STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

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| In the matter of: | ) | |
| | ) | |
| **CITY OF ETNA COLLECTION SYSTEM** | ) | **ORDER WQ-2015-XXXX-EXEC; Proposed** |
| | ) | |
| | ) | **Settlement Agreement and Stipulation for** |
| | ) | **Entry of Administrative Civil Liability Order;** |
| | ) | **Order** |

## Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulation") is entered into by and between the State Water Resources Control Board, Office of Enforcement Staff ("Enforcement Staff") and the City of Etna Collection System ("Settling Respondent") (collectively "Parties") and is presented to the State Water Resources Control Board ("State Water Board") for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

## Section II: Recitals

1. The Settling Respondent is the owner of the collection system serving the City of Etna, California. The collection system is subject to the requirements set forth in State Water Board Order No. 2006-0003-DWQ, the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems Order ("Sanitary Sewer Systems WDRs"), its Monitoring and Reporting Program, and its two monitoring and reporting requirements amendments, State Water Board Orders No. WQ 2008-0002-EXEC and No. WQ 2013-0058-EXEC.

2. On April 10, 2012, the State Water Board's Executive Director issued a Notice of Violation ("NOV") to the Settling Respondent. The NOV addressed the Settling Respondent's failure to comply with the Sanitary Sewer Systems WDRs by failing to complete and certify the Sewer System Management Plan ("SSMP"). The NOV required corrective action by July 9, 2012.

3. On September 29, 2014, the State Water Board's Executive Director issued a Notice of Violation and California Water Code Section 13267 Order ("NOV and 13267 Order") to the Settling Respondent. The NOV and 13267 Order outlined the Settling Respondent's failure to comply with the Sanitary Sewer Systems WDRs by (1) failing to complete the Collection System Questionnaire in California Integrated Water Quality System ("CIWQS"), (2) failing to enter and certify Sanitary Sewer Overflow ("SSO")/no spill reports in CIWQS dating back to January 2014, and (3) failing to submit and certify all elements of the Settling Respondent's SSMP in CIWQS and have the SSMP approved at a public meeting by the governing board.

4. The September 29, 2014 NOV and 13267 Order required that the Settling Respondent submit a written response to the State Water Board containing evidence that the Settling Respondent: (1) completed the collection system questionnaire in CIWQS, (2) entered and certified SSO/no spill reports in CIWQS dating back to the most recent entry of January 2014, and (3) submit and certify all elements of the SSMP in CIWQS and have the SSMP approved at a public meeting by the governing board. These requirements were to be completed by October 24, 2014.

5. This Stipulation and Order resolves this matter for four violations of Water Code section 13268 as outlined in Attachment A. The State Water Board is authorized to impose administrative civil liability for these violations pursuant to Water Code section 13268, subdivision (a)(1).

6. To resolve by consent and without further administrative proceedings these violations of the California Water Code, the Parties have agreed to the imposition of $19,182 against the Settling Respondent, which includes $1,350 for staff costs. The liability amount was determined using a factors analysis consistent with Water Code section 13327 and the State Water Resources Control Board Water Quality Enforcement Policy (May 2010)("Enforcement Policy"). The Enforcement Staff considered the methodology set forth in the Enforcement Policy, as shown in Attachment A, attached hereto and incorporated by reference as though fully set forth herein.

7. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation and by presenting this Stipulation to the State Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Enforcement Staff contends that the resolution of the violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations in this Stipulation, and that this Stipulation is in the best interest of the public.

## Section III: Stipulations

The Parties stipulate to the following:

8. **Jurisdiction:** The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged herein and personal jurisdiction over the Parties to this Stipulation and Order.

9. **Administrative Civil Liability:** The Settling Respondent hereby agrees to pay the administrative civil liability totaling $19,182 as set forth in Paragraph 6 of Section II herein. Payment of $19,812 to the State Water Resources Control Board Waste Discharge Permit Fund is due no later than 30 days following the State Water Board executing this Order. The Settling Respondent shall indicate on the check the number

of this Stipulation and Order and send it to the State Water Resources Control Board, Division of Administrative Services, Accounting Branch 1001 I Street, 18th Floor, Sacramento, California, 95814, and shall send a copy of the check to Dr. Matthew Buffleben, Office of Enforcement, 16th Floor, Sacramento, California, 95814.

10. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in this Stipulation and Order may subject it to further enforcement, including additional administrative civil liability.

11. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

12. **Matters Addressed by Stipulation:** Upon adoption by the State Water Board as an Order, this Stipulation represents a final and binding resolution and settlement of the violations asserted against the Settling Respondent as of the date the Parties sign the Stipulation based on the specific facts alleged in this Stipulated Order ("Covered Matters"). The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability obligations by the deadlines specified in Paragraph 9 of Section III.

13. **Public Notice:** The Settling Respondent understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the State Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the State Water Board, or its delegate, for adoption, the Director of the Office of Enforcement may unilaterally declare this Stipulation and Order void and decide not to present it to the State Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

14. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the State Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the 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.

15. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Settling Respondent is represented by counsel in this matter.

16. **Modification:** This Stipulation and Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties and approved by the State Water Board or its delegate.

17. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the State Water Board, or its delegate, or is vacated in whole or in part by a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liabilities for the underlying violations, 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:

a. Objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint 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 this period has been extended by these settlement proceedings.

18. **Waiver of Hearing:** The Settling Respondent has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the State Water Board prior to the adoption of the Order.

19. **Waiver of Right to Petition:** The Settling Respondent hereby waives its right to petition the State Water Board's adoption of the 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.

20. **Settling Respondent's Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

21. **Necessity for Written Approvals:** All approvals and decisions of the State Water Board under the terms of this Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions or comments by

employees or officials of the State Water Board regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval required by this Order.

22. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

23. **Integration:** This Stipulation and Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulation and Order.

24. **No Third Party Beneficiaries:** This Stipulation and Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.

25. **Effective Date**: The obligations under Paragraph 9 of Section III of this Stipulation are effective and binding on the Parties only upon the entry of an Order by the State Water Board which incorporates the terms of this Stipulation.

26. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

27. **Counterpart Signatures:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

**IT IS SO STIPULATED.**

State Water Resources Control Board Office of Enforcement

By: Daniel Bacon, for
Christian M. Carrigan, Director

Date: August 28, 2015.

City of Etna Collection System

By: Marilyn Seward, Mayor
NAME
TITLE

Date: August 5, 2015

**Order of the State Water Board**

28. This Order incorporates the foregoing Stipulation.

29. In accepting the foregoing Stipulation, the State Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13327. The State Water Board's consideration of these factors is based upon information obtained by the State Water Board staff in investigating the allegations in the Stipulations or otherwise provided to the State Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the State Water Board for this matter.

30. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the State Water Resources Control Board.

_____

Thomas Howard
Executive Director

Date: _____

Attachment: A – Administrative Civil Liability Methodology

## Attachment A

## Administrative Civil Liability Methodology

### Introduction

On November 17, 2009, the State Water Resources Control Board ("State Water Board') adopted Resolution No. 2009-0083 amending the Water Quality Enforcement Policy ("Enforcement Policy"). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors in California Water Code section 13385(e). The policy can be found at:
http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf.

The proposed administrative civil liability amount is based on the State Water Board Enforcement Staff's use of that methodology.

### Violation 1: Late Submittal of the Collection System Questionnaire

The City of Etna Collection System ("Discharger") violated California Water Code section 13268(a)(1) by failing to furnish the required Collection System Questionnaire to the online database system, California Integrated Water Quality System ("CIWQS"), by the October 24, 2015 deadline in the September 29, 2014 Notice of Violation and California Water Code Section 13267 Order ("NOV and 13267 Order").

#### Per Day Determination

Based on the facts in this case, the per day assessment is 0.25. This factor is determined by a matrix analysis using the Potential for Harm and the Deviation from Requirement. The Potential for Harm is minor since the act of reporting does not directly prevent spills. The Deviation from Requirement is moderate since the effectiveness of the online reporting program was partially achieved once the Discharger updated the Collection System Questionnaire in CIWQS.

The Collection System Questionnaire was due pursuant to the 13267 Order on October 24, 2014. The Discharger updated the Collection System Questionnaire in CIWQS on November 7, 2014. Therefore, there are 15 days of violation.

The initial amount of liability based on the days of violation is $3,750, which is 15 days multiplied by the per day factor of 0.25 and the $1,000 statutory maximum per day penalty.

#### Adjustment Factors to Determining Total Base Liability Amount

The culpability factor is a neutral 1.0. This value is based on the violation being a non-critical reporting violation for which the Discharger submitted the required Collection System Questionnaire 15 days late.

The cleanup and cooperation factor is 1.1. This value is based on no cooperation from the Discharger despite State Water Board staff's continual efforts to contact the Discharger. State Water Board staff, Bryan Elder, has attempted to work with the Discharger towards compliance. Staff contacted the Discharger's Legally Responsible Official (LRO), Pamela Russell, via email on October 27, 2014 and December 3, 2014 to follow-up on the NOV and 13267 Order requirements. No response was received following these emails. Staff contacted Ms. Russell by telephone on January 12, 2015. Ms. Russell informed staff that she had received the NOV and 13267 Order and subsequent emails. She assured staff that she would detail the Discharger's progress towards completing the conditions in the NOV and 13267 Order in an email. To date, no such correspondence has been received.

The history of violations factor is a neutral 1.0 due to no prior adjudicated Water Code violations of any kind.

Based on these adjustments, the total base liability is $4,125.

**Violation 2: Late Submittal of No-Spill Reports**

Discharger violated California Water Code section 13268(a)(1) by failing to furnish the required No-Spill Reports to CIWQS by the October 24, 2015 deadline in the 13267 Order.

Per Day Determination

Based on the facts in this case, the per day assessment is 0.15. This factor is determined by a matrix analysis using the Potential for Harm and the Deviation from Requirement. The Potential for Harm is determined to be minor since the act of reporting does not directly prevent spills. The Deviation from Requirement is minor since the intended effectiveness of the online reporting program remained generally intact once the Discharger submitted the No-Spill Reports in CIWQS.

The No-Spill Reports were due pursuant to the 13267 Order on October 24, 2014. The Discharger submitted the No-Spill Reports in CIWQS on November 7, 2014. Therefore, there are 15 days of violation.

The initial amount of liability based on the days of violation is $2,250, which is 15 days multiplied by the per day factor of 0.15 and the $1,000 statutory maximum per day penalty.

Adjustment Factors to Determining Total Base Liability Amount

The culpability factor is a neutral 1.0. This value is based on the violation being a non-critical reporting violation for which the Discharger submitted the required No-Spill Reports 15 days late.

The cleanup and cooperation factor is 1.1. This value is based on no cooperation from the Discharger despite State Water Board staff's continual efforts to contact the

Discharger. State Water Board staff repeatedly attempted to contact the Discharger in order to assist in their return to compliance following the deadline specified in the NOV and 13267 Order (Details outlined under Violation 1).

The history of violations factor is 1.0 due to no prior adjudicated Water Code violations of any kind.

Based on these adjustments, the total base liability is $2,475.

**Violation 3: Failure to Submit and Certify All Elements of SSMP in CIWQS and have the SSMP Approved at a Public Meeting by the Governing Board**

Discharger violated California Water Code section 13268(a)(1) by failing to furnish and certify all required elements of the Sewer System Management Plan ("SSMP") to CIWQS and have the SSMP approved at a public meeting by the governing board pursuant to the Statewide General Sanitary Sewer Systems Waste Discharge Requirements – Water Quality Order 2006-0003-DWQ ("SSS WDRs") as required in the 13267 Order.

Per Day Determination

Based on the facts in this case, the per day assessment is 0.35. This factor is determined by a matrix analysis using the Potential for Harm and the Deviation from Requirement. The Potential for Harm is determined to be minor since the SSMP does not directly prevent spills. The Deviation from Requirement is major since the Discharger disregarded the requirement and the requirement is rendered ineffective in its essential functions.

Under the 13267 Order, the SSMP was required to be submitted, certified, and approved at a public meeting by the governing board by October 24, 2014. The Discharger submitted some SSMP elements in CIWQS on November 7, 2014, but has yet to fully comply with the 13267 Order. As of April 24, 2015, there are 183 days of violation.

The alternative approach for calculating liability for multiday violations outlined in the Enforcement Policy (page 18) is applicable because the violation results in no economic benefit from the illegal conduct that can be measure on a daily basis.

Based on the alternative approach, the violation is assessed per day penalties based on 12 days of violation. Therefore, the initial amount of liability based on the days of violation is $4,200, which is 12 days multiplied by the per day factor of 0.35 and the $1,000 statutory maximum per day penalty.

Adjustment Factors to Determining Total Base Liability Amount

The culpability factor is 1.3. This value is based on the Discharger knowing that the SSMP is required under the SSS WDRs, as evidenced by Discharger submitting and certifying some elements of the SSMP in CIWQS, yet failing to complete, submit, and

certify the remainder of the SSMP or have the SSMP approved by the governing board at a public meeting even after being issued the NOV and 13267 Order.

The cleanup and cooperation factor is 1.2. This value is based on State Water Board staff repeatedly attempting to contact the Discharger in order to assist in their return to compliance following the deadline specified in the NOV and 13267 Order (Details outlined under Violation 1). To date, the Discharger has failed to do so. The Discharger submitting and certifying some, but not all, portions of the SSMP and failing to have the SSMP approved by the governing board at a public meeting as required in the SSS WDRs and then again in the NOV and 13267 Order.

The history of violations factor is 1.0 due to no prior adjudicated Water Code violations of any kind.

Based on these adjustments, the total base liability is $6,522.

**Violation 4: Failure to Submit a Written Response to the 13267 Order**

Discharger violated California Water Code section 13268(a)(1) by failing to furnish a written response to the 13267 Order by the October 24, 2015 deadline.

Per Day Determination

Based on the facts in this case, the per day assessment is 0.25. This factor is determined by a matrix analysis using the Potential for Harm and the Deviation from Requirement. The Potential for Harm is determined to be minor since the act of submitting a written response does not directly prevent spills. The Deviation from Requirement is moderate since the requirement is not met and the effectiveness of the requirement is only partially achieved.

The written response was due pursuant to the 13267 Order on October 24, 2014. The Discharger has yet to comply with this requirement. As of April 24, 2015, there are 183 days of violation.

The alternative approach for calculating liability for multiday violations is applicable because the violation is not causing daily detrimental impacts to the environment or the regulatory program.

Based on the alternative approach, the violation is assessed per day penalties based on 12 days of violation. Therefore, the initial amount of liability based on the days of violation is $3,000, which is 12 days multiplied by the per day factor of 0.25 and the $1,000 statutory maximum per day penalty.

Adjustment Factors to Determining Total Base Liability Amount

The culpability factor is 1.3. This value is based on the Discharger not submitting a written response to the 13267 Order when a reasonable and prudent person would have done so. It is explicit in multiple places in the 13267 Order that a written response is required, including in the first paragraph where it states in bold that "You are legally

obligated to respond to this Order." The Discharger has not submitted any written response to the 13267 Order.

The cleanup and cooperation factor is 1.2. This value is based on the lack of cooperation from the Discharger. State Water Board staff repeatedly attempted to contact the Discharger in order to assist in their return to compliance following the deadline specified in the NOV and 13267 Order (Details outlined under Violation 1).

The history of violations factor is 1.0 due to no prior adjudicated Water Code violations of any kind.

Based on these adjustments, the total base liability is $4,680.

## Ability to Pay and to Continue in Business

The factor for the ability to pay the liability and to continue in business is a neutral 1.0 because the Discharger is a municipality with the ability to collect taxes. Additionally, the California State Controller's most recent *Cities Annual Report* covering Fiscal Year 2011-12 indicates the Discharger's annual revenues surpass its annual expenditures and it has enough funds to pay the proposed liability amount. The *Cities Annual Report* can be found at http://www.sco.ca.gov/Files-ARD-Local/LocRep/1112cities.pdf.

## Other Factors as Justice May Require

Costs of Investigation and Enforcement: To date, Enforcement Staff has incurred costs of investigation and enforcement in the amount of approximately $1,350, reflecting 9 hours of work at a rate of $150 per hour. Therefore, the liability amount is adjusted to $19,182 to include these staff costs.

## Economic Benefit

The Economic Benefit amount is any savings or monetary gain derived from the act or omission that constitutes the violation. The economic benefit associated with submitting the Collection System Questionnaire and No-Spill Reports late is negligible. The economic benefit of failing to complete, submit, certify, and get the SSMP approved by the governing board at a public meeting is $182, reflecting the delayed cost of expending an estimated 70 hours of staff time at an assumed rate of $150 per hour. The economic benefit of failing to provide a written response to the 13267 Order is $1,537, reflecting the avoided cost of expending 10 hours of staff time at a rate of $150 per hour. The total economic benefit here is $1,721.

## Maximum and Minimum Liability Amounts

The maximum liability provided for by statute for the four violations of Water Code section 13268(a)(1) is $396,000.

The Enforcement Policy requires that the adjusted Total Base Liability Amount be at least 10% higher than the economic benefit amount. Therefore, the minimum liability amount is $1,893.10.

## Proposed Administrative Civil Liability Amount

Based on the foregoing analysis, and consistent with the Enforcement Policy, the proposed administrative civil liability is $19,182.