

CONFORMED COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 30 2014

Sherri R. Carter, Executive Officer/Clerk
By Rosemarie D. Aquino, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

REC'D
JUL 25 2014
FILING WINDOW

BC 552862

PEOPLE OF THE STATE OF CALIFORNIA,
ex rel. STATE WATER RESOURCES
CONTROL BOARD,

Plaintiff,

v.

CITY OF GLENDALE, a municipal
corporation, and DOES 1-20 inclusive,

Defendants.

Case No.

[PROPOSED] FINAL CONSENT
JUDGMENT AND PERMANENT
INJUNCTION

(Health & Saf. Code, Div. 20, Chapter
6.7)

Plaintiff the People of the State of California, ex rel. State Water Resources Control Board ("State Water Board" or "Plaintiff") and Defendant City of Glendale ("City" or "Settling Defendant"), having consented pursuant to stipulation to the entry of this Final Consent Judgment and Permanent Injunction ("Final Judgment"); and

The Court having considered the pleadings, which include, without limitation, the Complaint, the parties' Stipulation for Entry of Final Consent Judgment and Permanent Injunction, and the proposed Final Consent Judgment and Permanent Injunction;

1 IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED as follows:

2 **INTRODUCTION**

3
4 Concurrent with the filing of this Stipulation, the State Water Board filed a Complaint in
5 this matter alleging that the City violated various laws and regulations governing the operation
6 and maintenance of underground storage tanks (“USTs”) and UST systems. The City denies
7 these allegations. The Parties previously stipulated to toll the statute of limitations as to the
8 alleged violations so as to allow a discussion of a negotiated resolution. In these negotiations,
9 both the State Water Board and the City were represented by counsel.

10 The Parties have entered into a Stipulation for Entry of Final Consent Judgment and
11 Permanent Injunction (“Stipulation”) to settle this matter in order to avoid prolonged and
12 complicated litigation, and after opportunity for review by counsel, the Parties consent to the
13 entry by the Court of this Final Judgment on the terms set forth below. As set forth in Item 22
14 and in the Stipulation, the parties have requested, and the Court has approved, that the Court
15 retain Jurisdiction for the purpose of enabling any party to this Final Judgment to apply to the
16 Court at any time for such further orders and directions as may be necessary and appropriate for
17 the enforcement or compliance with the Final Judgment.
18

19 **1. DEFINITIONS**

20
21 1.1. Except where otherwise expressly defined herein, all terms shall be interpreted
22 consistent with Chapters 6.7 of Division 20 of the California Health and Safety Code and Title
23 23, Division 3, Chapter 16 of the California Code of Regulations (“the UST Regulations”).

24 1.2. “Released Facilities” shall mean the eleven (11) UST facilities owned and
25 operated by the City and located at:

- 26 a. 421 Oak Street, Glendale CA (“Fire Station #21”);
27 b. 1201 S. Glendale Ave., Glendale CA (“Fire Station #22”);
28

- c. 1734 Canada Blvd., Glendale CA (“Fire Station #24”);
- d. 353 N. Chevy Chase Drive, Glendale CA (“Fire Station #25”);
- e. 1145 N. Brand Blvd., Glendale CA (“Fire Station #26”);
- f. 2465 Honolulu Ave., Glendale CA (“Fire Station #29”);
- g. 141 N. Glendale Ave, Glendale CA (“Power and Water #141”);
- h. 120 N. Isabel St., Glendale CA (“Police Department #120”);
- i. 131 N. Isabel St., Glendale CA (“Police Department #131”);
- j. 541 W. Chevy Chase Dr., Glendale CA (“Public Works #541”); and
- k. 548 W. Chevy Chase Dr., Glendale CA (“Public Works #548”).

1.3. “Covered Facilities” means the UST facilities that are owned and/or operated by the City and that are identified in Exhibit B, as may be amended by agreement of the Parties.

1.4. “Immediately” means directly and without undue delay.

1.5. “Promptly” means as soon as reasonably practicable.

1.6. “Suspended Penalty Conduct” shall mean a violation of one or more of the provisions of Paragraph 6, below.

2. JURISDICTION

The Parties agree, and the Court hereby orders, that the Superior Court of California, County of Los Angeles, has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

3. SETTLEMENT OF DISPUTED CLAIMS

The Parties have stipulated pursuant to a compromise and settlement of disputed claims set forth in the Complaint. The Stipulation is not an admission by the City regarding any issue of law or fact in the above-captioned matter or any violation of law.

1 4. PAYMENT FOR CIVIL PENALTIES AND INVESTIGATION AND
2 ENFORCEMENT COSTS

3 4.1. Upon entry of the Final Judgment, the City is liable for a total of ONE MILLION
4 SIXTY THOUSAND DOLLARS (\$1,060,000) in civil penalties and costs to be paid and/or
5 suspended, as set forth in paragraphs 4.2 through 4.4., below.
6

7 4.2. Cash Civil Penalties: Within thirty (30) days of entry of the Final Judgment, the
8 City shall be liable for a total of ONE HUNDRED NINETY TWO THOUSAND FIVE
9 HUNDRED DOLLARS (\$192,500) in civil penalties under Chapter 6.7 of Division 20 of the
10 Health and Safety Code and the UST Regulations. This payment shall be made by check, payable
11 to the State Water Board's "State Water Pollution Cleanup and Abatement Account." These
12 funds may be used by the State Water Board, at its discretion, to fund activities associated with
13 the investigation and/or enforcement of UST requirements, including those codified at Chapter
14 6.7 of the Health and Safety Code and the UST Regulations, and the investigation and/or
15 protection of the Underground Storage Tank Cleanup Fund. These activities may include, but are
16 not limited to, training State and local enforcement staff, hiring enforcement staff, expert witness
17 support, and criminal investigation development and support.
18

19 4.3. Supplemental Environmental Project:

20 Of the City's total liability of ONE MILLION SIXTY THOUSAND DOLLARS
21 (\$1,060,000), ONE HUNDRED NINETY TWO THOUSAND FIVE HUNDRED DOLLARS
22 (\$192,500) shall be used by the City to fund the Hexavalent Chromium Removal Technology
23 Research Project ("Cr6 Removal Technology SEP" or "SEP") as set forth in Paragraph 7 and in
24 EXHIBIT C.
25

26 4.4. Reimbursement of Costs of Investigation and Enforcement: Within thirty (30)
27 days of entry of the Final Judgment, the City shall pay a total of SIXTY THOUSAND
28

1 DOLLARS (\$60,000) to the State Water Board for reimbursement of attorney's fees, costs of
2 investigation and other costs of enforcement. This payment shall be made by check, payable to
3 the State Water Board's "Underground Storage Tank Cleanup Fund."

4 4.5. Suspended Penalties:

5 4.5.a. Of the City's total liability of ONE MILLION SIXTY THOUSAND DOLLARS
6 (\$1,060,000), SIX HUNDRED FIFTEEN THOUSAND DOLLARS (\$615,000) shall be
7 suspended on the condition that: (1) The City complies with its payment obligations of cash civil
8 penalties and investigative and enforcement costs as set forth in Paragraphs 4.2 and 4.4, and (2)
9 the City does not engage in any Suspended Penalty Conduct specified in Paragraph 6 for a period
10 of five (5) years, beginning immediately upon entry of the Final Judgment.
11

12 4.5.b. If the State Water Board determines that the City has engaged in Suspended
13 Penalty Conduct, as set forth in Paragraph 6, below, and the Suspended Penalty Conduct has been
14 ongoing for a period of thirty (30) or more calendar days, then the State Water Board may initiate
15 a new enforcement action and seek appropriate relief as authorized by law, including but not
16 limited to, injunctive relief and civil penalties, and/or move the Court by noticed motion to assess
17 and collect suspended civil penalties as provided herein. The City shall retain all of its rights to
18 contest the State Water Board's claim that it has engaged in Suspended Penalty Conduct,
19 including the right to assert that the alleged violation was due to a *Force Majeure Event* as
20 described in Paragraph 23.
21

22 4.5.c. If the State Water Board elects to assess and collect suspended penalties as
23 provided herein and the Court finds that the City has engaged in Suspended Penalty Conduct for
24 thirty (30) or more calendar days, the Court shall impose a civil penalty as follows: For each
25 Suspended Penalty Conduct violation, the Court shall impose a mandatory ONE HUNDRED
26 THOUSAND DOLLAR (\$100,000) civil penalty for each thirty (30) calendar day period that a
27
28

1 Suspended Penalty Conduct violation remains uncorrected. The civil penalty shall be payable to
2 the State Water Pollution Cleanup and Abatement Account. However, the State Water Board
3 may still take enforcement action and seek any appropriate relief for such violations as authorized
4 by law, including, but not limited to, the assessment and collection of civil penalties pursuant to
5 Health and Safety Code section 25299. If the Court finds that the City has engaged in Suspended
6 Penalty Conduct, the Parties agree that the Court shall have no discretion to reduce or otherwise
7 modify the amount of suspended civil penalties to be assessed and awarded to the State Water
8 Board pursuant to this Stipulation and the Final Judgment until the entire suspended penalty
9 amount of SIX HUNDRED FIFTEEN THOUSAND DOLLARS (\$615,000) is exhausted.

10
11 Payment of the suspended penalties awarded by the Court pursuant to this paragraph shall be due
12 to the State Water Board within thirty (30) days from the Court's final order(s).
13

14 4.5.d. The State Water Board shall have one hundred (100) calendar days after expiration
15 of the five (5) year period referenced in Paragraph 4.5.a to file a noticed Enforcement Motion for
16 suspended civil penalties as herein provided. If the City complies with its payment obligations
17 set forth in Paragraphs 4.2. and 4.4. and does not engage in Suspended Penalty Conduct for a
18 period of five (5) years, beginning with the entry of the Final Judgment, the suspension of
19 penalties as herein provided shall become permanent. However, if a motion to assess and collect
20 suspended civil penalties as provided herein is still pending before the Court five (5) years after
21 the entry of the Final Judgment, the suspension of penalties shall not become final until a final
22 order has been issued and payment of civil penalties to the State Water Board has been made if
23 required by such order.
24

25 4.5.e. The suspended penalties provided by Paragraph 4.5. are in addition to, and do not
26 bar, any other remedies or sanctions that may be available for any violations of Chapter 6.7 of
27 Division 20 of the California Health and Safety Code and the UST Regulations.
28

1 4.6. Late Payments: The City shall be liable for a stipulated civil penalty of TWO
2 THOUSAND FIVE HUNDRED DOLLARS (\$2,500) for each day that a payment required
3 pursuant to this Stipulation and the Final Judgment is late.

4 4.7. Other than the SEP funding described in Paragraph 4.3., all payments made
5 pursuant to the Final Judgment shall be made by check and delivered to the State Water
6 Resources Control Board, 1001 I Street, 16th Floor, Sacramento, CA 95814, attention David
7 Boyers. The City shall send a photocopy of all payments made by check, to the Office of the
8 California Attorney General, 300 South Spring Street, Suite 1700, Los Angeles, California,
9 90013, attention Ross Hirsch.

10
11 5. **INJUNCTIVE RELIEF**

12 Pursuant to the provisions of Health and Safety Code section 25299.01, but subject to the
13 termination Paragraph 21 below, upon approval and entry of the Final Judgment by the Court, the
14 City, with respect to the Covered Facilities, is enjoined to comply with Chapter 6.7 of Division 20
15 of the Health and Safety Code and the UST Regulations. Specifically, the City is enjoined to
16 comply with the following requirements at each of the Covered Facilities:

17
18 5.1. The City shall, at all times, identify a designated operator for each Covered
19 Facility in accordance with the requirements of Title 23, California Code of Regulations section
20 2715(a).

21 5.2. Monthly UST inspections shall be performed by a designated operator and the
22 results of the monthly inspection shall be recorded in a monthly inspection report, as required by
23 Title 23, California Code of Regulations section 2715(c).

24 5.3 Training for UST facility employees shall be conducted by the designated
25 operator, as required by California Code of Regulations, title 23, section 2715(f). A list of UST
26 facility employees who have been trained by the designated operator shall be maintained, as
27 required by Title 23, California Code of Regulations section 2715(f)(3).
28

1 5.4. UST primary and secondary containment shall be “product tight” as required by
2 Health and Safety Code sections 25290.1(c), 25290.2(c) and 25291(a)(1).

3 5.5 Secondary containment testing shall be conducted in accordance with the
4 requirements of Title 23, California Code of Regulations section 2637.

5 5.6. USTs shall be equipped with a spill container that will collect any hazardous
6 substances spilled during product delivery operations to prevent the hazardous substance from
7 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
8 Title 23, California Code of Regulations section 2635(b)(1), and the spill containment structure
9 shall be tested annually in accordance with the requirements of Health and Safety Code section
10 25284.2.

11 5.7. UST monitoring equipment shall be tested and certified every twelve (12)
12 months in accordance with Title 23, California Code of Regulations section 2638.

13 5.8. Underground pressurized piping that conveys a hazardous substance shall be
14 equipped with a functional automatic line leak detector, as required by Health and Safety Code
15 sections 25290.1(h), 25290.2(g), 25291(f) and 25292(e), and Title 23, California Code of
16 Regulations sections 2636(f)(2) and 2643(c)(1).

17 5.9 Automatic line leak detectors shall be tested in accordance with the
18 requirements of Health and Safety Code section 25293 and Title 23, California Code of
19 Regulations sections 2636(f)(2), 2638(a) and/or 2643(c).

20 5.10. The UST monitoring system shall be capable of detecting an unauthorized
21 release from any portion of the UST system at the earliest possible opportunity, as required by
22 Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and title 23,
23 California Code of Regulations sections 2630(d) and 2641(a). The City shall properly install and
24 place all leak-detecting sensors so that each is capable of detecting a leak at the earliest possible
25 opportunity as required by California Code of Regulations, title 23, including but not limited to
26 section 2630(d). The City shall promptly replace or repair any sensor that, for any reason,
27 becomes incapable of detecting a leak at the earliest possible opportunity.
28

1 5.11. Except as necessary to facilitate testing or maintenance, the City shall at all
2 times ensure that the test boots or other termination fittings or couplings at turbine sumps,
3 transition sumps and other piping sumps are properly placed so that the secondary piping drains
4 to a monitored sump as required by Title 23, California Code of Regulations section 2636(c).

5 5.12. The UST system interstitial space shall be continuously monitored in
6 accordance with the requirements of Health and Safety Code section 25292(a) and Title 23,
7 California Code of Regulations section 2631(g).

8 5.13. Written monitoring and maintenance records shall be maintained in accordance
9 with the requirements of Health and Safety Code section 25293 and Title 23, California Code of
10 Regulations section 2712(b).

11 5.14. Updated and approved monitoring plans and release response plans shall be
12 maintained on site as required by Title 23, California Code of Regulations sections 2632(b) and
13 (d), 2634(d), 2641(g) and (h), 2711(c) and 2712(i).

14 5.15. The UST system capacity shall be accurately reported in accordance with
15 Health and Safety Code section 25286(a) and Title 23, California Code of Regulations section
16 2711(a)(5).

17 **6. SUSPENDED PENALTY CONDUCT**

18 The following acts shall constitute Suspended Penalty Conduct for which the City will be
19 subject to the Suspended Penalties described in Paragraph 4.3, above.

20 6.1. Failure to identify a designated operator for each UST facility owned by the
21 City in accordance with the requirements of Title 23, California Code of Regulations section
22 2715(a).

23 6.2. Failure to ensure that monthly UST inspections are performed by a designated
24 operator and the results of the monthly inspection are recorded in a monthly inspection report, as
25 required by Title 23, California Code of Regulations section 2715(c).

26 6.3 Failure to ensure that training for UST facility employees is conducted by the
27 designated operator, as required by title 23, California Code of Regulations section 2715(f) and/or
28

1 failure to ensure that a list of UST facility employees who have been trained by the designated
2 operator is maintained and provided to the local agency upon request, as required by California
3 Code of Regulations, title 23, section 2715(f)(3).

4 6.4. Failure to ensure that UST primary and secondary containment is "product
5 tight" as required by Health and Safety Code sections 25290.1(c), 25290.2(c) and 25291(a)(1).

6 6.5. Failure to conduct periodic testing of secondary containment in accordance
7 with the requirements of Title 23, California Code of Regulations section 2637.

8 6.6. Failure to equip USTs with a spill container that will collect any hazardous
9 substances spilled during product delivery operations to prevent the hazardous substance from
10 entering the subsurface environment, as required by Health and Safety Code section 25284.2 and
11 Title 23, California Code of Regulations section 2635(b)(1).

12 6.7. Failure to conduct periodic spill containment structure testing in accordance
13 with the requirements of Health and Safety Code section 25284.2.

14 6.8. Failure to maintain and certify every twelve months all UST system monitoring
15 equipment, in accordance with Title 23, California Code of Regulations section 2638.

16 6.9. Failure to equip underground pressurized piping that conveys a hazardous
17 substance with a functional automatic line leak detector in accordance with Health and Safety
18 Code sections 25290.1(h), 25290.2(g), 25291(f) and 25292(e), and Title 23, California Code of
19 Regulations sections 2636(f)(2) and 2643(c)(1).

20 6.10. Failure to perform testing of automatic line leak detectors in accordance with
21 Health and Safety Code section 25293 and Title 23, California Code of Regulations sections
22 2636(f)(2), 2638(a) and/or 2643(c).

23 6.11. Failure to have a UST monitoring system that is capable of detecting an
24 unauthorized release from any portion of the UST system at the earliest possible opportunity, as
25 required by Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a) and
26 Title 23, California Code of Regulations sections 2630(d) and 2641(a).

27
28

1 6.12. Failure to ensure that test boots or other termination fittings or couplings at
2 turbine sumps, transition sumps and other piping sumps are properly placed so that the secondary
3 piping drains to a monitored sump as required by Title 23, California Code of Regulations section
4 2636(c), except as necessary to facilitate testing or maintenance.

5 6.13. Failure to continuously monitor the UST system interstitial space in
6 accordance with the requirements of Health and Safety Code section 25292(a) and Title 23,
7 California Code of Regulations section 2631(g).

8 6.14 It is the Parties' intent that nothing in Paragraphs 5 and 6, inclusive, shall
9 require the City to undertake any duties, acts or responsibilities beyond what may otherwise be
10 required of the City under the cited statute or regulation in the absence of this Final Judgment
11 (e.g., if a particular statute or regulation does not apply to the City in the absence of this Final
12 Judgment, nothing in this Final Judgment shall be interpreted to require the City to otherwise
13 comply with said statute or regulation).

14 **7. SUPPLEMENTAL ENVIRONMENTAL PROJECT**

15 7.1. The Cr6 Removal Technology SEP, described in Exhibit C, shall be funded and
16 completed by the City and a final report shall be provided to the State Water Board by June 30,
17 2015, or 270 days after entry of final judgment, whichever is later ("SEP Completion Date").

18 7.2. The City represents that it will fund the SEP in the amount of at least ONE
19 HUNDRED NINETY TWO THOUSAND FIVE HUNDRED DOLLARS (\$192,500) and that it
20 will remain liable for that amount until the SEP is completed and the final report is accepted by
21 the State Water Board.

22 7.3. The City shall provide quarterly reports of progress on the SEP to the State Water
23 Board commencing ninety (90) days from entry of the Final Judgment and continuing through
24 submittal of the final report described in Paragraph 7.4. below.

25 7.4. On or before the SEP Completion Date, the City shall submit a certified statement of
26 completion of the SEP ("Certification of SEP Completion"). The statement shall be submitted
27
28

1 under penalty of perjury to the State Water Board by an authorized representative of the City.
2 The Certification of SEP Completion shall include the following:

3 a. Certification that the SEP has been completed in accordance with the terms of
4 this Stipulation and the Final Judgment. Such documentation may include photographs,
5 invoices, receipts, certifications and other materials reasonably necessary for the State
6 Water Board to evaluate completion of the SEP and costs incurred by the City.

7 b. Certification that the City followed all applicable environmental laws and
8 regulations in the implementation of the SEP, including but not limited to the California
9 Environmental Quality Act ("CEQA"), the Federal Clean Water Act, and the California
10 Porter-Cologne Water Quality Control Act. To ensure compliance with CEQA, where
11 necessary, the City shall provide the State Water Board with the following documents from
12 the lead agency prior to commencing the SEP:

- 13 i. Categorical or statutory exemptions relied upon;
14 ii. Negative Declaration if there are no potentially "significant" impacts;
15 iii. Mitigated Negative Declaration if there are potentially "significant"
16 impacts but revisions to the project have been made or may be made to avoid or mitigate
17 those potentially significant impacts; or
18 iv. Environmental Impact Report.

19 7.5. If the State Water Board obtains information that causes it to reasonably believe that
20 the City has not expended money in the amounts claimed by the City, the State Water Board may
21 require that the City, at its sole cost, shall submit a report prepared by an independent third party
22 acceptable to the State Water Board providing such party's professional opinion that the City has
23 expended money in the amounts claimed by the City. The audit report shall be provided to the
24 State Water Board within three (3) months of notice from the State Water Board Executive
25 Director to the City of the need for an independent third party financial audit.

26 7.6. Upon the City's satisfaction of its SEP obligations under this Stipulation and the Final
27 Judgment and any audit requested by the State Water Board Executive Director, the State Water
28

1 Board shall send the City a letter recognizing satisfactory completion of its SEP obligations
2 within 90 days. The letter shall terminate any further SEP obligations of the City and result in
3 permanent stay of civil penalties in the amount of ONE HUNDRED NINETY TWO
4 THOUSAND FIVE HUNDRED DOLLARS (\$192,500).

5 7.7. In the event that the City is not able to demonstrate to the reasonable satisfaction of
6 the State Water Board that the entire SEP amount of ONE HUNDRED NINETY TWO
7 THOUSAND FIVE HUNDRED DOLLARS (\$192,500) has been spent to complete the SEP, the
8 City shall pay the difference between the SEP amount of ONE HUNDRED NINETY TWO
9 THOUSAND FIVE HUNDRED DOLLARS (\$192,500) and the amount the City can demonstrate
10 was actually spent on the SEP, as a cash civil penalty. The City shall pay the cash civil penalty
11 within thirty (30) days of receipt of its notice of the State Water Board Executive Director's
12 determination that the City has failed to demonstrate that the entire SEP amount has been spent to
13 complete the SEP.

14 7.8. If the SEP is not fully implemented by the SEP Completion Date, the State Water
15 Board Executive Director shall issue a Notice of SEP Violation. As a consequence, the City shall
16 be liable to pay the entire SEP amount of ONE HUNDRED NINETY TWO THOUSAND FIVE
17 HUNDRED DOLLARS (\$192,500) as a cash civil penalty or, if shown by the City, some portion
18 thereof less the value of the completion of any milestone requirements as determined by the Court
19 or as agreed in writing by the Parties. Unless otherwise agreed or determined by the Court, the
20 City shall not be entitled to any credit, offset, or reimbursement from the State Water Board for
21 expenditures made on the SEP prior to the date of receipt of the Notice of SEP Violation. The
22 amount of the civil penalty owed shall be determined by written agreement of the Parties or, if the
23 Parties cannot reach agreement, via a noticed motion before the Court.

24 7.9. Should the City, its agents or contractors, publicize one or more elements of the SEP,
25 the City shall state in a prominent manner that the project is or was funded as part of the
26 settlement of an enforcement action by the State Water Board against the City of Glendale. The
27 cover of the report produced by the SEP shall state in at least 12 point font that "this project was
28

1 funded as part of the settlement of an enforcement action by the State Water Board against the
2 City of Glendale.”

3 **8. MATTERS COVERED BY THE FINAL JUDGMENT**

4 8.1. The Final Judgment is a final and binding resolution and settlement of all claims,
5 violations, penalties and causes of action alleged by the State Water Board in the Complaint
6 regarding the Released Facilities and all claims, violations, penalties and causes of action related
7 to the Released Facilities which could have been asserted by the State Water Board based upon
8 the acts, omissions and/or events that are alleged in the Complaint (hereinafter referred to as
9 “Covered Matters”). The Parties reserve the right to pursue any claim that is not a Covered
10 Matter (“Reserved Claim”) and to defend against any Reserved Claim.

11 8.2. The Covered Matters do not include, and the Final Judgment does not apply to,
12 any claims, actions or penalties for the performance, or lack of performance of, cleanup,
13 corrective action, or response action concerning or arising out of actual past or future releases,
14 spills, leaks, discharges or disposal of motor vehicle fuels, hazardous wastes, or hazardous
15 substances caused or contributed to by the City at or from the Covered Facilities or any other
16 UST facility owned and/or operated by the City. The Final Judgment does not prevent any
17 claims, actions, or penalties by the State Water Board and/or other regulatory entity based upon
18 the actual release of any hazardous substance into the soil and/or groundwater.

19 8.3. Except as otherwise provided in this Stipulation and in the Final Judgment, the State
20 Water Board covenants not to sue or pursue any further civil claims, actions or penalties against
21 the City or any officials, officers, employees, representatives, agents or attorneys for the Covered
22 Matters.

23 8.4. The City covenants not to sue or pursue any civil or administrative claims against
24 the State Water Board or against any agency of the State of California or against their officers,
25 employees, representatives, agents or attorneys arising out of or related to any Covered Matters.

26 8.5. Any claims, violations, or causes of action that are based on acts, omissions or
27 events occurring after the date of entry of the Final Judgment in this matter, are not resolved,
28

1 settled or covered by the Final Judgment.

2 8.6. In any subsequent action that may be brought by the State Water Board based on
3 any Reserved Claims, the City agrees that it will not assert that failing to pursue the Reserved
4 Claim as part of this action constitutes claim-splitting, laches, or is otherwise inequitable. This
5 Paragraph does not prohibit the City from asserting any statute of limitations defense that may be
6 applicable to any Reserved Claims.

7 9. **NON-ADMISSION OF LIABILITY**

8 The City does not admit any allegation, finding, determination or conclusion contained,
9 alleged or asserted in the Complaint, and the Final Judgment is not an admission by the City
10 regarding any issue of law or fact alleged in the Complaint and shall not be construed as an
11 admission by the City regarding the same. Except as otherwise expressly provided in the Final
12 Judgment, nothing in the Final Judgment shall prejudice, waive or impair any right, remedy or
13 defense that the City has against any person or entity not party to the Final Judgment.

14 10. **PLAINTIFF NOT LIABLE**

15 The State Water Board shall not be liable for any injury or damage to persons or property
16 resulting from acts or omissions by the City in carrying out the activities pursuant to the Final
17 Judgment, nor shall the State Water Board be held as a party to or guarantor or any contract
18 entered into by the City, its officers, employees, agents, representatives or contractors in carrying
19 out activities required pursuant to the Final Judgment.

20 11. **EFFECT OF JUDGMENT**

21 Except as expressly provided in the Final Judgment or applicable statutory or common
22 law, nothing in the Final Judgment is intended nor shall it be construed to preclude the State
23 Water Board from exercising its authority under any law, statute or regulation. Except as
24 expressly provided by the Final Judgment, the City retains all of its defenses and rights to the
25 exercise of such authority.

26 12. **APPLICATION OF FINAL JUDGMENT**

27 The Final Judgment shall apply to and be binding upon the State Water Board, and upon
28

1 the City and to each of their respective predecessors, subsidiaries, affiliates, successors and
2 assigns.

3 **13. REGULATORY CHANGES**

4 Nothing in the Final Judgment shall excuse the City from complying with any more
5 stringent requirements that may be imposed by changes in applicable law. To the extent any
6 future regulatory or statutory changes make the obligations of the City less stringent than as
7 provided for in Paragraphs 5 and 6 of this Stipulation and in the corresponding paragraphs on the
8 Final judgment, the City may apply to this Court, upon noticed motion, for modification(s) of any
9 of the obligations contained in Paragraphs 5 and 6 hereof.

10 **14. AUTHORITY TO ENTER STIPULATION**

11 Each signatory to the Stipulation certified that he or she is fully authorized by the Party he
12 or she represents to enter into the Stipulation, to execute it on behalf of the Party, and legally to
13 bind that Party.

14 **15. PAYMENT OF LITIGATION EXPENSES AND FEES**

15 Except as otherwise provided in the Stipulation and in this Final judgment, each of the
16 Parties shall bear and pay their own fees and costs, including, but not limited to, their attorney
17 fees, expert witness fees, and costs and all other costs of litigation, investigation, inspection,
18 enforcement, prosecution and suit incurred to date, in and regarding this action, although nothing
19 in this Paragraph is intended to abridge the allocation of the payments made by the City pursuant
20 to Paragraph 4 hereof.

21 **16. COUNTERPART SIGNATURES**

22 The Stipulation may be executed by the Parties in counterpart.

23 **17. ENTRY OF JUDGMENT**

24 Pursuant to the Stipulation, the Parties seek approval of the Final Judgment and request
25 that the Court make a determination that the Final Judgment is fair and in the public interest.
26
27
28

1 **18. INTEGRATION**

2 The Stipulation and Final Judgment constitutes the whole agreement between the Parties.
3 The Final Judgment may not be amended or modified except as provided for in the Stipulation
4 and in the Final Judgment.

5 **19. MODIFICATION OF FINAL JUDGMENT**

6 The Final Judgment may be amended or modified only on a noticed motion by one of the
7 Parties with subsequent approval by the Court or upon written consent by the Parties and the
8 subsequent approval of the Court.

9 **20. NOTICES**

10 All notices and submissions required by the Stipulation and the Final Judgment shall be
11 sent to the following via personal delivery, overnight mail using a reputable delivery courier, or
12 United States Postal Service mail, certified or registered mail, return receipt requested:
13

14 **For Plaintiff:**

15 State Water Resources Control Board, Office of Enforcement
16 1001 I Street, 16th Floor
17 Sacramento, CA 95814
18 Attn: David Boyers

19 and

20 Office of the California Attorney General
21 300 Spring Street, Suite 1702
22 Los Angeles, CA 90013
23 Attn: Ross Hirsch

24 **For the City:**

25 Lucy Varpetian
26 Office of the Glendale City Attorney
27 613 E. Broadway, Suite 220
28 Glendale, CA 91206

 and

Gregory J. Newmark
Meyers Nave
633 W. 5th Street, Suite 1700
Los Angeles CA 90071

Any Party may change the individual or address for purpose of notice to that Party by written notice specifying the new individual or address, but no such change is effective until the written notice is actually received by the Party sought to be charged with its contents.

21. TERMINATION OF INJUNCTIVE RELIEF PROVISIONS

At any time after the Final Judgment has been in effect for five (5) years, the Parties may lodge a stipulation and proposed order, or the City may file a motion, seeking to have the Court dissolve the permanent injunction and/or relieve the City from any further compliance with all and/or some of the injunctive relief provisions of Paragraph 5 of this Stipulation and the corresponding provisions of the Final Judgment based upon the City's demonstrated history of compliance with Paragraph 5. If the State Water Board agrees that the City has demonstrated that it has complied with Paragraph 5, it may file a statement of non-opposition to such motion. If the State Water Board disagrees, the State Water Board may file an opposition setting forth its reasoning and recommending that the Final Judgment, including the injunctive relief provisions, remain in effect. Unless otherwise ordered by the Court, briefing on a motion for termination of injunctive relief provisions shall be filed and served in accordance with the following schedule:

Filing	Minimum Number of Calendar Days Prior to Noticed Hearing Date
City's moving papers	55
State Water Board's non-opposition or opposition papers	25
City's reply papers	10

The Parties agree that the Court may grant the City's request upon a showing by the City that it

1 has complied with Paragraph 5 and a determination by this Court that the City has complied with
2 the obligations set forth in Paragraph 5 of the Final Judgment. In the event that any motion for
3 termination of injunctive relief provisions is denied, in whole or in part, the City may file an
4 additional motion or motions to terminate injunctive relief provisions.

5 **22. ENFORCEMENT OF FINAL JUDGMENT**

6
7 22.1. The State Water Board may move this Court to enjoin the City from any violation
8 of any provisions of the Final Judgment and to award other appropriate relief, including penalties
9 and costs, by serving and filing a regularly noticed motion in accordance with Code of Civil
10 Procedure section 1005 (“Enforcement Motion”). The City may file an opposition and the State
11 Water Board may file a reply. At least ten (10) calendar days before filing an Enforcement
12 Motion, the State Water Board will meet and confer in good faith with the City to attempt to
13 resolve the matter without judicial intervention. Notwithstanding any other provisions in this
14 Stipulation or the Final Judgment, the State Water Board may take immediate action as
15 authorized by law in order to respond to an immediate threat to human health or the environment.
16

17 22.2. The Court has the authority to enjoin any violation of the Final Judgment. On the
18 State Water Board’s Enforcement Motion, where Paragraphs 4.5 and 4.6 apply and the State
19 Water Board has met its burden of proof as required by Paragraph 4.5, if applicable, the payment
20 amounts as provided in those Paragraphs shall be binding on the City. The Court retains, in
21 addition, its power to enforce the Final Judgment through contempt. Except as to Covered
22 Matters between the State Water Board and the City, nothing in the Final Judgment or this
23 Stipulation shall restrict the authority of any state or local agency to seek criminal or civil
24 penalties and injunctive relief as provided by law.
25

26 **23. FORCE MAJEURE EVENT**

27 23.1. It is not a breach of the City’s obligations under Paragraphs 5 or 6 if the City is
28

1 unable to perform due to a *Force Majeure Event*. Any event due to acts of God, acts of war or
2 circumstances beyond the control of the City that prevents the performance of such an obligation
3 despite the City's timely and diligent efforts to fulfill the obligation is a *Force Majeure Event*. A
4 *Force Majeure Event* does not include financial inability to fund or complete any work, any
5 failure by the City's suppliers, contractors, subcontractors or other persons contracted to perform
6 the work for or on behalf of the City (unless their failure to do so is itself due to a *Force Majeure*
7 *Event*), nor does it include circumstances which could have been avoided if the City had complied
8 with preventative requirements imposed by law, regulation or ordinance.
9

10 23.2. If the City claims a *Force Majeure Event*, it shall notify the State Water Board in
11 writing within seven (7) business days of when the City learns that the event will prevent
12 performance of an obligation in Paragraph 5. Within fourteen (14) calendar days thereafter, the
13 City shall provide the State Water Board a written explanation and description of the reasons for
14 the prevention of performance, all actions taken or to be taken to prevent or mitigate the
15 nonperformance, the anticipated date for performance, and explanation of why the event is a
16 *Force Majeure Event*, and any documentation to support the City's explanation. Within fourteen
17 (14) calendar days of receipt of such explanation, the State Water Board will notify the City in
18 writing whether the State Water Board agreed or disagrees with the City's assertion of a *Force*
19 *Majeure Event*. If the Parties do not agree that a particular delay or lack of performance is
20 attributable to a *Force Majeure Event*, either Party may petition the Court to resolve the dispute.
21 If either Party petitions the Court to resolve the dispute, it will neither prejudice nor preclude the
22 State Water Board from bringing a motion to enforce any of the provisions of Paragraph 5 against
23 the City as provided in Paragraph 23.4, below.
24

25
26 23.3. The time for performance of the obligations under Paragraph 5 of this Stipulation
27 that are affected by a *Force Majeure Event* will be extended for such time as is necessary to
28

1 complete those obligations. An extension of time for performance of the obligations affected by
2 the *Force Majeure Event* shall not, of itself, extend the time for performance of any other
3 obligation.

4 23.4. If the State Water Board decides to enforce the Provisions of Paragraph 5 against
5 the City for the failure to perform in spite of the City's claim of a *Force Majeure Event*, the City
6 may raise the claimed *Force Majeure Event* as a defense to such an action and shall have the
7 burden of proof to demonstrate the *Force Majeure Event*.

8
9 **24. NO WAIVER OF RIGHT TO ENFORCE**

10 The failure of the State Water Board to enforce any provision of the Final Judgment shall
11 neither be deemed a waiver of such provision nor in any way affect the validity of the Final
12 Judgment. The failure of the State Water Board to enforce any such provision shall not preclude
13 it from later enforcing the same or any other provision of the Final Judgment. Except as
14 expressly provided in the Final Judgment, the City retains all defenses allowed by law to any such
15 later enforcement. No oral advice, guidance, suggestions or comments by employees or officials
16 of any Party regarding matters covered in the Final Judgment shall be construed to relieve any
17 Party of its obligations under the Final Judgment.

18
19 **25. NECESSITY FOR WRITTEN APPROVALS**

20 All approvals and decisions of the State Water Board under the terms of the Final
21 Judgment shall be communicated to the City in writing. No oral advice, guidance, suggestions or
22 comments by employees of or officials of the State Water Board regarding submissions or notices
23 shall be construed to relieve the City of its obligation to obtain any final written approval required
24 by the Final Judgment.

25
26 **26. ABILITY TO INSPECT AND COPY RECORDS AND DOCUMENTS**

27 The City shall permit any duly authorized representative of the State Water Board to
28

1 inspect and copy the City's records and documents, and to enter and inspect the City's facilities to
2 determine whether the City is in compliance with the terms of the Final Judgment. Such
3 documents include, but are not limited to, the City's designated operator reports. Nothing in this
4 Paragraph is intended to require access to or production of any documents that are protected from
5 production or disclosure by the attorney-client privilege, attorney work product doctrine or any
6 other applicable privilege afforded to the City under law.
7

8 **27. COVERED FACILITIES AND CHANGE OF OWNERSHIP OR**
9 **OPERATION**

10 The Parties agree that Exhibit B, which as of the effective date of the Final Judgment
11 identifies the current Covered Facilities, shall be a living document that the City shall keep
12 current as herein required. Commencing on the effective date of the Final Judgment in this
13 matter, the City shall promptly provide written notice to the State Water Board in accordance
14 with Paragraph 20 whenever any Covered Facility listed on Exhibit B, as amended, is sold,
15 transferred to a new owner or operator, or closed. The City shall also promptly provide written
16 notice to the State Water Board in accordance with Paragraph 20 whenever any additional UST
17 Facilities come to be owned and/or operated by the City. The facilities listed on Exhibit B, as
18 may be modified to reflect new facilities or changes in ownership or operation of current
19 facilities, shall be considered "Covered Facilities" for purposes of this Stipulation and the Final
20 Judgment. Accordingly, the Parties agree that all requirements of this Stipulation and the Final
21 Judgment that are applicable to the current "Covered Facilities" shall also be applicable to each
22 additional UST facility that comes to be owned and/or operated by the City after the effective
23 date of the Final Judgment and that the all the requirements of this Stipulation and the Final
24 Judgment will not be applicable to UST Facilities that are no longer owned and/or operated by the
25 City. Following the City's notice to the State Water Board of acquisition or construction of a new
26
27
28

1 facility, additional requirements imposed solely by this Stipulation and the Final Judgment will
2 become applicable to each new Covered Facility.

3 **28. RETENTION OF JURISDICTION**

4 28.1 The Parties stipulated that this Court has jurisdiction to interpret and enforce the
5 Final Judgment. The Court shall retain continuing jurisdiction to enforce the terms of this Final
6 Judgment and to address any other matters arising out of or regarding this Final Judgment.
7

8 28.2. This Final Judgment shall go into effect immediately upon entry thereof. Entry is
9 authorized by Stipulation of the Parties upon filing.
10

11 **IT IS SO ORDERED, ADJUDGED AND DECREED**

12
13 Dated: 7-30, 2014

FREDERICK C. SHALLER

Judge of the Superior Court
Los Angeles County

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

There is no Exhibit A to this Final Consent Judgment and Permanent Injunction.

This page intentionally left blank.

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B

CITY OF GLENDALE COVERED FACILITIES

<u>Covered Facilities</u>	
<u>Facility ID</u>	<u>Address</u>
Fire Station #21	421 Oak Street, Glendale CA
Fire Station #22	1201 Glendale Avenue, Glendale CA
Fire Station #24	1734 Canada Boulevard, Glendale CA
Fire Station #25	353 North Chevy Chase Drive, Glendale CA
Fire Station #26	1145 North Brand Avenue, Glendale CA
Fire Station #29	2465 Honolulu Avenue, Glendale CA
Power & Water #141	141 North Glendale Avenue, Glendale CA
Power & Water #800	800 Air Way, Glendale CA
Police Department #120	120 North Isabel Street, Glendale CA
Police Department #131	131 North Isabel Street, Glendale CA
Public Works #541	541 Chevy Chase Drive, Glendale CA
Public Works #548	548 Chevy Chase Drive, Glendale CA

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT C

SUPPLEMENTAL ENVIRONMENTAL PROJECT DESCRIPTION

SUMMARY

CITY OF GLENDALE PROPOSAL TO THE STATE WATER RESOURCES CONTROL BOARD TO FUND SUPPLEMENTAL ENVIRONMENTAL PROJECTS



ENHANCED RESEARCH USING REDUCTION COAGULATION FILTRATION (RCF) FOR HEXAVALENT CHROMIUM REMOVAL – WATER EFFICIENCY TESTING

Background

The City of Glendale has been involved in a major research effort to establish technologies to remove hexavalent chromium from ground water supplies. Glendale research effort dates back to the year 2000 release of the movie "Erin Brockovich" and the great public concern with any hexavalent chromium (also known as chromium 6) in drinking water supplies produced from contaminated ground water supplies. The study has been underway since year 2002 and is near completion with final efforts remaining to achieve maximum public benefit. A project report to the California Department of Public Health (CDPH) was completed and delivered in 2012 containing information on the treatment systems that can remove this contaminant from water supplies and the costs. This information was used by CDPH as part of developing a draft maximum contaminant level (MCL) for hexavalent chromium in drinking water supplies. Additionally it will be used by the U.S. Environmental Protection Agency (USEPA) as part of setting an MCL at the federal level. Funding for this effort has come from an impressive group of partners with the principal contributions from the USEPA, CDPH, California Department of Water Resource's Proposition 50, U.S. Bureau of Reclamation,

Metropolitan Water District, and Water Research Foundation with expected expenditures based on the current close out activities of about \$10 million.

Work Plan

The work plan provided below describes the approach to each of the tasks, plan to achieve project objectives, measures of success, the strength of the project team, and schedule.

Task 1 - Project Management. The City of Glendale staff will coordinate the teams and contracts, maintaining detailed accounting records. Hazen and Sawyer staff manages the jar and pilot testing through this task, including coordination with Eurofins Eaton Analytical laboratory and operations staff with CDM-Smith.

Task 2 - Test Plan Development. Task 2 will involve the preparation of a test plan for the testing. Components of the test plan will include:

- Design criteria of the equipment to be used,
- Conditions that will be tested through the test period,
- Analytes to be sampled and frequency
- Methods
- Quality assurance/quality control

Task 3 - Testing of Water Efficiency in Reduction-Coagulation-MicroFiltration (RCMF) Treatment. This task will involve bench and pilot testing of a treatment approach for dewatering backwash water generated in the microfiltration process and recycling the water to the head of the plant. Two potential approaches will be considered, including the use of polymer that is compatible with MF membranes or the use of high-rate solids dewatering such as lamella plates. Based on initial jar testing, we will determine which approach looks most promising in terms of minimizing footprint while providing a good quality water for recycling to the head of the treatment plant.

Glendale currently has an RCF system that includes granular media filtration, although MF has been shown to operate more effectively in short-term testing. This study will involve rental of an MF unit and incorporation of the unit on a side stream of water from the coagulation step as had been previously performed successfully. New aspects of this study include recycle of clarified backwash water and use of less reduction time (which has been shown to be effective in subsequent studies at Glendale and Coachella Valley Water District). Both of these advances significantly shrink the footprint of the technology and improve the water efficiency, which are important for installations of this process throughout the state. In Glendale, the approach will offer a means of saving wastewater from going to the sewer, maximizing beneficial use of water resources.

Task 4 - Data Analysis. Data will be generated throughout testing on a rapid turnaround time basis to minimize costs for rental of the MF unit. Data analysis and interpretation will be shared weekly with the long-standing Project Advisory Committee

and the RWQCB to gain their feedback in case alterations of the test plan are warranted during the testing.

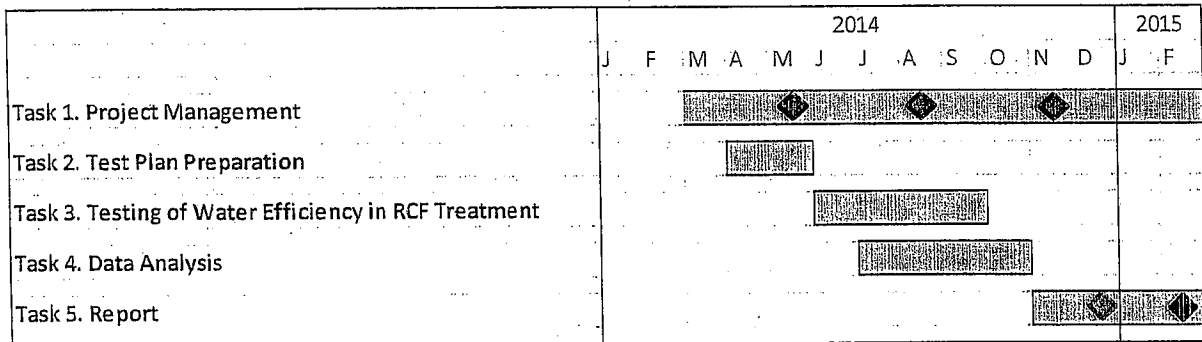
Task 5 - Report. A key component of this project will be preparation of a well-documented report, to allow for dissemination of the findings to the broader water community. A cornerstone of the Glendale Research Program on Chromium-6 treatment technologies has been transparent and accessible reporting so that the information is available to other utilities seeking solutions for Chromium-6 removal. The budget includes draft report, response to comments, and final report preparation.




Measures of Success. The measures of success for this project include:

- Development of an approach to maximize water efficiency by allowing backwash water to be dewatered and returned to the head of the plant
- Evaluation of the RCMF process with chlorination (no simultaneous aeration, which had been tested previously)
- Identification of space requirements for technologies and components in preliminary design
- Reporting and outreach of the project results to water utilities and industry that can use the information to minimize water loss and treatment cost

Schedule

The project schedule is shown below by task. The project objectives can be assessed within this 12-month time frame with the proposed team, who have confirmed their availability to complete the project on time and budget.



- Quarterly Report 
- Draft Report 
- Final Report 

The final schedule will depend on when a "notice-to-proceed" is provided and the schedule for the research under the RCF Enhanced Testing is factored into that for Proposed RCF Water Efficiency Testing. Also, the schedule can be adjusted to meet the needs of the State.

Costs

Summary of Costs by Task. A breakdown of costs is provided by project team organization in the table below by task. Hazen and Sawyer will prepare the test plan, conduct field and data analysis, and prepare the project reporting requirements. CDM Smith will operate the facilities and implement physical changes to the demonstration testing infrastructure, such as changes in reduction time, iron dosing, and pump. Eurofins Eaton Analytical will perform laboratory analyses. The City of Glendale will provide project management and oversight of the project team.

SUMMARY OF PROJECT COSTS BY TASK AND FIRM

Task	Hazen and Sawyer	CDM Smith	Eurofins Eaton Analytical	City of Glendale	TOTAL
1 Project Management	\$ 5,000	\$ -	\$ -	\$ 28,500	\$ 33,500
2 Test Plan Development	\$ 10,000	\$ 1,000	\$ -	\$ -	\$ 11,000
3 Testing of Water Efficiency in RCF Treatment	\$ 104,000	\$ 37,500	\$ 15,000	\$ -	\$ 156,500
4 Data Analysis	\$ 8,000	\$ -	\$ -	\$ -	\$ 8,000
5 Report	\$ 10,000	\$ 1,000	\$ -	\$ -	\$ 11,000
Total Project Budget	\$137,000	\$ 39,500	\$ 15,000	\$ 28,500	\$ 220,000

Compliance with SWRCB Policy on SEP

Glendale is aware of the SEP requirements with summary information provided below.

They key compliance issues are discussed below.

- Type of SEP- SEP performed by settling party
- SEP will:
 - Develop water treatment systems for potable water for chromium 6 removal
 - Develop water treatment systems for groundwater pollution reduction/remediation for chromium 6 removal
 - Compliance training relative to assisting water agencies in removing chromium 6 from drinking water supplies
 - Provide outreach to the public on water quality matters

Additional SEP Qualification Criteria

- It is supported by many groups based on significant financial and technical participation
- It benefits local, regional, statewide, and nationwide water agency groups
- Project facilities were built in compliance with CEQA/NEPA
- The proposal identifies the possibility of additional funds from the State of California via Proposition 50 to supplement the budget and possibly expand on outreach activities
- Glendale has the institutional stability and capacity to complete this project like so many chromium 6 research projects in the past
- Success criteria for the overall program are part of the effort.

File SEP summary

2305161.1