- 26. Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
- 27. Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to this Stipulated 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.
- 28. No Waiver of Right to Enforce:** The failure of the Prosecution Team or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or

any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Central Valley Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of ACL complaints or orders for violations other than those addressed by this Order.

29. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Central Valley Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
30. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
31. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Central Valley Water Board or its delegee.
32. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
33. **If Order Does Not Take Effect:** In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess an ACL for the underlying alleged violations, or may continue to pursue settlement. 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 any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or

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- b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
34. **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 Central Valley Water Board.
35. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
36. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or cause of action, which arise out of or are related to this action.
37. **Water Boards Not Liable:** Neither the Central Valley Water Board members, nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Central Valley Water Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Discharger, or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order.
38. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
39. **Necessity for Written Approvals:** All approvals and decisions of the Central Valley Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Central Valley 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 Stipulated Order.
40. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
41. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.

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42. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.

43. **Counterpart Signatures:** This Order 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 Prosecution Team
Central Valley Region

By: ORIGINAL SIGNED BY
John J. Baum
Assistant Executive Officer

12/27/2023
Date

City of Grass Valley

By: ORIGINAL SIGNED BY
Trevor Van Noort
Utilities Manager

1/02/2024
Date

HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley 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, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Central Valley Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this 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, Central Valley Region.

Patrick Pulupa
Executive Officer
Central Valley Regional Water Quality Control Board

Attachment A: Record of Violations

CITY OF GRASS VALLEY
GRASS VALLEY CITY WASTEWATER TREATMENT PLANT
RECORD OF VIOLATIONS (1 February 2022 – 31 December 2022) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2017-0085-019)

The following table lists the alleged violations subject to mandatory minimum penalties (MMPs), pursuant to Water Code section 13385(h) and (i).

Table A. Violations Subject to Mandatory Penalties

Item	Date	Parameter	Units	Limit	Measured	Period	Violation Type	MMP Type	CIWQS
*	12/20/2021	Total coliform	MPN/100 mL	2.2	17	7-day median	OEV	CHRON*	1099944
*	12/22/2021	Total coliform	MPN/100 mL	2.2	17	7-day median	OEV	CHRON*	1099945
*	12/23/2021	Total coliform	MPN/100 mL	2.2	17	7-day median	OEV	CHRON*	1099943
1	6/18/2022	BOD	mg/L	15	17	Weekly average	CAT1	CHRON	1106997
2	6/29/2022	Total coliform	MPN/100 mL	2.2	4.0	7-day median	OEV	NCHRON	1106764
3	6/30/2022	Total coliform	MPN/100 mL	2.2	4.0	7-day median	OEV	NCHRON	1106763
4	11/22/2022	Total coliform	MPN/100 mL	2.2	3.3	7-day median	OEV	CHRON	1111694
5	11/23/2022	Total coliform	MPN/100 mL	2.2	6.2	7-day median	OEV	CHRON	1111693
6	11/28/2022	Total coliform	MPN/100 mL	2.2	4.5	7-day median	OEV	CHRON	1111695

* Violation was previously resolved under Administrative Civil Liabilities Order R5-2022-0506

VIOLATIONS AS OF:	31 December 2022
Group I Serious Violations:	0
Group II Serious Violations:	0
Non-Serious Violations Not Subject to MMPs:	2
Non-Serious Violations Subject to MMPs:	4
Total Violations Subject to MMPs:	4

Mandatory Minimum Penalty Amount for Effluent Limit Violations

0 Serious Violations x \$3,000 Violation = \$0

4 Non-Serious Violation subject to MMP x \$3,000 per Violation = \$12,000

Total Expedited Payment Amount = \$12,000

Table B. Definitions

Abbreviation	Description
CAT 1	Violation of effluent limitation for Group I pollutant.
CAT 2	Violation of effluent limitation for Group II pollutant
CHRON	Chronic violation as defined by Water Code section 13385 (i). Any non-serious violation that falls within a 180-day period with three preceding violations. Thus, the fourth non-serious violation that occurs within a 180-day period is subject to MMPs.
CIWQS	California Integrated Water Quality System database. (https://www.waterboards.ca.gov/water_issues/programs/ciwqs/)
CTOX	Violation of chronic toxicity effluent limitation.
DREP	Deficient reporting violation. This will only result in MMPs if the report is so deficient as to make determination of compliance impossible for the reporting period.
LREP	Late Reporting violation. Every 30-Days a report is late counts as one serious late reporting violation subject to MMPs.
Measured	Reported value for the monitoring period by the Discharger.
MMP Type	Classification of the type of MMP violation.
Occurrence Date	Date that a violation occurred. For averaging period limitation violations, such as weekly and monthly averages, the last day of the reporting period is used such as last day of the week (Saturday) and last day of the month, respectively.
OEV	Violation of any constituent-specific effluent limitation not included in Group I or Group II.
NCHRON	Non-serious violation falls within the first three violations in a 180-day period, thus, not subject to MMP.
SIG	Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more. For Group II pollutants that exceed the effluent limitation by 20 percent or more.