

**State of California
California Regional Water Quality Control Board
Los Angeles Region**

IN THE MATTER OF:)
) **Order No. R4-2016-0287**
Las Virgenes Municipal Water District) **Settlement Agreement and Stipulations**
) **For Entry Of Administrative Civil**
4232 Las Virgenes Road) **Liability Order**
Calabasas, CA 91302)

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R4-2016-0287 ("Settlement Agreement" or "Stipulated Order") is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region ("Regional Water Board") on behalf of the Regional Water Board Prosecution Team and the Las Virgenes Municipal Water District ("Discharger")(the Regional Water Board and the Discharger are collectively referred to as the "Parties") and is presented to the Regional Water Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violations subject to administrative civil liability pursuant to California Water Code section 13385.

RECITALS

1. The Discharger is a municipal water district and owns the Tapia Water Reclamation Facility ("Facility") located at 791 Malibu Canyon Road, Calabasas. The facility is currently managed and operated by the Las Virgenes Municipal Water District. The Discharger's facility is regulated pursuant to Order No. R4-2010-0165, National Pollutant Discharge Elimination System (NPDES) Permit No CA0056014.
2. The Facility treats approximately 8 million gallons per day (MGD) of sewer flow to a tertiary level. The treatment process includes influent screening and grit removal, primary sedimentation, secondary treatment using aeration basins with aerobic and anoxic zones to induce biological nutrient removal, tertiary filtration with mono-media filters, disinfection using chloramination and dechlorination.
3. On approximately 3:30 PM in the afternoon of May 28, 2015, a filter inlet butterfly valve to the tertiary filters automatically closed due to a malfunctioning wire nut that sent a false signal to close the valve. The closure of the valve caused a large reduction in the filter flow and backed up both the primary and secondary processes.

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Approximately 430,000 gallons of partially treated sewage overflowed from the secondary clarifiers, 215,000 gallons of which flowed to Malibu Creek. The other half of the overflow was collected in the storm drain sump and pumped back to the headworks. From the point of entry, Malibu Creek runs approximately 5 miles before discharging into Malibu Lagoon and then into the Pacific Ocean.

4. The Discharger's standby staff, already responding to an unrelated generator alarm at a sewer lift station, did not respond to the Facility alarm until 11:30 PM on May 28, 2015. The Discharger's standby staff ceased the discharge at approximately 11:45 PM. The Discharger notified the California Emergency Management Agency, the Regional Water Board, and the Los Angeles County Health Department of the spill, posted public signs along Malibu Creek, and collected bacterial samples.
3. On May 29, 2015, Regional Water Board staff conducted an inspection to evaluate the unauthorized discharge. During the inspection, the Regional Water Board staff identified the following factors which contributed to the discharge: (1) The Programmable Logic Controller, which controls the actuator for a valve that allows passage of secondary sewage to tertiary treatment, malfunctioned and limited the flow to approximately two percent of the normal flow rate; (2) Five of the ten secondary clarifiers were in operation on the date of the discharge; (3) The high level alarm for the secondary clarifiers malfunctioned.
4. On July 14, 2015, the Regional Water Board issued to the Discharger a Notice of Violation (NOV) and Investigative Order No. R4-2015-0115, issued pursuant to Water Code section 13267. The Investigative Order required the submission of a technical report detailing the unauthorized discharge.
5. On August 11, 2015, the Discharger submitted a technical report in response to the Investigative Order.
6. The Federal Clean Water Act (33 U.S.C Section 1311) and California Water Code (Water Code) Section 13376 prohibit the discharge of pollutants to waters of the United States, unless authorized by a National Pollutant Discharge Elimination System (NPDES) permit.
7. The discharge of partially treated or undisinfected waste to Malibu Creek is not authorized by the facilities NPDES Permit. Section III.B of Order No. R4-2010-0165, prohibits the bypass or overflow of untreated wastewater or waste to surface waters or surface water drainage courses. The discharge of partially treated and undisinfected waste on May 28, 2015 resulted in the unauthorized discharge of pollutants, such as bacteria, viruses, and other potential pathogens, to waters of the United States.

8. The unauthorized discharge of pollutants to waters of the United States is subject to the imposition of civil liability administratively in accordance with Water Code section 13385.
9. Water Code section 13385 authorizes the Regional Water Board to impose administrative civil liability of up to \$10,000 per day of violation, and 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.
10. The Parties have engaged in settlement negotiations and agree to settle the matter without administrative or civil litigation by presenting this Stipulated Order and Settlement Agreement to the Regional Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. To resolve the alleged violations by consent and without further administrative proceedings, the Parties have agreed to the imposition of ninety eight thousand four hundred fifty-one dollars (\$98,451) in liability upon the Discharger. This amount is based upon use of the penalty methodology in the State Water Resources Control Board (State Water Board) Water Quality Enforcement Policy. Attachment A, which describes the penalty methodology is incorporated herein.
11. The Regional Water Board believes that the resolution of the alleged violation is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violation except as provided in this Settlement Agreement, and that this Settlement Agreement is in the best interest of the public.

STIPULATIONS

The Parties stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling NINETY EIGHT THOUSAND FOUR HUNDRED FIFTY-ONE DOLLARS (\$98,451) to resolve the violation alleged herein. Within thirty (30) days of issuance of the Stipulated Order, the Discharger agrees to remit that amount by check payable to the *State Water Resources Control Board Cleanup and Abatement Account*, and shall indicate on that check the number of this Order. The Discharger shall send the original signed check to the State Water Resources Control Board Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, CA 95812-1888. A copy of the check shall be sent to the Los Angeles Regional Water Quality Control Board, Attn: Russ Colby, 320 W. 4th Street, Suite 200, Los Angeles, CA 90013.
2. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that other violations of the type alleged herein

may subject it to further enforcement, including additional administrative civil liability.

3. **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.
4. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged herein or which could have been asserted based on the specific facts alleged herein as of the effective date of this Stipulated Order (Covered Matters). The provisions of this Stipulation are expressly conditioned on Discharger's payment of the administrative civil liability by the deadline specified in Stipulation 1.
5. **Public Notice:** The Parties acknowledge that the Settlement Agreement, as signed by the Parties, must be noticed for a 30-day public comment period prior to being presented to the Regional Water Board, or its delegee, for adoption in the Order. In the event objections are raised during the public review and comment period, the Regional Water Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In that event, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement prior to its adoption in the Order.
6. **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 Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement.
7. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Agreement shall be construed to relieve any Party regarding matters covered in this Agreement. This Agreement relates only to the subjective matter hereof, including administrative civil liability for the violation listed herein. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Settlement Agreement.

- 8. Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
- 9. Interpretation:** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
- 10. Modification:** Neither this Settlement Agreement nor the proposed Order shall be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Water Board or its Executive Officer.
- 11. Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Regional Water Board's Executive Officer, or is vacated in whole or in part by the State Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In the event of the Order being vacated by the State Board or a court, unless waived by the Discharger in writing, the Regional Water Board shall refund to the Discharger, within thirty (30) days of the effective date of such vacation, the sum of NINETY EIGHT THOUSAND FOUR HUNDRED FIFTY-ONE DOLLARS (\$98,451), provided that the Discharger had paid the amount as per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Regional Water Board in any such subsequent administrative or judicial proceeding or hearing; 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.
- 12. Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the

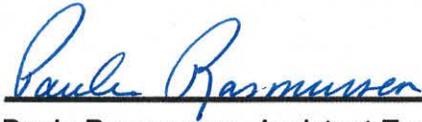
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Discharger. However, this Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Water Board against the Discharger.

- 13. Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.
- 14. Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
- 15. Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Regional Water Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.
- 16. Water Boards not Liable:** Neither the Regional Water Board members nor the Regional Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.
- 17. Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
- 18. Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
- 19. Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Executive Officer.
- 20. Counterpart Signatures:** This Settlement Agreement 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. Incorporated Attachments: Attachment A, are incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED¹:



Paula Rasmussen, Assistant Executive Officer
For the Los Angeles Regional Water Quality Control
Board Prosecution Team

10-11-2016

Date



David W. Pedersen P.E., General Manager
For the Las Virgenes Municipal
Water District

10/06/16

Date

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

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ORDER

HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, FINDS THAT:

1. In adopting this Order, the Los Angeles Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.
2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Los Angeles Regional Water Quality Control Board. The Los Angeles Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this 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.
3. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Los Angeles Regional Water Quality Control Board.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE EXECUTIVE OFFICER HEREBY ADOPTS THIS ORDER.

Samuel Unger, P.E.
Executive Officer

Date

CONFIDENTIAL SETTLEMENT COMMUNICATION SUBJECT TO EVIDENCE CODE 1152

Attachment A – Specific Factors Considered
Administrative Civil Liability Complaint No. R4-2016-0287
Las Virgenes Municipal Water District
Order No. R4-2010-0165
NPDES No. CA0056014

Pursuant to California Water Code section 13385(e) and the State Water Board Water Quality Enforcement Policy (Enforcement Policy), the Regional Water Quality Control Board, Los Angeles Region (Los Angeles Water Board) is required to consider the following factors in determining the amount of civil liability: the nature, circumstances, extent, and gravity of the violations; 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; at a minimum, the liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation.

Each factor of the Enforcement Policy methodology and its corresponding category, adjustment, or amount for the violation alleged in Administrative Civil Liability (“ACL”) Complaint No. R4-2016-0287 (“Complaint”) is presented below.

Violation: Unauthorized discharge of partially treated sewage from the Tapia Water Reclamation Facility’s (Facility) secondary clarifier to Malibu Creek.

Pursuant to Section III.B of Order No. R4-2010-0165, Las Virgenes Municipal Water District (Discharger) is prohibited from a bypass or overflow of untreated wastewater or waste to surface waters or surface water drainage courses. Regional Board staff inspected the Tapia Water Reclamation Facility (“Facility”) located at 791 Malibu Canyon Road, Calabasas on May 29, 2015 and confirmed that partially treated sewage overflowed from the secondary clarifiers. On July 14, 2015, Regional Board issued Investigative Order No. R4-2015-0115, which required the Discharger to provide a technical report pursuant to California Water Code section 13267.

Step 1. Potential for Harm for Discharge Violations

a. Harm or Potential for Harm to Beneficial Uses: Below Moderate

On May 28, 2015, partially treated sewage flowed from an unauthorized discharge location approximately 100 feet down an undeveloped hill into Malibu Creek. From the point of entry, Malibu Creek runs approximately 5 miles before discharging into Malibu Lagoon and then into the Pacific Ocean.

Malibu Creek is located within the Malibu Creek Watershed. The existing beneficial uses of Malibu Creek from the Basin Plan for the Coastal Watersheds of Los Angeles and Ventura Counties include water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, wildlife habitat, rare, threatened, or endangered species habitat, migration of aquatic organism habitat, spawning, reproduction, and/or early development habitat and wetland habitat.

According to the Discharger's August 11, 2015 response to the Investigative Order, the total volume of the overflow was estimated to be 430,000 gallons. Of that, 215,000 gallons was discharged to Malibu Creek on May 28, 2015, of which none was recovered. The remaining 215,000 gallons were recovered and returned to the headworks of the facility.

The Discharger posted "Keep Away" signs and collected samples to test for total coliform, E.coli, and enterococcus. Based on Resolution No. 01-018, *Amendment to the Water Quality Control Plan for the Los Angeles Region to Update the Bacteria Objectives for Water Bodies Designated for Water Contact Recreation*, adopted by the Los Angeles Water Board on October 25, 2001, the water quality objectives for E. coli in Malibu Creek are the following: 1) the single sample limit shall not exceed 235 colony forming units per 100 mL (CFU/100 mL) and 2) the geometric mean limit shall not exceed 126 CFU/100 mL. On May 29, 2015, E. coli analytical results collected from MC002D (downstream below Tapia outfall) and MC13D (approximately 0.5 miles downstream from Tapia) were 1400 CFU/100mL and 3300 CFU/100mL respectively. Also, enterococcus results were elevated in relation to samples taken upstream of the discharge point as shown in the table below:

| | | Receiving Water Station | | | |
|----------------------------|-----------|----------------------------|--------------------------------|--|---|
| | | RSW-MC001U | RSW-MC002D | RSW-MC13D | RSW-MC003D |
| | | Upstream Reference Station | Downstream below Tapia outfall | Approximately 1/2 mile downstream from Tapia | Approximately 3.3 miles downstream from Tapia |
| E. coli (CFU/100ml) | 5/29/2015 | 130 | 1400 | 3300 | ND |
| | 5/30/2015 | 30 | ND | ND | ND |
| | 5/31/2015 | 20 | ND | ND | ND |
| | 6/1/2015 | ND | 100 | ND | ND |
| | 6/2/2015 | ND | ND | ND | ND |
| | 6/3/2015 | ND | ND | 100 | ND |
| Enterococci (CFU/100ml) | 5/29/2015 | 32 | 119 | 435 | 193 |
| | 5/30/2015 | 24 | 46 | 6 | 17 |
| | 5/31/2015 | 56 | 24 | 3 | 102 |
| | 6/1/2015 | 64 | 129 | 19 | 145 |
| | 6/2/2015 | 49 | 15 | 13 | 23 |
| | 6/3/2015 | 111 | 16 | 27 | 130 |

Therefore, the Potential for Harm was characterized as a Below Moderate threat to beneficial uses (i.e., impacts are observed or reasonably expected, harm to beneficial uses is minor). A score of 2 was assigned for harm or potential for harm.

b. The Physical, Chemical, Biological or Thermal Characteristics of the Discharge: Moderate

The overflow occurred from the secondary clarifiers, partially bypassing the secondary clarifiers and fully bypassing the tertiary filtration and disinfection process.

Secondary clarifiers remove the microorganisms or activated sludge formed in the secondary treatment process. Tertiary filtration removes suspended or colloidal matter that the secondary clarifier does not remove. Disinfection destroys bacteria, pathogens, and virus.

Overflow that partially bypasses secondary clarifiers may contain microorganisms or activated sludge, which are formed in the secondary treatment process, to be present in the effluent.

Fully bypassing the tertiary filtration and the disinfection process allows suspended or colloidal matter, which the secondary clarifier did not remove and microbial pathogens known to be harmful to public health, to be discharged. These pathogens include:

- Bacteria: campylobacter, E.coli, vibrio cholera, salmonella, S.typhi, shigella, Yersinia
- Parasites: cryptosporidium, entamoeba, giardia
- Virus: adenovirus, astrovirus, norovirus, echovirus, enterovirus, reovirus, rotavirus

Therefore, a score of 2 was assigned for the overflow because it poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of concern regarding receptor protection).

c. Susceptibility to Cleanup or Abatement

Less than 50 percent of the discharge was susceptible to cleanup or abatement.

Therefore, a score of 1 was assigned for susceptibility to cleanup or abatement.

Based on the above determinations, the Potential for Harm for the violation is 5.

(Score A) + (Score B) + (Score C) = 2 + 2 + 1 = 5 Potential for Harm.

Step 2. Assessment for Discharge Violations

Water Code section 13385, subdivision (c) states that civil liability may be imposed administratively by a Los Angeles Water Board pursuant to Article 2.5 of Chapter 5 in an amount not to exceed the sum of ten thousand dollars (\$10,000) for each day in which the violation occurs and \$10 for each gallon discharged but not cleaned up that exceeds 1,000 gallons.

Per Gallon Assessment

To calculate the initial liability amount on a per gallon basis, a Per Gallon Factor is determined from Table 1 of the Enforcement Policy (page 14) by using the Potential for Harm score (step 1) and the extent of Deviation from Requirement (minor, moderate, or major) of the violation. The Per Gallon Factor is then multiplied by the number of gallons subject to administrative civil liability multiplied by the maximum per gallon

liability amount.

a. Deviation from Requirement (Major)

Section III.B of Order No. R4-2010-0165 states that “the bypass or overflow of untreated wastewater or wastes to surface waters or surface water drainage course is prohibited, except as allowed In Standard Provision I.G. of Attachment D, Standard Provisions.”

The May 28, 2015 discharge of partially treated sewage is a direct deviation from this prohibition. Therefore, the Deviation from Requirement is “Major.”

b. Per Gallon Factor (0.15)

Using a Potential for Harm score of “5” and a “Major” Deviation from Requirement, a Per Gallon Factor of 0.15 is selected from Table 1 (page 14) of the Enforcement Policy.

c. Maximum per gallon penalty amount allowed under Water Code section 13385, subdivision (c) is \$10 for each gallon of waste discharged. Because the violation was a high volume discharge, the Assistant Executive Officer applied a per gallon liability amount of \$2.00 per gallon, as suggested by the Enforcement Policy.

Using the information above, the Initial Liability assessed per gallon is calculated to be $\$64,200 = (0.15) \times (214,000 \text{ gallons}) \times (\$2.00 / \text{gallon})$

$(\text{Per Gallon Factor}) \times (\text{gallons subject to liability}) \times (\text{maximum per gallon liability amount})$

Per Day Assessment

To calculate the initial liability amount on a per day basis, a Per Day Factor is determined from Table 2 of the Enforcement Policy (page 15) by using the Potential for Harm score (step 1) and the extent of Deviation from Requirement of the violation. The days of violation were counted as 1 because the discharge began at 10:15 pm on May 28, 2015 and ended at 11:45 pm on May 28, 2015.

a. Deviation from Requirement (Major): The Deviation from Requirement is Major, as discussed above.

b. Per Day Factor (0.15): A Per Day Factor of 0.15 is selected from Table 2 of the Enforcement Policy.

c. Using the information above, the Initial Liability assessed per day is calculated to be \$1,500:

$(\text{Per Day Factor}) \times (\text{Days subject to penalty}) \times (\text{Maximum per day liability amount})$

$$\$1,500 \text{ Initial Liability (Per Day Assessment)} = (0.15) \times (1 \text{ day}) \times (\$10,000 / \text{day})$$

Step 3. Per Day Assessment for Non-Discharge Violations
Not applicable (non-discharge violation alleged)

Step 4. Adjustment Factors

Additional factors are considered and can modify the amount of initial liability: Culpability; Cleanup and Cooperation; History of Violations and, if applicable, Multiple Day Violations.

a. Culpability: 1.3

The culpability multiplier ranges between 0.5 and 1.5, with the lower multiplier for accidental incidents, and higher multiplier for intentional or negligent behavior.

The Discharger failed to properly maintain the 42" filter inlet butterfly valve to the tertiary filters as well as associated wirings. A failed wire nut sent a false signal to the butterfly valve causing it to close, thereby initiating the overflow.

The Discharger failed to repair or replace the high level alarm in the secondary clarifiers. The Discharger found the severed high level signal wire in an electrical vault during its investigation. If due care had been exercised by the Discharger in these regards, the violation may have been prevented.

Therefore, the Prosecution Team assigns a multiplier of 1.3 for this violation.

b. Cleanup and Cooperation: 1.0

This is the extent to which the Discharger voluntarily cooperated in returning to compliance and correcting environmental damage. The multiplier for this factor ranges between 0.75 to 1.5, with the lower multiplier being applied where there is a high degree of cleanup and cooperation, and a higher multiplier where this is absent.

The Discharger's standby staff was responding to an off-site generator alarm when the Facility's yard pump alarm was received at 10:28 pm. Therefore, the staff was unable to respond to the alarm until 11:30 pm. Once the Discharger's standby staff was present at the Facility, the 42" filter inlet valve was opened at 11:34 pm and the overflow ceased by 11:45 pm. The overflow was not susceptible to clean up. Therefore, a multiplier of 1.0 was selected.

c. History of Violations: 1.1

The Discharger has a history of violations (see for example ACL R4-2011-0157-M; ACL R4-2015-0035; ACL R4-2015-0223). Therefore, a multiplier of 1.1 was selected.

Step 5. Total Base Liability: \$93,951

The initial base liability per gallon and initial base liability per day are multiplied by the above factors to determine the total base liability amount of \$93,951.

Initial Liability $(\$64,200 + \$1,500) \times 1.3 \times 1.0 \times 1.1 = \$93,951$.

Step 6. Ability to Pay: 1

Consistent with Water Code section 13385, the Enforcement Policy provides that if the Water Board has sufficient financial information to make a finding that the Discharger lacks the ability to pay the Total Base Liability, or to make a finding that the Total Base Liability will negatively impact the Discharger's ability to continue in business, then it may adjust the Total Base Liability amount downward. Ultimately, the adjusted Final Liability Amount must be higher than the economic benefit the Discharger realized from committing the violation plus 10 percent. (Enforcement Policy, at p. 20-21.)

The Discharger is a special district that has the ability to impose rates and raise revenue. Therefore, the Discharger has the ability to pay the proposed amount and continue in business.

Step 7. Other Factors as Justice May Require

The Los Angeles Water Board finds that it is appropriate to increase the Total Base Liability amount by \$4,500 in consideration of investigation and enforcement costs incurred in regard to this matter. Increasing the Total Base Liability amount in this manner serves to create a more appropriate deterrent against future violations.

a. Staff Cost: \$4,500

To date, the Regional Board has incurred \$4,500 in staff costs associated with the investigation, preparation, and enforcement of the violations. This represents 30 hours of staff time devoted to meetings and communications, and drafting the enforcement documents, at a rate of \$150 an hour.

Step 8. Economic Benefit: \$1,674

Water Code section 13385(e) requires that, at a minimum, liability be assessed at a level that recovers the economic benefits derived from the acts or omission that constitute a violation. The Enforcement Policy directs the Los Angeles Water Board to determine any economic benefit of the violations based on the best available information. It provides that the administrative civil liability should exceed this amount plus 10 percent. (Enforcement Policy, at p. 20-21.)

The Discharger received an economic benefit of \$1,674. The Discharger avoided the cost of repairing or replacing the severed signal wire for the high level alarm for the secondary clarifier. The Discharger also failed to develop Standard Operating Procedures (SOP) for alarm testing. Finally, the Discharger failed to properly maintain, test, and verify the functionality of all alarms and wiring on regular basis.

This Economic Benefit amount represents the Discharger's cost-savings associated with noncompliance. See the attached Economic Benefit Analysis.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

b. Statutory Maximum: \$2,150,000

This is determined by multiplying the volume discharged but not cleaned up exceeds 1,000 gallons by the maximum \$10 per gallon rate under Water Code section 13385, subdivision (c).

c. Statutory Minimum: \$1,841.40

The Enforcement Policy requires the Regional Board to recover, at a minimum, 10 percent more than the economic benefit. Therefore, the statutory minimum is \$1,841.40.

Step 10. Final Liability Amount: \$98,451

The final liability amount consists of the sum for each violation, with any allowed adjustments, provided that amounts are within the statutory minimum and maximum amounts. The final liability amount calculation for the violations is the total base liability plus staff cost which sums up to \$98,451 and is within the statutory minimum and maximum amounts.

Economic Benefit Analysis

Tapia Water Reclamation Facility

| Compliance Action | One-Time Non-Depreciable Expenditure | | | | Annual Cost | | | Non-Compliance Date | Compliance Date | Penalty Payment Date | Discount Rate | Benefit of Non-Compliance |
|-------------------------------------|--------------------------------------|-------|------------|----------|-------------|-------|----------|---------------------|-----------------|----------------------|---------------|---------------------------|
| | Amount | Basis | Date | Delayed? | Amount | Basis | Date | | | | | |
| High Level Alarm Switch Replacement | \$ 5,000 | PCI | 10/19/2016 | Y | | | | 5/28/2015 | 7/31/2015 | 10/19/2016 | 7.30% | \$ 73 |
| Quarterly Alarm Testing | | | | | \$ 579 | ECI | 1/1/2015 | 5/28/2015 | 10/19/2016 | 10/19/2016 | 7.30% | \$ 561 |
| Alarm Testing SOP | \$ 1,448 | ECI | 1/1/2015 | N | | | | 5/28/2015 | 10/19/2016 | 10/19/2016 | 7.30% | \$ 1,040 |

Income Tax Schedule: Municipality **Analyst:** Bryan Elder **Total Benefit:** \$ 1,674
USEPA BEN Model Version: Version 5.6.0 (April 2016) **Date/Time of Analysis:** 7/19/2016 15:25

- Assumptions:**
- 1 High Level Alarm Switch Replacement cost based on estimates provided by LVMWD in email dated June 22, 2016.
 - 2 High Level Alarm Switch replacement costs are indexed using the Plant Cost Index (PCI).
 - 3 Alarm testing is based on quarterly, critical equipment testing lasting approximately 2 hours. Labor rate approximated at \$145 per hour based on annual salary for Water Reclamation Manager reported on transparentcalifornia.com for 2014. The labor rate includes a multiplier of 2.0 to account for costs of employment including benefits and overhead.
 - 4 Alarm testing Standard Operating Procedure (SOP) is based on approximately 10 hours for development. Labor rate approximated at \$145 per hour based on annual salary for Water Reclamation Manager reported on transparentcalifornia.com for 2014. The labor rate includes a multiplier of 2.0 to account for costs of employment including benefits and overhead.
 - 5 Alarm testing and SOP development costs are indexed using the Employment Cost Index (ECI).
 - 6 Non-compliance date is based on date of spill event.
 - 7 Compliance date for high level alarm switch replacement based on end of month that LVMWD indicated switch was replaced.
 - 8
 - 9 To the Regional Board's knowledge, SOP development and implementation for alarm testing has not been initiated. Therefore, the compliance date for these actions is assumed to be the tentative date of the hearing.
 - 9 The penalty payment date is assumed to be the tentative hearing date.