

STATE WATER RESOURCES CONTROL BOARD

In the matter of:)	
)	Order WQ-2009-00XX-EXEC
CITY OF STOCKTON)	
)	SETTLEMENT AGREEMENT AND
SIU-REF-000217/City of)	STIPULATION FOR ENTRY OF
Stockton/RB5-S)	ADMINISTRATIVE CIVIL LIABILITY ORDER
)	(PROPOSED)

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Chief Deputy Director of the State Water Resources Control Board ("State Water Board"), on behalf of the State Water Board Prosecution Staff ("Prosecution Staff") and the City of Stockton (Collectively "Parties") and is presented to the State Water Board for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

1. RECITALS

WHEREAS, at all times relevant to this matter, the City of Stockton was the owner of the Stockton Regional Wastewater Control Facility ("SRWCF" or "Facility"), located at 2500 Navy Drive, Stockton, CA 95206, and was responsible for the operation and maintenance thereof in accordance with National Pollution Discharge Elimination System ("NPDES") Permit No. CA0079138, Waste Discharge Requirements Order No. R5-2002-0083 ("NPDES Permit");

WHEREAS, OMI-Thames Water Stockton, Inc. ("OMI-Thames Water Stockton") operated and maintained the SRWCF under a service contract with the City of Stockton from August 1, 2003 through February 29, 2008;

WHEREAS, on June 16, 2006, there was a discharge from the SRWCF of approximately 8.7 million gallons of partially treated effluent to the San Joaquin River ("the Event");

WHEREAS, the CHIEF DEPUTY DIRECTOR OF THE STATE WATER BOARD, by and through the Prosecution Staff, and with the assistance of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Staff, investigated the circumstances of the Event;

WHEREAS, the Prosecution Staff alleges that the Event occurred in violation of NPDES Permit Discharge Prohibition No. A.2., which states, in part, that "the bypass or overflow of wastes to surface waters is prohibited." The specific alleged violations are described in Exhibit A, attached hereto;

WHEREAS, the Prosecution Staff agrees that the City of Stockton and its contract operator, OMI-Thames Water Stockton, have fully cooperated with its investigation and voluntarily provided records and information requested by the Prosecution Staff. The Prosecution Staff recognizes that, upon discovery of the Event,

OMI-Thames Water Stockton promptly notified all relevant authorities, including the State Water Board, the Central Valley Water Board, the State Office of Emergency Services, the California Department of Fish and Game, the San Joaquin Environmental Health Department, and the National Response Center;

WHEREAS, the Prosecution Staff recognizes that the Event was not intentional and caused no measurable environmental harm; and

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

2. **JURISDICTION**

The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulated Order.

3. **SETTLEMENT AND DISPUTED CLAIMS**

The City of Stockton and its contractor OMI-Thames Water Stockton expressly deny the allegations described in Exhibit A and this Stipulated Order. Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule, or regulations. However, this Order and/or any actions or payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in any future actions by the State Water Board or by the Central Valley Water Board against the City of Stockton.

4. **ADMINISTRATIVE CIVIL LIABILITY**

Upon issuance of this Stipulated Order, the City of Stockton shall be liable for a total of TWO MILLION FOUR HUNDRED TWENTY FIVE THOUSAND DOLLARS (\$2,425,000), as set forth in Paragraphs 4.1 through 4.3, below.

4.1. **Paid Liability**

Within 30 days of issuance of this Stipulated Order, the City of Stockton shall remit, by check, THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000), payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. The City of Stockton shall send the original signed check to State Water Resources Control Board, Department of Administrative Services, PO Box 1888, Sacramento, CA 95812-1888, with copies sent to: Reed Sato, Director, State Water Resources Control Board, Office of Enforcement,

P.O. Box 100, Sacramento, CA 95812, and David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812.

4.2. Third Party Audit

The City of Stockton shall expend a minimum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000) to retain a neutral third party that will review the operation of the City's Facility over a period of three years. The third party auditor must be approved, in writing, by the Director of the State Water Board's Office of Enforcement and the Executive Officer of the Central Valley Water Board. The City shall submit a request for approval of the third party auditor to the Director of the State Water Board and the Executive Officer of the Central Valley Water Board, together with the proposed contract for services, within 120 days upon issuance of this Stipulated Order. The contract shall require that the third party auditor perform annual inspections of the City's Facility at regular intervals over a period of three years. The contract shall require that the third party review, at a minimum, the following aspects of the operation of the City's Facility:

- a. Staffing levels for the SRWCF operations department;
- b. Staffing levels for the SRWCF maintenance department;
- c. Staffing levels for the collection, pretreatment and stormwater systems;
- d. Backlog of corrective and preventive maintenance work orders; and
- e. Employee training program.

The contract shall require that the third party auditor report its findings to the City of Stockton, the State Water Board, and the Central Valley Water Board within 60 days of each inspection.

4.3. Environmental Improvement Credit

4.3.1. Against the City of Stockton's total liability of \$2,425,000, the City shall be credited TWO MILLION DOLLARS (\$2,000,000) in costs associated with increasing staffing levels at the SCWRF, as follows:

- a. ONE MILLION DOLLARS in costs incurred by the City to increase operations staff at the SCWRF from the time period of December 11, 2007 to June 30, 2008 (Phase I Staffing Increase); and
- b. ONE MILLION DOLLARS in costs incurred by the City to increase operations staff at the SCWRF from the time period of June 31, 2008 to January 1, 2011 (Phase II Staffing Increase).

4.3.2. The City of Stockton shall provide evidence acceptable to the Director of the State Water Board's Office of Enforcement that it has expended monies in the amount set forth in Paragraph 4.3.1.a. above, including, without limitation, a certified report by the City of Stockton describing the expenditures made. Such evidence shall be submitted to the Director of the Office of Enforcement within 60 days following issuance of this Stipulated Order.

4.3.3. The City of Stockton shall provide evidence acceptable to the Director of the State Water Board's Office of Enforcement that it has expended monies in the

amount set forth in Paragraph 4.3.1.b. above, including, without limitation, a certified report by the City of Stockton describing the expenditures made. Such evidence shall be submitted to the Director of the Office of Enforcement on or before February 1, 2010 for costs incurred between June 31, 2008 and January 1, 2010, and on or before February 1, 2011 for costs incurred between January 2, 2010 and January 1, 2011.

4.3.4. In the event that the City of Stockton is not able to demonstrate to the reasonable satisfaction of the Director of the Office of Enforcement that it has expended \$2,000,000 for the staffing increases, the City of Stockton shall undertake additional Environmental Improvement work reasonably approved by the Director of the Office of Enforcement and shall incur additional costs equal to the amount of the difference between the amount reasonably accepted by the Director of the Office of Enforcement and \$2,000,000. The Prosecution Staff may seek to enforce this requirement by petition to the State Water Board, and the City of Stockton shall have the burden of proving that it has met the requirements of Paragraphs 4.3.2 and 4.3.3. The Parties shall meet and confer prior to the filing of any petition to enforce this Paragraph.

5. **MATTERS COVERED BY THIS STIPULATED ORDER**

Upon adoption by the State Water Board, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Exhibit A or this Stipulated Order against the City of Stockton as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on the City's full payment of administrative civil liability by the deadlines specified in Paragraph 4.1 of and its full satisfaction of the obligations described in Paragraphs 4.2 and 4.3.

6. **COVENANT NOT TO SUE**

Upon the effective date of this Stipulated Order, the City of Stockton shall and does release, discharge and covenant not to sue or pursue and civil or administrative claims against the State Water Board, including its officers, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.

7. **PUBLIC NOTICE**

The Parties agree that the proposed Stipulated Order, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the State Water Board for adoption. If the State Water Board Chief Deputy Director or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board for adoption, the State Water Board Chief Deputy Director may unilaterally declare this Stipulated Order void and decide not to present the Order to the State Water Board. The City of Stockton agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

8. **PROCEDURE**

The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

9. **WAIVERS**

In the event that this Stipulated Order does not take effect because it is not approved by the State Water Board, 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 alleged 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 also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the 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, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.

10. **APPEALS**

The City of Stockton hereby waives its right to appeal this Stipulated Order to a California Superior Court and/or any California appellate level court.

11. **EFFECT OF STIPULATED ORDER**

Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Prosecution Staff or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation at the Facility.

12. **WATER BOARDS NOT LIABLE**

Neither the State Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City of Stockton, its employees, representative agents, attorneys, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board members, staff, attorneys or representatives be held as parties to or guarantor of any

contract entered into by the City of Stockton, its employees, representative agents, attorneys, or contractors in carrying out activities required pursuant to this Stipulated Order.

13. **NO WAIVER OF RIGHT TO ENFORCE**

The failure of the Prosecution Staff or State Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Staff or State Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order.

14. **REGULATORY CHANGES**

Nothing in this Stipulated Order shall excuse the City of Stockton from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

15. **AUTHORITY TO ENTER STIPULATED ORDER**

Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

16. **INTEGRATION**

This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.

17. **MODIFICATION OF STIPULATED ORDER**

This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the State Water Board or its Executive Director.

18. **CERTIFICATION**

Whenever this Stipulated Order requires the certification by the City of Stockton, such certification shall be provided by a City employee at a managerial level in charge of municipal utilities. Each certification shall read as follows:

To the best of my knowledge, based on information and belief and after reasonable investigation, I certify that the information contained in or accompanying this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

19. **INTERPRETATION**

This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

20. **COUNERTPART SIGNATURES**

This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

21. **INCORPORATION OF EXHIBITS**

Exhibit "A" is incorporated by reference.

IT IS SO STIPULATED:

State Water Board Prosecution Staff

By: _____
Jonathon Bishop, Chief Deputy Director

Date

City of Stockton

By: _____
J. Gordon Palmer, Jr., City Manager

Date

**HAVING CONSIDERED THE ALLEGATIONS AND THE PARTIES' STIPULATIONS,
THE STATE WATER BOARD FINDS THAT:**

22. 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.

23. In adopting this Stipulated Order, the State Water Board has considered all the factors prescribed in Water Code section 13327. The State Water Board's consideration of these factors is based upon information and comments provided by the Parties and by members of the public.

24. This Order is not precedential.

PURSUANT TO WATER CODE SECTION 13323 AND GOVERNMENT CODE SECTION 11415.60, **IT IS HEREBY ORDERED** ON BEHALF OF THE STATE WATER BOARD.

Dorothy Rice
Executive Director

Date

EXHIBIT A - ALLEGATIONS

1. The City of Stockton is the owner of the Stockton Regional Wastewater Control Facility ("SCWRF" or "Facility"), located at 2500 Naval Drive, Stockton, CA 95206, and is responsible for the operation and maintenance thereof in accordance with National Pollution Discharge Elimination System ("NPDES") Permit No. CA0079138, Waste Discharge Requirements Order No. R5-2002-0083 ("NPDES Permit").
2. OMI-Thames Water Stockton, Inc. ("OMI-Thames Water Stockton") operated and maintained the SRWCF under a service contract with the City of Stockton from August 1, 2003 through February 29, 2008.
3. On June 16, 2006, 8.7 there was a discharge from the SRWCF of approximately 8.7 million gallons of partially treated effluent to the San Joaquin River ("the Event").
4. The Event occurred in violation of NPDES Permit Discharge prohibition No. A.2., which states, in part, that "the bypass or overflow of wastes to surface waters is prohibited."
5. The discharge described above in Paragraph 3 is not susceptible to cleanup and was not cleaned up.

POTENTIAL MAXIMUM CIVIL LIABILITY

6. Water Code section 13385, subdivision (a) provides that civil liability may be administratively imposed by the State Water Resources Control Board (State Water Board) against any person that violates any waste discharge requirements issued pursuant to Chapter 5.5 of Division 7 of the Water Code. The City of Stockton NPDES Permit was issued pursuant to Chapter 5.5 of Division 7 of the Water Code.
7. Water Code section 13385, subdivision (c) provides that the civil liability may be imposed by the State Water Board in an amount not to exceed the sum of both the following:
 - a. Ten thousand dollars (\$10,000) for each day in which the violation occurs.
 - b. Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.
8. The City is exposed to liability pursuant to section 13385, subdivision (c) by failing to comply with its NPDES Permit on June 16, 2006, when 8.7 Million gallons of un-disinfected secondary wastewater effluent was discharged to the San Joaquin River.
9. The maximum liability for the violation described above, pursuant to section 13385, subdivision (c) of the Water Code is:

PENALTY CATEGORY	CALCULATION	TOTAL
Failure to comply with Waste Discharge Requirements Order No. R5-2002-0083, NPDES No. CA 0079138	One day (June 16, 2006) x \$10,000	\$ 10,000.00
Additional liability for volume of discharge over 1,000 gallons which is not susceptible to cleanup or which is not cleaned up.	8,699,000 gallons x \$10/gallons.	\$ 86,990,000.00
Potential Penalty		\$ 87,000,000.00

CONSIDERATION OF FACTORS

10. Pursuant to Water Code section 13327, the State Water Board is required to consider the following factors in determining the amount of civil liability, including the nature, circumstance, extent, and gravity of the violation; whether the discharge is susceptible to cleanup or abatement; the degree of toxicity of the discharge; and with respect to the violator, the ability to pay; the effect on the ability to continue in business; voluntary cleanup efforts; prior history of violations; the degree of culpability; economic benefit or savings, if any, resulting from the violation; and other matters that justice may require.

a. Nature, Circumstance, Extent, and Gravity of the Violations

1. The Event occurred due to an open effluent diversion gate located near the outfall at the SCWRF and lasted from approximately 8:30 AM until 6:30 PM.
2. The diversion gate at the SCWRF operates between the siphon entry box and a channel containing enhanced secondary treated effluent, and is designed to recycle water through the plant when it is necessary to stop the flow of effluent to the river.
3. Historically, the diversion gate had been operated manually, but in 2006, the operation of the gate was modified so that it could be opened either manually or automatically. The automation of the diversion gate was intended to protect personnel who were installing a weir inside the chlorine contact basin by preventing sudden flooding of the basin.
4. On June 16, 2006, discharge to the San Joaquin River dropped to near zero during a backwash of several filters. Due to improper wiring of the gate during its automation by a third-party contractor, this low flow condition activated the diversion gate to open even though flow to the San Joaquin River had not completely ceased. The open gate allowed the secondary effluent from the diversion channel to mix with the fully treated effluent in the siphon entry box before being discharged.

5. There were no violations of the NPDES Permit water quality effluent limitations caused by the discharge and there is no evidence to suggest any measurable harm to the environment occurred.

6. As described in Paragraphs 10.a.7. through 10.a.10, below, while the direct cause of the discharge was the improper wiring of the gate, the magnitude of the discharge was exacerbated by inadequate levels of staffing, preventative and corrective maintenance, and the lack of training to the operators regarding the installation and use of the diversion gate.

7. At least three experienced operators were at the facility during the incident, which covered two shifts.

8. On or prior to June 16, 2006, someone switched the diversion gate from "manual" to "automatic" mode without notifying anyone or documenting this change in the SCWRF logbook, which should have occurred.

9. The modification of the bypass gate was supposed to include an alarm that would notify the operators when the bypass gate opened. Testing of the gate and operator training were also specified in the document "SPA 11F" that discussed the proposed modifications to the gate. The alarm was not installed as proposed by the design engineer and the gate was never fully tested in automatic mode. The operators were notified of the changes; however, they received no formal training.

10. The plant operations are managed by a Supervisory Control and Data Acquisition ("SCADA") system, a computer control of the operations. The SCADA system provides real time data as to chemical feed rates, and automatic monitoring readouts. Information is displayed on a computer screen either numerically or graphically. Certain data showing on the SCADA system indicated a problem with the discharge, including a drop in effluent dissolved oxygen to approximately 3.8 mg/l dissolved oxygen, a change in pH from 6.5 to approximately 7.2 standard units, a significant increase in turbidity, and a change in metering flow. These conditions should have triggered an investigation by the Chief Plant Operator or other operators and timely discovery of the discharge.

b. Susceptibility to Cleanup or Abatement

The discharge is not susceptible to cleanup or abatement.

c. Degree of Toxicity

Since no toxicity analysis was done on samples collected after the discharge, there is no evidence to indicate if the discharge had significant deleterious effect on the aquatic life in the receiving waters.

d. Ability to Pay

Not applicable.

e. Effect on Ability to Continue Business

Not applicable.

f. Voluntary Cleanup Efforts

No voluntary cleanup efforts were made by the City of Stockton related to the Event.

g. Prior History of Violations

1. In 1985, the Central Valley Regional Water Quality Control Board ("Central Valley Water Board") issued Administrative Civil Liability Order No. 85-268, imposing \$50,000 in civil liability for certain effluent limit violations.

2. In 1999, the Central Valley Water Board issued Administrative Civil Liability Complaint No. 99-503 to the City of Stockton in response to a discharge that occurred on October 8, 1998 of approximately 6.11 million gallons of effluent with a calculated chlorine residual of 6.3 mg/l to the receiving water. The City waived its right to a hearing and paid the proposed liability of \$100,000.

3. In 2004, the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2004-0535 to the City of Stockton, alleging the discharge of 480,000 gallons of groundwater containing approximately 40 gallons of 12.5% sodium hypochlorite solution into the Woodbridge Irrigation District South Main Canal, a water of the United States, without an NPDES Permit. OMI-Thames Water Stockton paid the proposed liability of \$125,000 on behalf of the City without a hearing.

h. Degree of Culpability

1. The City of Stockton has a moderate degree of culpability. As described above, while the direct cause of the discharge was the improper wiring of the gate, the magnitude of the discharge was exacerbated by inadequate levels of staffing, preventative and corrective maintenance, and the lack of training to the operators regarding the installation and use of the diversion gate.

2. There are no standards regarding the number of staff required to operate a Wastewater Treatment Facility.

i. Economic Savings Resulting from the Violations

The discharger did not gain any quantifiable economic benefit or savings from the violation.

j. Other Matters as Justice May Require

The State Water Board and Central Valley Water Board expended approximately 304 hours of staff time on the investigation (initial inspections and interviews) of the Event and follow-up inspections. The total staff costs (at \$150/hour) are estimated at \$45,600.