



- b. EVMWD submitted self-monitoring reports (January 2006 through June 2011) for the EVMWD RWRF, which show effluent limit violations of total dissolved solids. These violations are summarized in Attachment 1 of this order.
- c. Water Code Section 13385 (i) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for non-serious violations, not counting the first three non-serious violations following each six-month, violation-free period.
- d. As shown in Attachment 1, the District incurred a total of fifty-six (56) reported violations between January 2006 and June 2011. The violations during January through March 2006, and May through July 2007 are Non-serious violations waived under this complaint pursuant to Water Code Section 13385(i). Fifty (50) violations out of the fifty-six (56) violations are subject to mandatory penalties of \$3,000 for each violation. In accordance with Water Code Section 13385 (i), the total mandatory penalty for the fourteen effluent limit violations cited in Attachment 1 is one hundred-fifty-thousand dollars (50 x \$3,000 = \$150,000).

**D. PROPOSED SETTLEMENT:**

1. The Discharger agrees to settle the above mandatory penalty (total liability: \$150,000) in accordance with the following:
  - a. The Discharger will pay \$75,475 to the State Water Resources Control Board. A check in this amount shall be mailed to the following address within 30 days of adoption of this Order:

Santa Ana Regional Water Quality Control Board  
3737 Main Street, Suite 500  
Riverside, CA 92501-3348
  - b. The Discharger will pay \$74,525 to the Water Education Foundation (WEF), for a Supplemental Environmental Project (SEP). This is the suspended liability payment and is also due within 30 days of adoption of this Order. A check in the amount \$74,525, made payable to WEF, shall also be mailed to the Regional Board at the above address. The suspended liability shall be deemed satisfied once the Discharger funds the SEP project and the project is completed by the SEP Proponent in accordance with the schedule proposed in the SEP proposal (Attachment 2).
2. WEF shall utilize the SEP allocation of \$74,525 as per the proposed budget in accordance with the schedule included in Attachment 2 of this Order.

**E. TERMS AND CONDITIONS OF THE AGREEMENT:**

1. The Discharger is alleged to have violated the California Water Code by discharging wastewater with constituents in excess of permit limitations to waters of the United States. These violations are subject to mandatory penalty. The Discharger agrees to waive its right to a hearing regarding this penalty. The total assessed liability is \$150,000.
2. The Discharger agrees to settle this penalty by making a payment of \$75,475 to the State Water Resources Control Board and by funding a SEP project for the suspended liability of \$74,525.
3. The SEP Proponent agrees to complete the SEP project as per the proposed budget and the schedule included in the SEP proposal outlined in Attachment 2 of this Order.
4. Upon adoption of this Order by the Executive Officer, incorporating this Agreement, this Order represents a final and binding resolution and settlement of violations alleged above against the Discharger and its subsidiaries, successors, assigns, and their officers, directors, employees, representative agents, and attorneys.
5. The Parties covenant and agree that they will not contest the Order before the State Water Resources Control Board, or any court.
6. The Parties agree that the procedure that has been adopted for the approval of the Agreement by the Parties, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this 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.
7. **Description of the SEP:** See Attachment 2.
8. **Deliverable Products from SEP:** See Attachment 2.
9. **Budget and Milestones:** See Attachment 2.

**10. Representations and Agreements by the SEP Proponent:** As a material consideration for the Executive Officer's acceptance of this Order, the SEP Proponent represents that it will utilize the funds provided to it by the Discharger to implement the SEP in accordance with the schedule in Attachment 2. The SEP Proponent understands that its promise to implement the SEP as described in Attachment 2, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Board. The SEP Proponent agrees that the Regional Board has the right to require the SEP Proponent to implement the SEP in accordance with the terms of this Order if it has received funds for that purpose from the Discharger. The SEP Proponent agrees to submit to the jurisdiction of the Regional Board to enforce the terms of this Order for purposes of implementation of the SEP.

The SEP Proponent represents to the Parties and to the Regional Board that the SEP Proponent will: 1) spend the SEP payment as described in the Order as per the project description in Attachment 2; and 2) provide a certified, written report to Regional Board staff consistent with the terms of this Order detailing the implementation of the SEP. The SEP Proponent agrees that Regional Board staff has the right to require an audit of the funds provided to it by the Discharger and expended by it to implement the SEP.

**11. Publicity:** Wherever the Discharger or its subcontractors or agents or the SEP proponent or its agents or subcontractors publicizes one or more elements of the SEP project, they shall state in a prominent manner that the project is being undertaken as part of the settlement of an enforcement action by the Regional Board against the Discharger.

**12. Public Notice:** This Order and Agreement, including the SEP proposal, were publicly noticed at least for 30 days. All public comments received have been considered and responded to.

**13. Regional Board Staff Oversight Costs:** Regional Board staff does not anticipate any staff oversight costs for the proposed SEP.

**14. Submittal of Progress Reports:** The SEP Proponent shall provide quarterly progress reports to the Designated Regional Board Representative on the 15<sup>th</sup> day of the month following the quarter; the first quarterly report is due on: April 15, 2012.

**15. SEP Program Audit:** The SEP Proponent shall allow Regional Board staff to audit the SEP project during normal business hours.

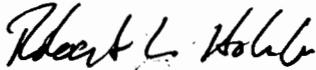
- 16. Final Certification:** On or before March 1, 2013, the SEP Proponent shall submit certified statements by responsible officials representing the SEP Proponent documenting the respective expenditures by the SEP Proponent to implement and to complete the SEP. The expenditures may be external payments to outside vendors or contractors implementing the SEP. In making such certification, the official may rely upon normal company project tracking systems that capture employee time expenditures and external payments to outside vendors such as environmental and information technology contractors or consultants. The SEP Proponent shall provide any additional information requested by the Regional Board staff which is reasonably necessary to verify the SEP Proponent's SEP expenditures. The certification need not address any costs incurred by Regional Board staff for oversight. The final report shall include a certification by the Principal Investigator, under penalty of perjury, stating that the SEP has been completed in accordance with Attachment 2 and any agreed upon written changes between the authorized representatives of the SEP Proponent and the Regional Board and the applicable provisions of this Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Board to evaluate the completion of the SEP and the costs incurred by the SEP Proponent.
- 17. Third Party Audit:** If the Designated Regional Board Representative obtains information that causes the representative to reasonably believe that the SEP Proponent has not expended money in the amounts claimed by the SEP Proponent, or has not adequately completed any of the work in the SEP proposal, as described in Attachment 2, the Designated Regional Board Representative, may require, and the SEP Proponent shall submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Regional Board providing such party(ies)'s professional opinion that the SEP Proponent has expended money in the amounts claimed by the SEP Proponent. In the event of such an audit, the SEP Proponent agrees that it will provide the third-party auditor with access to all documents which the auditor requests. Such information shall be provided to the Designated Water Board Representative within three (3) months of the completion of the SEP Proponent's SEP obligations. The audit need not address any costs incurred by the Regional Board staff for oversight.
- 18. Regional Board's Acceptance of Completed SEP:** Upon the SEP Proponent's satisfaction of its obligations under this Order, the completion of the SEP and any audits, the Designated Water Board Representative, shall request that the Executive Officer issue a "Satisfaction of SEP Letter." The issuance of the Satisfaction of SEP Letter shall terminate any further obligations of the SEP Proponent and the Discharger under this Order.

- 19. Failure to Expend All Suspended Liability on the Approved SEP Project:** In the event that the SEP Proponent is not able to demonstrate to the reasonable satisfaction of the Regional Board staff that it has spent the entire SEP Amount for the completed SEP, the SEP Proponent shall pay, the difference between the SEP funds and the actual amount expended, to the SWRCB.
- 20. Failure to Complete the SEP:** If the SEP is not fully implemented as per the schedule in Attachment 2 or there has been a material failure to satisfy a Milestone Requirement, the Designated Regional Board Representative shall issue a Notice of Violation. As a consequence, the SEP Proponent shall be liable to pay the entire SEP funds or, some portion thereof less the value of the completion of any Milestone Requirements. Unless otherwise ordered, the SEP Proponent shall not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the date of the "Notice of Violation" by the Designated Regional Board Representative. The amount of the SEP funds owed shall be determined via a "Motion for Payment of SEP Funds" before the Regional Board. Upon a determination by the Regional Board of the amount of the SEP funds, the amount owed shall be paid to the State Water Resources Control Board-WDPF within thirty (30) days after the service of the Regional Board's determination. In addition, the SEP Proponent shall be liable for the Regional Board's reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the suspended liability amount will satisfy the SEP Proponent's obligations to implement the SEP.
- 21. Regional Board is not Liable:** Neither the Regional Board members nor the Regional 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 SEP Proponent or its respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members or staff be held as parties to or guarantors of any contract entered into by the SEP Proponent, or its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Order.
- 22.** The SEP Proponent and the Discharger covenant not to sue or pursue any administrative or civil claim or claims against the Regional Board, or its officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the administrative civil liability, this Order or the SEP project.
- 23.** Nothing in this Order shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.

24. The Executive Officer may extend any of the due dates in this Order upon the joint request of the Parties. Such extensions must be in writing.
25. The effective date of this Order shall be the date on which it is adopted by the Executive Officer.
26. This Order relates only to the mandatory minimum penalty for violations that were listed Attachment 1 of this Order. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
27. In the event of a dispute, the SEP Proponent shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Board and the SEP Proponent shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Board and SEP Proponent are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.
28. Each person executing this Agreement in a representative capacity represents that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf he or she executes the Agreement.
29. This Agreement 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.
30. This Agreement shall not be modified by any of the Parties by oral representation made before or after the execution of this Agreement. All modifications must be made in writing and approved by the Executive Officer.
31. This Agreement may be executed by the parties 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.

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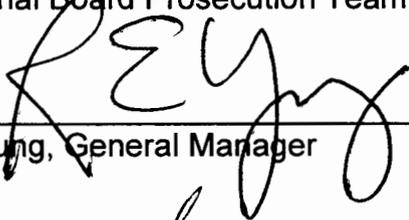
IT IS SO STIPULATED<sup>1</sup>



Robert L. Holub, Division Chief  
For the Regional Board Prosecution Team

02/24/12

Date



Ronald E. Young, General Manager  
For EVMWD

3/8/12

Date



Rita Schmidt Sudman, Executive Director  
For WEF

3/14/12

Date

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

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), in accordance with Sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Stipulated Order, the Executive Officer has considered all the factors prescribed in California Water Code Section 13327. The Executive Officer's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.
3. The foregoing Stipulation is incorporated into this Order.

Pursuant to Section 13385 of the California Water Code and Section 11415.60 of the California Government Code, the Executive Officer hereby adopts this Order.



Kurt V. Berchtold  
Executive Officer

Date

Santa Ana Regional Water Quality Control Board

<sup>1</sup> The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

## ATTACHMENT 1

### Effluent Limit Violations of Order No. R8-2005-0003, NPDES No. CA8000027 Elsinore Valley Municipal Water District, Regional Water Reclamation Facility

<b>TDS Effluent Limits</b>	<b>12-month running average 700 mg/L</b>	<b>250 mg/L above Source Water</b>		<b>12-month running average 700 mg/L</b>	<b>250 mg/L above Source Water</b>
<b>Month/Year</b>			<b>Month/Year</b>		
<b>2006</b>			<b>2009</b>		
Jan-06	[1]		Jan-09	1	
Feb-06	[1]		Feb-09	1	
Mar-06	[1]		Mar-09	1	
Apr-06	1		Apr-09	1	
May-06	1		May-09	1	
Jun-06	1		Jun-09	1	
<b>2007</b>			Jul-09	1	
May-07		[1]	Aug-09	1	
Jun-07		[1]	Sep-09	1	
Jul-07		[1]	Oct-09	1	
Aug-07		1	Nov-09	1	
Sep-07	1		Dec-09	1	
Oct-07	1		<b>2010</b>		
Nov-07	1		Jan-10	1	
Dec-07	1		Feb-10	1	
<b>2008</b>			Mar-10	1	
Jan-08	1		Apr-10	1	
Feb-08	1		May-10	1	
Mar-08	1		Jun-10	1	
Apr-08	1		Jul-10	1	
May-08	1		Aug-10	1	
Jun-08	1		Sep-10	1	
Jul-08	1		Oct-10	1	
Aug-08	1		Nov-10	1	
Sep-08	1		Dec-10	1	
Oct-08	1		<b>2011</b>		
Nov-08	1		Jan-11	1	
Dec-08	1		Feb-11		1
			Mar-11	1	
			Apr-11	1	
			May-11	1	
			Jun-11	1	

Notes: [ ] = Non-serious violations waived under this complaint pursuant to Water Code Section 13385(i).

## ATTACHMENT 2

### **Supplemental Environmental Project Water Education Foundation**

**Name of Project:** No Drugs Down the Drain Educational Radio Ad Campaign

**Name of Organization:** Water Education Foundation  
717 K Street, Suite 317  
Sacramento, CA 95814  
916-444-6240  
www.watereducation.org

**Contacts:** Rita Schmidt Sudman, Executive Director  
(rsudman@watereducation.org)  
  
Beth Stern, Development Director  
(bstern@watereducation.org)

#### **Overview**

The Water Education Foundation would like to support the Regional Board's efforts to educate citizens about keeping pharmaceuticals out of their water supply. Building on the success of the existing "No Drugs Down the Drain" public outreach program, the Foundation would focus its efforts on educating people on the problems associated with flushing their unused or expired drugs into the sewer system. In an entertaining and engaging radio ad campaign, citizens will learn about the importance of keeping their drugs out of municipal sewers, and where they can go for more information on programs and services in their communities.

#### **Project Description**

To help accomplish this task, the Water Education Foundation, a highly-respected, impartial, non-profit, 501(c) 3 organization with more than 30 years of experience in water issues, proposes to develop, coordinate, and implement a "No Drugs Down the Drain" type of educational radio ad campaign to run on radio stations in several Southern California counties, including Riverside, Orange, San Bernardino and Los Angeles.

The radio ad campaign will outline steps that everyday citizens can take to reduce pharmaceuticals in their sewer systems and/or wastewater treatment plants, and will drive residents to the statewide and/or regional "No Drugs Down the Drain" website(s) for more information and steps they can take to properly dispose of their unused medicines. Foundation staff will work with an award-winning radio production team from Sacramento Public Radio, KXPR that we have worked with on previous successful radio ad campaigns, to create and produce several ad spots in an entertaining and engaging format. Foundation staff will work with production team to develop two types of radio ads, one that fits the parameters for public radio and one that is suitable for air time on commercial radio. These ads will run on local radio stations such as KNX Newsradio, KPCC Southern CA Public Radio, and KFRG. Foundation staff has already contacted these radio stations about purchasing airtime, and is continuing to research other possible radio stations in the Southern California region. Also, since the radio station penetration is over much of Southern California, we will work to find other partners such as California Association of Sanitary Agencies (CASA) and sanitation districts, such as Orange County Sanitation District to collaborate with on the campaign.

The Foundation proposes to develop a radio ad campaign that will educate and create a behavior change in area residents. Foundation staff is aware that some sanitation districts, water agencies, or other organizations may have already developed similar educational/ad campaigns, and for this reason, Foundation staff will devote significant staff time to conducting research in order that we don't re-invent the wheel or produce spots that are duplicative in their message. Foundation staff will also convene a Technical Advisory Committee, comprised of representatives from the Regional Board, local water agencies, sanitation districts, CASA and others, to provide input on developing radio ads. The radio ad campaign will outline steps that everyday citizens can take to keep their unused or unwanted medications out of the water system. The ads will aim to educate residents about the options available to them for the safe and legal disposal of medications. The ads will encourage the listener to visit the No Drugs Down the Drain website for more information and to learn where their nearest disposal site is located.

Again, as with the Foundation's other programs, publications and educational campaigns, we will form an advisory committee of stakeholders (i.e. regional board representatives, water district representatives, city government representatives, sanitation districts, etc.) to ensure that the No Drugs Down the Drain educational radio ad campaign covers key issues and most effective solutions in a way that is accurate, timely, engaging and useful for involving citizens in efforts to reduce the amount of pharmaceuticals in their wastewater systems, thereby improving water quality in their communities. The 501(c)3 non-profit Water Education Foundation will maintain editorial control while giving serious consideration to all comments submitted by advisory committee members.

This project will enhance water quality and beneficial uses of the waters of the state by educating local Southern California residents about the options available to them to reduce the amount of pharmaceuticals discharged into a community's wastewater system.

**Scope of Work:**

The Water Education Foundation will undertake the following scope of work over a 6-9 month project period. The Water Education Foundation will report to the client on a quarterly basis both programmatic (% of tasks completed) and fiscal (% and amount of cost incurred against \$75,000 budget) progress on the project.

**Task 1: Planning/Design**

- Form advisory committee
- Meetings and communications with advisory committee to get their thoughts on ad campaign components
- Research existing campaigns and programs
- Identify radio stations in appropriate markets
- Identify possible additional water organization partners to join in the ad campaign

**Task 2: Ad Campaign Treatment**

- Research prior public educational campaigns on topic
- Hire radio production team
- Work with radio production team to write draft ad spots

**Task 3: Distribute Ad Campaign Treatment**

- Distribute Ad Campaign Treatment to advisory committee for comments

- Incorporate appropriate advisory committee comments into treatment to create ads

**Task 4: Ad Campaign**

- Develop ad campaign scripts with input from advisory committee
- Hire on-air talent
- Contact radio stations and purchase airtime for ad campaign
- Roll out ad campaign

**Task 5: Ad Campaign Promotion**

- Create No Drugs Down the Drain link on Water Education Foundation website and Aquaforia.com
- Link to other websites for more information. Websites could include the Regional Board, water district pages to be determined, the Southern California Salinity Coalition, etc.

**Task 6: Ad Campaign Analysis**

- Upon completion of ad campaign, the Foundation will furnish a media analysis report to the Regional Board detailing frequency and reach of ad campaign

**Task 7: Project Management and Evaluation**

- Contract management including quarterly progress reports and quarterly expense reports tracking incurred costs-to-date on the total project budget not to exceed \$75,000
- Final Distribution Report

**Budget:**

<b>Staff</b>	<b>Title</b>	<b>Rate</b>	<b>Hours</b>	<b>Cost</b>
Rita Schmidt Sudman	Executive Director	\$175	55	\$ 9,625
Sue McClurg	Program Director	\$150	45	\$ 6,750
Robin Douglas	Communications Associate	\$45	50	\$ 2,250
Diana Farmer	Office Manager/Clerical	\$40	35	\$ 1,400
Beth Stern	Development Director	\$80	25	\$ 2,000
			<i>Water Education Foundation Staff Costs</i>	\$22,025
<b>Services</b>				
Radio Production				\$ 5,000
Purchase of Airtime on local radio stations				\$45,000
Distribution & Publicity				\$ 2,500
			<i>Services Total</i>	\$52,500
			<b>Project Total</b>	<b>\$74,525</b>

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PS Form 3800	