

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

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| In the matter of: |) | |
| |) | |
| SAN JOSE WATER COMPANY, |) | SETTLEMENT AGREEMENT AND |
| SANTA CLARA COUNTY |) | STIPULATION FOR ENTRY OF |
| |) | ADMINISTRATIVE CIVIL LIABILITY |
| September 10, 2017, unplanned |) | ORDER |
| discharge of chlorinated potable |) | |
| water |) | ORDER NO. R2-2018-1011 |
| |) | |
| |) | |
| |) | |

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team) and San Jose Water Company (Discharger) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by the imposition of administrative civil liability against the Discharger in the amount of **\$75,000**.

Section II: RECITALS

1. The Discharger is a water purveyor and operates a drinking water system in the greater San Jose metropolitan area. The Discharger operates and maintains a potable water main located near Babb Creek in San Jose.
2. On September 10, 2017, the Discharger’s water main failed, resulting in an unplanned discharge of 110,250 gallons of potable water with a chlorine residual of up to 2.5 mg/L to a storm drain leading to Babb Creek, in violation of the Statewide NPDES Permit for Drinking Water System Discharges to Waters of the U.S., Order WQ 2014-0194-DWQ (Permit) section V.E. The unplanned discharge violated the Permit’s receiving water limitation for toxicity because it killed 565 fish in Babb Creek. None of the fish were species listed as threatened or endangered under State or federal law.
3. The water main break and unplanned discharge was reported to the Discharger at 3:43 a.m. on Sunday, September 10, 2017. The Discharger’s Field Services Inspector arrived at the site within 16 minutes of the report, began throttling down adjacent valves to reduce the discharge, and promptly contacted a crew to manage the discharge, deploy best management

practices (BMPs) for dechlorination, diffusion and sediment control, and repair the water main.

4. There is no evidence that the Discharger could have reasonably anticipated this water main failure. The Discharger's program for risk analysis, pipe replacement, rehabilitation, and preventative maintenance exceeds industry standards; the broken pipe that caused the discharge was not approaching the anticipated end of its useful life; and there was no indication the pipe was at high risk for failure.
5. The Discharger went above and beyond Permit requirements for implementing BMPs as soon as feasible, controlling and abating the discharge, assessing biological impacts, providing an initial spill notification within 24 hours, and providing a written report within five (5) days. In addition to other prompt response actions and mitigation measures, the Discharger's actions included the following:
 - a. Within 0.5 hours after it became aware of the discharge, the Discharger isolated the leak, reduced the flow, and deployed BMPs for dechlorination, diffusion and sediment control;
 - b. Within 2.5 hours after it became aware of the discharge, the Discharger obtained two representative grab samples for chlorine residual at the affected storm drain inlet. The results were non-detect (<0.1 mg/L);
 - c. Within six (6) hours after it became aware of the discharge, the Discharger began a biological survey of Babb Creek, including proactively sampling for chlorine residual, observing turbidity, and assessing and documenting the fish kill, and, within four (4) hours thereafter, provided notification to the Regional Water Board.
6. The Discharger's 5-day report also went above and beyond Permit requirements by providing a detailed timeline and description of the response and repairs, the method for volume calculation, a description of the biological survey, detailed information and photographs relating to the fish kill, maps and information concerning Babb Creek, and descriptions of the Discharger's leak detection program, spill response program and mobile application, and water main replacement program.
7. Pursuant to Water Code section 13385, subdivision (a)(2), the unauthorized discharge subjects the Discharger to administrative civil penalties not to exceed \$10,000 per day of violation and up to \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons.
8. The settlement amount (\$75,000) is less than the liability amount the Prosecution Team calculated or asserted using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) Water Quality Enforcement Policy (May 2010)¹ (Enforcement Policy) as shown in Attachment A. The final proposed administrative civil liability amount (\$83,100)

¹ The 2010 Enforcement Policy is used to assess the penalty for this case because the violation occurred before the effective date of the 2017 Enforcement Policy, October 5, 2017.

was reduced by approximately 10 percent (\$8,300) in consideration of hearing and/or litigation risks related to equitable factors and mitigating circumstances.

9. To resolve the alleged violation in Section II, paragraph 2, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$75,000** against the Discharger. Payment of \$37,500 to the “State Water Pollution Cleanup and Abatement Account” is due no later than 30 days following the Regional Water Board’s execution of this Stipulated Order. The remaining \$37,500 shall be treated as a suspended liability pending completion of a Supplemental Environmental Project (SEP) and shall be dismissed upon the SEP’s completion as provided for in Section III, paragraph 9.
10. The Parties have engaged in settlement negotiations and agreed to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an Order by settlement pursuant to Government Code section 11415.60.
11. The Prosecution Team contends that the resolution of the alleged violation is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violations, except as provided in this Stipulated Order; and that this Stipulated Order is in the public’s best interest.

Section III: STIPULATIONS

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **\$75,000** to resolve the alleged violation as set forth in Section II, paragraph 2, as follows: no later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for **\$37,500** made payable to the “State Water Pollution Cleanup and Abatement Account,” with reference to the Stipulated Order number on page 1 of this Stipulated Order, to the following address:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement (paul.cicarelli@waterboards.ca.gov), and the Regional Water Board (habte.kifle@waterboards.ca.gov).

2. **SEP Description:** The SEP requires the Discharger to provide a \$20,000 grant and \$17,500 in engineering and technical services to the California-Nevada Section of the American Water Works Association (CA-NV AWWA) to update the *Best Management Practices Manual for Drinking Water System Releases* (BMPs Manual), publicize the updated BMPs manual, and provide training workshops on the updated BMPs manual. Attachment B,

incorporated herein by reference, contains the complete SEP description, project milestones, budget, and reporting schedule.

3. Representations and Agreements Regarding the SEP:

- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that it will use the suspended \$37,500 (SEP Amount) to implement the SEP set forth in Attachment B. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedule, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.
 - b. The Discharger agrees to (1) spend the SEP Amount as described in this Stipulated Order; (2) provide certified, written reports to the Regional Water Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) provide as part of the final report due September 30, 2021 (SEP Completion Date), a certification by a responsible official, signed under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act. The Discharger further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the SEP at the Discharger's cost, and that the Discharger bears ultimate responsibility for meeting all deadlines and requirements specified in Attachment B.
4. **SEP Oversight Costs:** The San Francisco Estuary Partnership (SFEP) will oversee implementation of this SEP in lieu of Regional Water Board staff oversight. SFEP will report directly to the Regional Water Board. As set forth in Attachment B, the Discharger shall reimburse SFEP for all oversight costs associated with the SEP. Oversight costs are not considered part of the SEP's direct costs.
5. **Publicity Associated with the SEP:** Whenever the Discharger or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a **prominent manner** that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.
6. **Progress Reports and Inspection Authority:** The Discharger shall provide reports describing progress implementing the SEP to the Regional Water Board as described in Attachment B. The Discharger agrees that Regional Water Board staff, or its third-party oversight staff, have permission to inspect the SEP at any time without notice.
7. **Certification of SEP Completion:** On or before the SEP Completion Date, a responsible official of the Discharger shall submit a final report as described in Attachment B, a certified statement that documents the Discharger's expenditures during the SEP completion period, and documentation that the Discharger completed the SEP in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include the normal, routine work undertaken by the Discharger's staff. In making such certification, the signatory may rely on normal organizational project tracking

systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and the costs incurred. The Discharger shall provide Regional Water Board staff with any additional information reasonably necessary to verify the Discharger's SEP expenditures and completion.

8. **Time Extension for SEP:** The Regional Water Board Executive Officer may extend the SEP deadlines contained in this Stipulated Order if the Discharger demonstrates delays from unforeseeable circumstances, such as unforeseeable delays of Best Management Practice Manual approval, provided that the Discharger continues to undertake all appropriate measures to meet the deadlines. The Discharger shall make any deadline extension request in writing at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or its delegate must be in writing.
9. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, SEP completion, and any audits, the Executive Officer will issue a "Satisfaction of Order" that terminates any further Discharger obligations under this Stipulated Order and dismisses the remaining penalty amount.
10. **Failure to Expend All Suspended Funds on the Completed SEP:** If the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed SEP by the SEP Completion Date, the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Discharger to pay the Difference to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the Notice of Violation's issuance date. The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the Difference shall satisfy the Discharger's obligations to implement the SEP.
11. **Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date, or if there has been a material failure to satisfy a project milestone, the Executive Officer shall issue a Notice of Violation. The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Regional Water Board or its delegate. The Discharger shall be liable to pay the entire SEP Amount, or, if shown by the Discharger, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the assessed amount shall satisfy the Discharger's obligations to implement the SEP.

12. Regional Water Board is Not Liable: Neither the Regional Water Board members nor Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the Regional Water Board or its members or staff 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 Stipulated Order.

13. Compliance with Applicable Laws: The Discharger understands that payment of administrative civil liability 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 continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

14. Party Contacts for Communications related to this Stipulated Order:

For the Regional Water Board:

Habte Kifle
Water Resources Control Engineer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
habte.kifle@waterboards.ca.gov
(510) 622-2371

For the Discharger:

Francois Rodigari
Director of Water Quality and
Environmental Services
San Jose Water Company
1221A S Bascom Ave.
San Jose, CA 95128
Francois.Rodigari@sjwater.com
(408) 279-7967

15. Attorneys' 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.

16. Matters Addressed by this Stipulated Order: Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 1.

17. Public Notice: The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

18. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
19. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
20. **Modification:** The Parties shall not modify this Stipulated Order 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 delegate.
21. **If the Stipulated Order Does Not Take Effect:** If the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control Board or a court vacates it in whole or in part, 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 violation, 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 the following:
 - a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or 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 this Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein 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 that this period has been extended by these settlement proceedings.
22. **Waiver of Hearing:** The Discharger has been informed of the rights Water Code section 13323, subdivision (b), provides and hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.
23. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Stipulated 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. This explicit waiver of

rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including but not limited to time extensions and other terms contained in this Stipulated Order.

24. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.
25. **No Admission of Liability:** This Stipulated Order reflects the Parties' agreement on terms to settle disputed claims. In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code or any other federal, State, or local law or ordinance, all of which are expressly denied. The Discharger understands that, in the event of any future enforcement actions by the Regional Water Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 or 13385, subdivision (e). The Regional Water Board understands that the Discharger retains any and all of its objections, defenses, and rights to challenge, on any factual, legal, or other ground, such use of the Stipulated Order.
26. **Necessity for Written Approvals:** All Regional Water Board approvals and decisions under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
27. **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 Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.
28. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
29. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
30. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated 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. Furthermore, this Stipulated Order 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.

31. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.

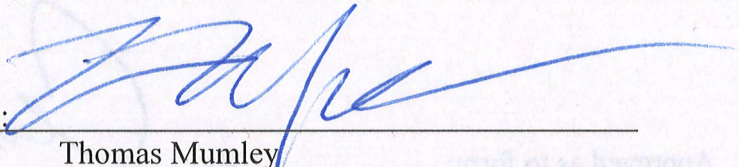
IT IS SO STIPULATED.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date:

7/19/18

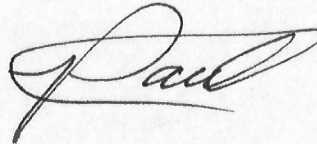
By:



Thomas Mumley
Assistant Executive Officer


Approved as to form:


By:



Paul Ciccarelli, Attorney
State Water Resources Control Board
Office of Enforcement

San Jose Water Company

Date: July 18, 2018 By: 
Andrew R. Gere, P.E.
President and Chief Operating Officer

Approved as to form: By: 
Chris Locke, Attorney
Farella, Braun & Martel LLP

ORDER OF THE REGIONAL WATER BOARD

1. This Stipulated Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the Enforcement Policy, which is incorporated herein by reference. The Regional Water Board's consideration of these factors and application of the Penalty Calculation Methodology is based on information the Prosecution Team obtained in investigating the allegations set forth in this Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board, which therefore finds issuance of this Stipulated Order exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Stipulated Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
4. The Executive Officer of the Regional 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 Stipulated Order.

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

Bruce H. Wolfe
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

ATTACHMENT A

Factors in Determining Administrative Civil Liability

San Jose Water Company Discharge of Chlorinated Potable Water to Babb Creek San Jose, Santa Clara County

The State Water Resources Control Board's Water Quality Enforcement Policy² (May 2010) (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code section 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation are presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms are not replicated herein. The Enforcement Policy is located at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

ALLEGED VIOLATION

On September 10, 2017, San Jose Water Company (Discharger) discharged 110,250 gallons of potable water with a chlorine residual up to 2.5 mg/L to Babb Creek in violation of the Statewide NPDES Permit for Drinking Water System Discharges to Waters of the U.S., Order WQ 2014-0194-DWQ (Permit) section V.E. The unplanned discharge violated the Permit's receiving water limitation for toxicity because it killed 565 fish in Babb Creek.

The Discharger is subject to administrative civil liabilities pursuant to Water Code section 13385, subdivision (a)(2).

| PENALTY FACTOR | SCORE | DISCUSSION |
|--|--------------|---|
| Harm or Potential Harm to Beneficial Uses for Discharge Violations | 4 | <p>A score of 4 (above moderate) is selected because the Discharger observed 565 dead fish in Babb Creek that ranged from 1 inch to 3 inches long. Thus, the environmental impacts from this discharge were observed and substantial, and posed a "more than moderate threat to beneficial uses...." (Enforcement Policy, p. 12.)</p> <p>The <i>San Francisco Bay Basin (Region 2) Water Quality Control Plan</i> (Basin Plan) designates the following beneficial uses of Babb Creek: warm freshwater habitat (WARM), wildlife habitat (WILD), water contact recreation (REC-1), and noncontact water recreation (REC-2). The beneficial uses most affected by the chlorinated potable water discharge and fish kill were WARM and WILD.</p> |

² The 2010 Enforcement Policy is used to assess the penalty for this case because the violation occurred before the effective date of the 2017 Enforcement Policy, October 5, 2017.

| PENALTY FACTOR | SCORE | DISCUSSION |
|---|------------------|---|
| Physical, Chemical, Biological, or Thermal Characteristics (Degree of Toxicity) | 2 | A moderate toxicity risk is selected because the discharge had “some level of toxicity or pose[d] a moderate level of concern regarding receptor protection.” (Ibid. at 13.) Specifically, the discharge consisted of up to 2.5 mg/L chlorine residual, which is more than 100 times the U.S. EPA Water Quality Criterion of 0.019 mg/L for acute (one-hour) effects to aquatic life. ³ |
| Susceptibility to Cleanup or Abatement | 1 | The Enforcement Policy requires a score of 1 where less than 50 percent of a discharge is susceptible to cleanup or abatement. (Ibid. at 13.) A score of 1 is assessed because the discharge was not susceptible to cleanup or abatement. The discharge quickly comingled with the creek and flowed downstream. |
| Final Score | 7 | The scores for the above three factors are added together to provide a “Potential for Harm” score of 7 (4+2+1 = 7). |
| Deviation from Requirement | Major | A “major” deviation from requirement is selected because the unplanned discharge contained toxic concentrations of chlorine that killed fish. Permit section V.E (Receiving Water Limits) prohibits a discharge from causing or contributing to an occurrence of toxicity, ⁴ but was rendered ineffective. |
| Per-Gallon and Per-Day Factor for Discharge Violations | 0.31 | Enforcement Policy Tables 1 and 2 contain per-gallon and per-day factors based on the Potential for Harm and Deviation from Requirement. (Ibid. at pp.14-15.) A Potential for Harm score of 7 and a major Deviation from Requirement result in per-gallon and per-day factors of 0.31. |
| Adjustment for High Volume Discharges | \$4/gallon | A high volume adjustment for this incident is selected because 110,250 gallons is a marginally high volume discharge. The Enforcement Policy allows a reduction of the maximum per-gallon amount (\$10/gallon) for high volume discharges and recommends a maximum of \$1/gallon for high volume discharges of recycled water unless “reducing [the] maximum amounts result[s] in an inappropriately small penalty, ... a higher amount, up to [the] maximum per gallon amount, may be used.” (Ibid. p. 14.) Potable water is similar to recycled water in that both contain chlorine residual concentrations toxic to aquatic life. However, application of \$1/gallon for this incident would result in an inappropriately small penalty relative to its impact on beneficial uses. Instead, \$4/gallon is used to calculate the initial liability because the resulting penalty is a suitable deterrent and bears a reasonable relationship to the gravity of the violation and the harm to beneficial uses. |
| Initial Liability | \$138,570 | The initial liability is calculated as follows ([per-gallon factor x per-gallon amount x volume exceeding 1,000 gallons discharged but not cleaned up] + [per-day factor x maximum per-day liability x number of days of violation]): \$138,570 = (0.310 x \$4/gallons x 109,250 gallons) + (0.310 x \$10,000/day x 1 day) |

³ U.S. EPA, *Quality Criteria for Water* (1986).

⁴ The Permit defines “toxicity” as “toxic substances to be present, individually or in combination, in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.”

| Adjustments for Discharger Conduct | | |
|---|------|--|
| Culpability | 0.8 | <p>A reduced culpability multiplier of 0.8 is selected because the Discharger’s program for pipe replacement, rehabilitation, and preventative maintenance exceeds industry standards. Moreover, the broken pipe that caused the discharge was not approaching the anticipated end of its useful life, and there was no indication that the pipe was at high risk for failure. The discharge was unplanned and unexpected.</p> <p>The Discharger uses risk analysis (e.g., pipe age, material, and impact to surrounding areas in the event of a leak) to prioritize pipe replacement. The Discharger also uses an acoustic leak detection technology to continuously monitor mains, identify and locate leaks, monitor leak progression, and assign resources in the event of a discharge. The Discharger also uses the acoustic system to prioritize pipe replacement and rehabilitation.</p> <p>The Discharger’s main replacement rate is one percent per year (i.e., 24 miles per year) and is the highest rate allowed by the California Public Utilities Commission for this system. The Discharger has maintained this replacement rate over the last eight years and plans to maintain this rate indefinitely. In 2016, the Discharger had 7.3 main leaks per 100 miles of mains, which is below the industry standard goal set by American Water Works Partnership of Safe Water of 15 leaks per 100 miles.</p> <p>There is no evidence that the Discharger had any prior indication that the 6⁵/₈-inch cement-lined and -coated steel pipe would break. The pipe was installed in 1959 and was 58 years old. The useful life of this type of pipe is typically 80 to 100 years. Age was unlikely a factor in the break, and there was no prior leak along the broken segment.</p> |
| Cleanup and Cooperation | 0.75 | <p>A reduced cleanup and cooperation multiplier of 0.75 is selected because the Discharger went above and beyond the Permit requirements of implementing BMPs as soon as feasible, providing the initial spill notification within 24-hours, and providing written notification within 5-days. The Permit does not require monitoring for emergency (unplanned) discharges.</p> <p>Specifically, the following Discharger actions went above and beyond Permit requirements:</p> <ul style="list-style-type: none"> • Within 0.5 hour after it became aware of the incident, the Discharger isolated the leak, reduced the flow, and deployed BMPs for dechlorination, diffusion, and sediment control. • 2.5 hours after it became aware of the incident, the Discharger obtained two representative grab samples for chlorine residual at the affected storm drain inlet. The results were non-detect (i.e., <0.1 mg/L). • Within 6.0 hours after it became aware of the incident, the Discharger began a biological survey of the creek, including proactively sampling for chlorine residual, observing turbidity (above and below the discharge point), and assessing and documenting the fish kill. • Within four hours after finishing its biological survey along Babb Creek and observing adverse impacts, the Discharger notified the Regional Water Board. <p>The Discharger submitted its 5-day spill report on time and went beyond the Permit requirements for reporting the dates, times, duration, corrective measures, and steps to prevent reoccurrence.</p> <p>Specifically, the following reports went above and beyond Permit requirements:</p> <ul style="list-style-type: none"> • Timeline and description of response and repairs. • Method of volume calculation. |

| | | |
|---|---------------------------|--|
| | | <ul style="list-style-type: none"> • Description of biological survey. • Table of fish size, number, and location, and photographs of dead fish. • Creek turbidity, flow path, and instrument readings. • Photographs of field instrument readings for residual chlorine. • Maps of drainage system and areas of biological survey. • Description of leak detection program. • Description of water main replacement program. <p>The Discharger’s standards for spill response exceed industry standards. In the event of a release, field crews have a mobile application with the ability to check electronically the spill location and the nearest surface water. The mobile application promotes quick deployment to protect surface water. Field crews also receive training to properly implement best management practices in the event of a discharge.</p> |
| History of Violations | 1 | A neutral history of violations multiplier of 1 is selected because the Discharger does not have a history of enforcement associated with its water main distribution system. |
| Total Base Liability | \$83,142 | The initial liability is multiplied by each factor related to the Discharger’s conduct to determine the Total Base Liability as follows: \$83,142 = \$138,570 x 0.8 (culpability) x 0.75 (cleanup) x 1 (history) |
| Ability to Pay and Continue in Business | No adjustment | No adjustment is made because the Discharger has not demonstrated an inability to pay the proposed penalty. Its 2017 second quarter financial report states it has net earnings of \$18.7 million, operating revenue of \$102.1 million, and production expenses of \$38.5 million. ⁵ This indicates that the Discharger’s income is adequate to pay the proposed penalty. |
| Economic Benefit | No adjustment | No adjustment is made. The Discharger did not gain any economic benefit from the violation since this was an unplanned and unanticipated discharge involving a water main that had not exceeded its anticipated useful life. |
| Other Factors as Justice May Require | | |
| Staff Costs | No adjustment | No adjustment is made to assess staff costs. |
| Maximum Liability | \$1.102 million | Water Code section 13385 allows a penalty of up to \$10,000 for each day in which a violation occurs and \$10 for each gallon exceeding 1,000 gallons discharged and not cleaned up. The maximum liability calculated based on 110,250 gallons and one day of violation is as follows: $\$1.102 \text{ million} = (110,250 \text{ gallons} - 1,000 \text{ gallons}) \times \$10/\text{gallon} + (1 \text{ day} \times \$10,000/\text{day})$ |
| Final Liability | \$83,100 (rounded) | The final liability is the total base liability after appropriate adjustments for ability to pay, economic benefit, other factors, and maximum liability. |

⁵ <https://www.sjwgroup.com> (Press Release, *SJW Group Announces 2017 Second Quarter Financial Results*, July 26, 2017).

ATTACHMENT B
San Jose Water Company
Proposal for Supplemental Environmental Project (SEP)
Update the 2014 Best Management Practices Manual for Drinking Water System Releases,
Publicize the Update, and Provide Training on the Updated Manual

1. **Project Title:** Publish updates to and provide training on the *Best Management Practices Manual for Drinking Water System Releases* (BMPs Manual) for the Cal-Nevada Section of American Water Works Association (CA-NV AWWA).
2. **Service Area:** State of California
3. **Name of Responsible Entity:** San Jose Water Company (Discharger)
4. **Estimated Cost for Project Completion:** The cost for project completion is \$37,500, which includes a \$20,000 grant and \$17,500 in engineering and technical services to CA-NV AWWA. The Discharger will provide a grant of \$20,000 to CA-NV AWWA to update the BMPs Manual, to publicize the updates, and to provide training workshops on the updated BMPs Manual. The Discharger will actively participate in the updating of the BMPs Manual, assist with training, and share compliance systems it has developed for the 2014 Statewide National Pollutant Discharge Elimination System Permit for Drinking Water System Discharges to Waters of the United States, Order WQ 2014-0194-DWQ (Statewide General Permit). The Discharger will share sample field logs, BMPs validation data, standard operating procedures, and examples of 5-day reports. These in-kind services will include the assignment of at least one of the Discharger's Water Quality Engineers to work on the CA-NV AWWA Committee assigned the responsibility to revise the 2014 BMPs Manual and provide consulting services to support the work of Discharger personnel. The value of the in-kind services is estimated at \$17,500 and will be documented by providing an itemization of the consulting expenses related to supporting the upgrade of the BMP Manual and the number of hours worked on this SEP by the Water Quality Engineer and other Discharger personnel.
5. **CA-NV AWWA Approval:** The Executive Board of CA-NV AWWA approved the following motion at its March 28, 2018, meeting: "Motion No. 1 -2018-6. To support a grant of money, estimated at \$20,000, from the Discharger to revise and publish Best Management Practices for drinking water discharges; and to coordinate training for drinking water utilities on the revised BMPs."

6. **Contact Information:**

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Director of Water Quality and Environmental Services
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CA-NV AWWA
Dr. Tim Worley
Executive Director
10435 Ashford St. 2nd Floor
Rancho Cucamonga, CA 91730
tworley@ca-nv-awwa.org
(909) 291-2102

7. Project Goals and Description: The goal of the project is to update the 2014 CA-NV BMPs Manual, publicize the update, provide training on the updated BMPs Manual, and share the Discharger's compliance system information with other drinking water systems operators (Operators) in order to standardize and facilitate compliance with the Statewide General Permit. The Discharger will provide proposed BMPs for incorporation into the BMP Manual, and the BMP Manual update will contain examples related to planned discharges and unplanned or emergency discharges, as outlined below:

a. Planned Discharges Due to:

- Groundwater supply well flushing or pump-to-waste.
- Groundwater well development, rehabilitation, and testing.
- Groundwater monitoring for supply well development, rehabilitation, and testing.
- Trench dewatering of drinking water during planned repairs.
- Transmission system installing, cleaning, and testing.
- Water treatment plant operations (excluding filter backwash discharged to waters of the United States).
- Distribution system storage tank or reservoir releases.
- Distribution system dewatering, flushing, and pressure testing.
- Fire flow or fire hydrant testing.
- Meter testing.
- Automated water quality analyzers operations.
- Pressure relief valve releases.
- Unscheduled activities undertaken to comply with mandates of the Federal Drinking Water Act and California Health and Safety Code.

b. Unplanned or Emergency Discharges Due to:

- Emergency drinking water system failures and repairs, including transmission and distribution system failures and repairs.
- Trench dewatering due to an emergency failure.
- Operation errors.
- Catastrophic events.

c. BMPs to Be Reviewed for Incorporation into the BMPs Manual Update Will Include:

- Methods for sediment removal and dechlorination from trench dewatering operations (check dams, filtration, coagulant aided sedimentation, dechlorination diffusers, etc.).
- Methods for turbidity mitigation and erosion from well blow-offs (retention basins, sumps, check dams, dechlorination diffusers, etc.).
- Methods for sediment removal and dechlorination from basins and tanks cleaning (retention basins, pumping and filtration, dechlorination diffusers, etc.).
- Methods for sediment removal and dechlorination following well disinfection.
- Methods for tank overflow dechlorination.

- Methods for sediment removals and dechlorination from distribution system flushing activities.
 - Methods for early water main leak detection.
 - Methods for effectively responding to unplanned or emergency discharges and implementation of corrective actions, including notification to regulatory agencies, inspection, and adequate and timely biological assessment.
 - Methods for identifying and mapping environmentally sensitive water bodies.
 - BMPs for prioritization of main replacement program that include an environmental risk assessment component.
 - BMPs for prioritization of main replacement program that include a number of leaks per 100 miles/year component.
- 8. Water Quality and Beneficial Uses:** This SEP will provide educational materials, compliance training, and compliance education on BMPs that will protect the beneficial uses of waters of the State during planned and unplanned discharges of drinking water to surface water.
- 9. Confirmation That SEP Contains Only Measures That Go Above and Beyond Applicable Obligations of the Discharger:** The Discharger is under no current obligation to provide a grant to the CA-NV AWWA for any update to the 2014 BMPs Manual, or to train or publicize an updated 2014 BMPs Manual.
- 10. Demonstration that SEP Does Not Directly Benefit, in a Fiscal Manner, Water Board's Functions, Its Members, or Its Staff:** While this project will assist Operators in complying with the Statewide General Permit, and will advance the Water Board's goals in protecting the waters of the United States from potential discharges that contribute to exceedance of water quality objectives, the project funding will not directly benefit, in a fiscal manner, the Water Board's functions, its members, or its staff.
- 11. Nexus to Nature and Location of Violation:** The updated BMP Manual and training will provide guidance and tools to Operators for responding to unplanned discharges, deploying effective BMPs, investigating the potential impact of an unplanned discharge on the beneficial uses of the receiving waters, and reporting on these discharges. Thus, the SEP has a direct nexus to the September 10, 2017, unplanned drinking water discharge at Bambi Lane, San Jose, where the Discharger demonstrated the effectiveness of rapid response, mitigation, and abatement procedures. The updated BMP Manual and training will also reflect additional measures the Discharger is deploying for early detection and response.
- 12. Project Schedule, Milestones, and Deliverables:** The Discharger is responsible for providing all deliverable milestones described below and in Table 1.

a. Milestones:

| No. | Date | Milestones |
|-----|-----------------------------|---|
| 1 | September 28, 2018 | The Discharger submits to the Regional Water Board staff the proposed BMPs and preventative measures (e.g., replacement rates, leak detection methods, field logs, surface water location App, and other BMPs the Discharger currently uses) for review and approval by the Regional Water Board's Assistant Executive Officer. |
| 2 | November 30, 2018 | The Assistant Executive Officer completes his or her review of the proposed BMPs and corrective measures. |
| 3 | December 31, 2018 | The Discharger submits the approved BMPs and preventative measures to the CA-NV AWWA committee. |
| 4 | Apr 30, 2019 | The CA-NV AWWA committee reviews and selects BMPs and corrective measures stated in paragraph 7.c and milestone 1 above. |
| 5 | Oct 31, 2019 | CA-NV AWWA publishes the updated BMP Manual. |
| 6 | Nov 15, 2019 | The Discharger or CA-NV AWWA sends out advertisement for the updated BMP Manual and training. |
| 7 | Jan 1, 2020 to June 1, 2021 | The Discharger or CA-NV AWWA conducts at least two trainings to Operators on the updated BMP Manual in Northern and Southern California. Training activities will include: <ol style="list-style-type: none"> 1) Training workshop at CA-NV Fall or Spring Conference. Estimated attendance between 50 and 100. 2) Summary presentation at CA-NV annual Water Education Seminar. Estimated attendance in excess of 50. 3) A four to six-hour free training workshop in at least two, possibly up to four locations depending on attendance numbers, to take place in Northern and Southern California. Estimated attendance between 50 and 200 at each training event. |

b. Quarterly Reports: Within 30 days after the end of each calendar quarter, the Discharger shall submit quarterly progress reports documenting:

- Formation of a CA-NV AWWA committee to represent all Operators,
- Work performed by the committee, including schedules, decisions, publishing, advertising, and training.
- Submittal of deliverables detailed in Table 1 – Deliverables Table.

c. Final Report: The Discharger shall provide a final report documenting completion of the project. The final report shall include a declaration of SEP completion, address how the milestones for the project were fully implemented, certify that the Discharger followed all applicable environmental laws and regulations in implementing the SEP, and provide a final accounting of SEP expenditures as required by Stipulated Order, section III, paragraphs 2 and 3. The accounting must clearly document that the final cost of the SEP is equal to or more than the suspended liability of \$37,500. The final report shall be signed by an authorized Discharger representative under penalty of perjury.

Table 1 – Deliverables Table

| Due Date | Description | Deliverables |
|------------------|---|---------------------|
| October 31, 2018 | Submit Quarterly Report, including status on the following items, but not limited to: <ul style="list-style-type: none"> • Confirmation of committee formation and minutes of meeting #1 • Expected timeline for BMP Manual revisions, advertisements, and training | Quarterly Report #1 |
| January 31, 2019 | Submit Quarterly Report, including but not limited to status on the following items: <ul style="list-style-type: none"> • Sharing of the Discharger’s training materials and SOPs with committee • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes for meetings | Quarterly Report #2 |
| April 30, 2019 | Submit Quarterly Report, including but not limited to status on the following items: <ul style="list-style-type: none"> • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #3 |
| July 31, 2019 | Submit Quarterly Report, including but not limited to status on the following items: <ul style="list-style-type: none"> • Draft list of BMPs to be added to BMP Manual • Summary of committee activities • Dates of meetings • Agendas for meetings • Minutes for meetings | Quarterly Report #4 |
| October 31, 2019 | Submit Quarterly Report, including but not limited to status on the following items: <ul style="list-style-type: none"> • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #5 |
| January 31, 2020 | Submit Quarterly Report, including but not limited to status on the following items: <ul style="list-style-type: none"> • Completion of BMP Manual revisions • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #6 |

Attachment B
San Jose Water Company
Supplemental Environmental Project

| Due Date | Description | Deliverables |
|------------------|---|----------------------|
| April 30, 2020 | <p>Submit Quarterly Report, including but not limited to status on the following items:</p> <ul style="list-style-type: none"> • Records for BMP training sessions, including training dates and number of students trained • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #7 |
| July 31, 2020 | <p>Submit Quarterly Report, including but not limited to status on the following items:</p> <ul style="list-style-type: none"> • Records for BMP training sessions, including training dates and number of students trained • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #8 |
| October 30, 2020 | <p>Submit Quarterly Report, including but not limited to status on the following items:</p> <ul style="list-style-type: none"> • Records for BMP training sessions, including training dates and number of students trained • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #9 |
| January 29, 2021 | <p>Submit Quarterly Report, including but not limited to status on the following items:</p> <ul style="list-style-type: none"> • Records for BMP training sessions, including training dates and number of students trained • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #10 |
| April 30, 2021 | <p>Submit Quarterly Report, including but not limited to status on the following items:</p> <ul style="list-style-type: none"> • Records for BMP training sessions, including training dates and number of students trained • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #11 |

| Due Date | Description | Deliverables |
|--------------------|--|----------------------|
| July 30, 2021 | Submit Quarterly Report, including but not limited to status on the following items: <ul style="list-style-type: none"> • Records for BMP training sessions, including training dates and number of students trained • Summary of committee activities and decisions • Dates of meetings • Agendas for meetings • Minutes of meetings | Quarterly Report #12 |
| September 30, 2021 | Submit Final Report, including an abstract for a presentation and overview of the updated BMP Manual at either the CA-NV AWWA’s Fall 2020 or Spring 2021 conference. The final report shall include accounting invoices pertaining to this SEP for the Assistant Executive Officer’s review and approval. | Final Report |

13. Reports to Regional Water Board: All deliverables, reports, and accounting invoices pertaining to this SEP must be submitted to the Regional Water Quality Control Board, San Francisco Bay Region; State Water Resources Board, Office of Enforcement; and CA-NV AWWA. Quarterly and final reports will be approved by the Assistant Executive Officer if they meet the requirements of this proposal.

14. Project Performance Measures: The Discharger will be deemed to have fully performed its SEP-related obligations at such time that it has completed the actions described in the milestones above, including the reporting and accounting obligations. At a minimum, the SEP must achieve all of the following performance measures to be deemed complete:

- a. The updated BMPs Manual that is published and used for the Operator training required herein shall contain the following:
 - i. Methods for early water main leak detection;
 - ii. Methods for effectively responding to unplanned or emergency discharges and implementation of corrective actions, including notification to regulatory agencies, inspection, and adequate and timely biological assessment;
 - iii. Methods for identifying and mapping environmentally sensitive water bodies;
 - iv. BMPs for prioritization of main replacement program that include an environmental risk assessment component; and
 - v. BMPs for prioritization of main replacement program that include a number of leaks per 100 miles/year component.

- b. The Discharger or CA-NV AWWA shall conduct at least two Operator training events (one in Northern California and one in Southern California) on the updated BMPs Manual. No less than 50 Operators shall attend each training event.

15. Extension if Necessary: The SEP Completion Date is the due date of the final report, unless the Regional Water Board Executive Officer approves an extension in writing. If an extension is granted, it shall apply also to the reports to the Regional Water Board (paragraph 13) and to the third-party oversight (paragraph 16). If an extension is necessary, the

Discharger shall submit a written request for such extension to the Executive Officer and shall provide the justification for the delay as required by Stipulated Order, section III, paragraph 8.

16. Third Party Oversight Organization: The Discharger shall cover the full costs of project oversight. Oversight costs are not considered part of the project's direct cost. The Discharger shall use the San Francisco Estuary Partnership (SFEP) to provide third party oversight for this project and shall pay SFEP's invoice for oversight services, which will be sent to the Discharger after the Stipulated Order becomes effective. If the Executive Officer extends the SEP Completion Date past June 30, 2021, the Discharger shall be responsible for any additional oversight costs incurred as a result of the extension. For oversight of the project, SFEP will report directly to the Regional Water Board. All reports shall be emailed to the following:

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