
State Water Resources Control Board

NOTICE OF PROPOSED SETTLEMENT WITH INDIO WATER AUTHORITY

FOR ALLEGED VIOLATIONS ASSOCIATED WITH THE EMERGENCY WATER
CONSERVATION REGULATIONS

WRITTEN COMMENTS DUE NO LATER THAN
12:00 noon on May 2, 2016

On or after May 2, 2016, the State Water Resources Control Board (State Water Board) or its delegee will consider approval of a proposed settlement with the Indio Water Authority to resolve an alleged violation associated with Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation). Specifically, the alleged violation involves Indio Water Authority's failure to meet its conservation standard.

The Indio Water Authority and the Prosecution Team have entered into a tentative settlement for this alleged violation, and have agreed to jointly seek the State Water Board's approval of that settlement through the adoption of a Stipulated Administrative Civil Liability Order. The proposed Order is attached to this notice.

SUBMISSION OF WRITTEN COMMENTS

Interested persons must submit written comments by **12:00 noon on May 2, 2016**. Written comment letters must be submitted to the attention of:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814

Comment letters may be submitted to the Clerk of the Board via email at: commentletters@waterboards.ca.gov (15 megabytes, or less, in size) or by fax at (916) 341-5620. Please indicate in the subject line "**Comment Letter – Indio Water Authority.**"

Comments may also be hand delivered. Couriers delivering comment letters must check in with lobby security personnel on the first floor of the CalEPA Building at the above address. Questions on comment submittals may be directed to Ms. Townsend, at (916) 341-5600.

Please direct other questions about this notice to Dr. Matthew Buffleben at (916) 341-5891 or Matthew.Buffleben@waterboards.ca.gov.

STATE WATER RESOURCES CONTROL BOARD

Indio Water Authority

ORDER WR-2016-00XX (Proposed)

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (hereafter "Stipulated Order" or "Order") is entered into by and between the Director of the Office of Enforcement of the State Water Resources Control Board ("State Water Board"), on behalf of the State Water Board Prosecution Staff ("Prosecution Staff") and Indio Water Authority ("Settling Respondent") (collectively "Parties") and is presented to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

WHEREAS, Indio Water Authority is alleged to have violated section 865(c)(1) of title 23 of the California Code of Regulations, as described in **EXHIBIT A** to this Stipulated Order; and

WHEREAS, the Parties have engaged in settlement negotiations and agree to fully settle the alleged violations without administrative or civil litigation and by presenting this Stipulated Order to the State Water Board, or its delegee, 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 all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in **EXHIBIT A**, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

1. **Administrative Civil Liability:** Indio Water Authority hereby agrees to the imposition of an administrative civil liability totaling \$61,000.

- a. The Parties agree that \$61,000 of the administrative civil liability shall be suspended ("Suspended Liability") pending completion of the water conservation Supplemental Environmental Project (SEP) as set forth herein and **EXHIBIT B**.

2.1 SEP Descriptions: Indio Water Authority agrees to fund the SEP(s) described below. IWA's Project will benefit water conservation by enhancing public outreach to all customers with a focus on disadvantaged areas and school education activities, creating an evaporative cooler rebate to incentivize customers to install more water efficient evaporative coolers, developing a customer portal/website to allow our customers to better understand their water usage, budget, and conservation in real-time versus every 30 days.

2.2 SEP Definitions:

- a. "Designated State Water Board Representative" – the representative from the State Water Board responsible for oversight of the SEPs. That individual is: Jasmine Oaxaca, or a person who may subsequently designated by the Director of the Office of Enforcement of the State Water Board.
- b. "SEP Completion Date" – The date in which the SEP will be completed in its entirety.

2.3 SEP Completion Date: 12/30/2016. Upon a showing of good cause and upon written agreement of the Parties, the Executive Officer may extend the SEP Completion Date.

2.4 Agreement of Settling Respondent to Fund, Report and Guarantee Implementation of SEP: Indio Water Authority represents that: (1) it will fund the SEP in the amounts as described in this Stipulated Order; (2) it will provide certifications and written reports to the Designated State Water Board Representative consistent with the terms of this Stipulated Order detailing the implementation of the SEPs; (3) it will guarantee implementation of the SEP identified in **EXHIBITS B** by remaining liable for the Suspended Liability until the SEP is completed and accepted by the State Water Board in accordance with the terms of this Stipulated Order. Indio Water Authority agrees that the State Water Board has the right to require an audit of the funds expended by it to implement the SEP.

2.5 SEP Progress Reports: Indio Water Authority shall provide monthly reports of progress on the SEP to the Designated State Water Board Representative commencing 30 days after this Stipulated Order becomes effective and continuing through submittal of the final report described below in Paragraph 2.6. If no activity occurred during a particular quarter, a quarterly report so stating shall be submitted.

2.6 Certification of Completion of SEP and Final Reports: On or before the applicable SEP Completion Date, the Settling Respondent shall submit a certified statement of completion of the SEPs ("Certification of Completion"). The Certification of Completion shall be submitted under penalty of perjury, to the Designated State Water Board Representative by a responsible corporate official representing the Settling Respondent. The Certification of Completion shall include the following:

- a. Certification that the SEPs have been completed in accordance with the terms of this Stipulated Order. Such documentation may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the State Water Board to evaluate the completion of the SEPs and the costs incurred by the Settling Respondent.
- b. Certification documenting the expenditures by the Settling Respondent during the completion period for the SEP. In making such certification, Settling Respondent may rely upon tracking systems used in the ordinary course of business that capture employee time, expenditures, and external payments to outside vendors such as environmental and information technology contractors or consultants. The certification need not address any costs incurred by the State Water Board for oversight. The Settling Respondent shall provide any additional information requested by the State Water Board staff which is reasonably necessary to verify SEP expenditures.
- c. Certification, under penalty of perjury, that the Settling Respondent followed all applicable environmental laws and regulations in the implementation of the SEP including but not limited to the California Environmental Quality Act (CEQA), the federal Clean Water Act, and the Porter-Cologne Act. To ensure compliance with CEQA where necessary, the Settling Respondent shall provide the State Water Board with the following documents from the lead agency prior to commencing SEP construction:
 - i. Categorical or statutory exemptions relied upon by the Settling Respondent;
 - ii. Negative Declaration if there are no potentially "significant" impacts;
 - iii. Mitigated Negative Declaration if there are potentially "significant" impacts but revisions to the project have been made or may be made to avoid or mitigate those potentially significant impacts; or
 - iv. Environmental Impact Report (EIR)

3. Third Party Financial Audit: In addition to the certification, upon completion of the SEP and at the written request of the State Water Board Executive Director, or the Executive Director's delegee, the Settling Respondent, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the State Water Board Executive Director providing such party's(ies') professional opinion that the Settling Respondent has expended money in the amounts claimed by the Settling Respondent. The audit report shall be provided to the Designated State Water Board Representative within three (3) months of notice from the State Water Board Executive Director to the Settling Respondent of the need for an independent third party financial audit. The audit need not address any costs incurred by the State Water Board for oversight.

4. State Water Board Acceptance of Completed SEP: Upon the Settling Respondent's satisfaction of its SEP obligations under this Stipulated Order and completion of the SEP and any audit requested by the State Water Board, the Designated State Water Board Representative shall send the Settling Respondent a letter recognizing satisfactory completion of its obligations under the SEP. This letter shall terminate any further SEP obligations of the Settling Respondent and result in the permanent stay of the Suspended Liability.

5. Failure to Expend all Suspended Administrative Civil Liability Funds on the Approved SEP: In the event that Settling Respondent is not able to demonstrate to the reasonable satisfaction of the Designated State Water Board Representative that the entire Suspended Liability has been spent to complete the components of the SEP for which the Settling Respondent is financially responsible, Settling Respondent shall pay the difference between the Suspended Liability and the amount the Settling Respondent can demonstrate was actually spent on the SEP, as an administrative civil liability. The Settling Respondent shall pay the additional administrative liability within 30 days of its receipt of notice of the Designated State Water Board Representative's determination that the Settling Respondent has failed to demonstrate that the entire Suspended Liability has been spent to complete the SEP components.

6. Failure to Complete the SEP: If the SEP is not fully implemented by the SEP Completion Date (as defined in Paragraph 2.3) required by this Stipulated Order, the Director of the State Water Board Office of Enforcement shall issue a Notice of Violation. As a consequence, the Settling Respondent shall be liable to pay the entire Suspended Liability or, if shown by Settling Respondent, some portion thereof less the value of the completion of any milestone requirements as determined by the Motion for Payment of Suspended Liability or as agreed in writing by the Parties. Unless otherwise agreed or determined by a Motion for Payment of Suspended Liability, the Settling Respondent shall not be entitled to any credit, offset, or reimbursement from the State Water Board for expenditures made on the SEP prior to the date of receipt of the Notice of Violation. The amount of the Suspended Liability owed shall be determined by agreement of the Parties or, if the Parties cannot reach agreement, via a "Motion for Payment of

Suspended Liability” before the State Water Board, or its delegee. Upon a determination by the State Water Board, or its delegee, of the amount of the Suspended Liability assessed, the amount shall be paid to the State Water Board Division of Administrative Services within thirty (30) days after the service of the State Water Board’s determination. In addition, the Settling Respondent shall be liable for the State Water Board’s reasonable costs of enforcement, including but not limited to legal costs and expert witness fees. Payment of the assessed amount will satisfy the Settling Respondent’s obligations to implement the SEP.

7. Publicity: Should Indio Water Authority, or the agents or subcontractors of Indio Water Authority publicize one or more elements of the SEP, they shall state in a prominent manner that the project is being funded as part of the settlement of an enforcement action by the State Water Board against Indio Water Authority.

8. Compliance with Applicable Laws: Indio Water Authority 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 continuing violations of the type alleged in **EXHIBIT A** may subject it to further enforcement, including additional administrative civil liability.

9. Party Contacts for Communications related to Stipulated Order:

For the State Water Board: Jasmine Oaxaca, PE
Water Resource Control Engineer
Jasmine.Oaxaca@waterboards.ca.gov
(916) 322-5327

For Indio Water Authority: Brian Macy, PE
General Manager
bmacy@indio.org
(760) 625-1808

10. 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.

11. Matters Addressed by Stipulation, Release and Covenant Not to Sue Indio Water Authority: Upon adoption by the State 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 in this Order or which could have been asserted based on the specific facts alleged in Exhibit A or this Stipulated Order against Indio Water Authority as of the effective date of this Stipulated Order (“Covered Matters”). The State Water Board releases and covenants not to sue Indio Water Authority from and against all claims, violations or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in **Exhibit A** or this Stipulated Order as of the effective date

of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Indio Water Authority's completion of the SEP and any audit requested by the State Water Board.

12. Public Notice: Indio Water Authority understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the State Water Board, or its delegee. If the State Water Board's Executive Director receives significant new information that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board, or its delegee, for adoption, the Executive Director may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board, or its delegee. Indio Water Authority agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

13. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for the State Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the 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.

14. 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 the 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.

15. 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.

16. Interpretation: This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. Indio Water Authority is represented by counsel in this matter.

17. Modification: This Stipulated 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 delegee.

18. If Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the State Water Board, or its delegee, 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 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.

19. No Admission of Liability: In settling this matter, Indio Water Authority does not admit to any of the allegations in **EXHIBIT A**, or that it has been or is in violation of the Water Code, or any other federal, state, or local law or ordinance.

20. Waiver of Hearing: Indio Water Authority has been informed of the rights provided by Water Code section 1055 and hereby waives its right to a hearing before the State Water Board prior to the adoption of the Stipulated Order.

21. Waiver of Right to Petition: Indio Water Authority hereby waives its right to petition the State Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

22. Respondent's Covenant Not to Sue: Indio Water Authority 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.

23. State Water Board is Not Liable: Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Settling Respondent, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board, its members or staff be held as parties to

or guarantors of any contract entered into by the Settling Respondent, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

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

25. No Third Party Beneficiaries. This Stipulated 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 Stipulated Order for any cause whatsoever.

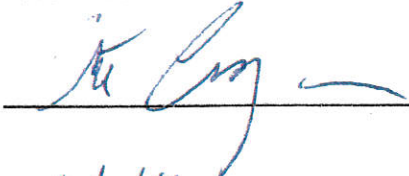
26. Effective Date: This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Board, or its delegee, enters the Order. The State Water Board shall notify Indio Water Authority within 24 hours of entry of this Stipulated Order.

27. Counterpart Signatures: This Stipulated 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.

28. Incorporation of Exhibits: Exhibits "A" and "B" are hereby incorporated by reference.

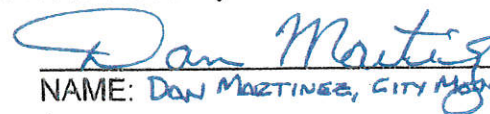
IT IS SO STIPULATED.

State Water Board Prosecution Staff

By: 

Date: 4/11/16

Indio Water Authority

By: 
NAME: DAN MARTINEZ, CITY MANAGER/INDIO EXECUTIVE DIRECTOR

Date: 4-8-16

Order of the State Water Board

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

Christian M. Carrigan
Director, Office of Enforcement

Exhibit A



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

October 29, 2015

(sent via electronic mail and certified mail)

CERTIFIED MAIL

No. 7015 0640 0006 0950 4568

Mr. Brian Macy
General Manager
Indio Water Authority
83-101 Avenue 45
Indio, CA 92201
bmacy@indio.org

SUBJECT: ENFORCEMENT ACTION: ISSUANCE OF ADMINISTRATIVE CIVIL LIABILITY COMPLAINT FOR FAILURE TO MEET WATER CONSERVATION STANDARD

Dear Mr. Macy:

On May 5, 2015, the State Water Resources Control Board (State Water Board) adopted Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) pursuant to Water Code section 1058.5. The Emergency Regulation became effective on May 18, 2015. Among other things, the Emergency Regulation is designed to achieve the 25 percent statewide potable water usage reduction through February 2016 ordered by Governor Brown in his April 1, 2015 Executive Order.

The Emergency Regulation requires each urban water supplier to "reduce its total potable water production by the percentage identified as its conservation standard." (Cal. Code Regs., tit. 23, § 865(c)(1).) The Indio Water Authority has failed to meet its conservation standard. Therefore, I am issuing you the enclosed Administrative Civil Liability Complaint (Complaint) under Water Code sections 1846 and 1055. The proposed civil liability is based on the findings set forth in the enclosed Complaint.

If you have questions, or believe the allegations are erroneous, please contact Dr. Matthew Buffleben at (916) 341-5891, or by email at Matthew.Buffleben@waterboards.ca.gov. Your right to request a hearing to contest the allegations is also described in the Complaint.

Sincerely,

Christian M. Carrigan, Director
Office of Enforcement

Enclosure

cc: *(via email only)*

Ms. Caren Trgovcich
Chief Deputy Director
caren.trgovcich@waterboards.ca.gov

Mr. Eric Oppenheimer, Director
Office of Research, Planning and Performance
eric.oppenheimer@waterboards.ca.gov

Mr. Max Gomberg
Office of Research, Planning and Performance
max.gomberg@waterboards.ca.gov

Dr. Matthew Buffleben, Chief
Special Investigations Unit
Matthew.Buffleben@waterboards.ca.gov

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

OFFICE OF ENFORCEMENT

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Urban Water Conservation
by
INDIO WATER AUTHORITY

YOU ARE HEREBY GIVEN NOTICE THAT:

1. The Indio Water Authority (IWA) is alleged to have failed to reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013, in violation of California Code Regulations, title 23, section 865(c)(9), adopted by the State Water Resources Control Board (State Water Board or Board) pursuant to Water Code section 1058.5.
2. Water Code section 1846, subdivision (a)(2), provides that any person or entity that violates a regulation adopted by the Board may be liable for up to five hundred dollars (\$500) for each day the violation occurs. Water Code section 1846, subdivision (c), provides that civil liability may be imposed administratively by the State Water Board pursuant to Water Code section 1055.
3. Water Code section 1055, subdivision (a), provides that the Executive Director of the Board may issue a complaint to any person or entity on which Administrative Civil Liability (ACL) may be imposed. State Water Board Executive Director Thomas Howard has delegated this authority to Chief Deputy Director Caren Trgovcich, who in turn has delegated the authority to issue a complaint for violation of California Code Regulations, title 23, sections 865(d)(1) to the Director of the State Water Board's Office of Enforcement, Cris Carrigan.

ALLEGATIONS

4. On January 17, 2014, Governor Edmund G. Brown Jr. (Governor Brown) issued Proclamation No. 1-17-2014 (Proclamation), declaring a State of Emergency to exist in California under the Emergency Services Act due to severe drought conditions. The Proclamation, among other things, called on all Californians to reduce their water usage by 20 percent.
5. On April 25, 2014, Governor Brown issued a Proclamation of a Continued State of Emergency due to drought conditions, based on the need to strengthen the state's ability to manage water and habitat effectively in drought conditions.
6. On April 1, 2015, Governor Brown issued Executive Order B-29-15 (Executive Order) to strengthen the state's ability to manage water and habitat effectively in drought conditions. The Executive Order calls on all Californians to redouble their efforts to conserve water, and directs the State Water Board to impose restrictions on urban water suppliers to achieve a statewide 25 percent reduction in potable urban water usage through February 2016.
7. On May 5, 2015, the State Water Board adopted Resolution 2015-0032, an Emergency Regulation for Statewide Urban Water Conservation (Emergency Regulation) pursuant to Water Code section 1058.5. The Emergency Regulation adds a new section to title 23 of the California Code of Regulations intended to safeguard urban water supplies in the event of continued drought, minimize the potential for waste and unreasonable use of water, and

achieve the 25 percent statewide potable water usage reduction ordered by Governor Brown in the Executive Order. The Emergency Regulation was approved by the Office of Administrative Law and became effective on May 18, 2015.

8. The Emergency Regulation requires each urban water supplier to "reduce its total potable water production by the percentage identified as its conservation standard." California Code Regulations, title 23, section 865(c)(1).
9. Section 865(b)(2) requires urban water suppliers to prepare and submit a monitoring report to the State Water Board by the 15th of each month detailing the total amount of potable water produced compared to the amount produced in the same calendar month in 2013.
10. The drought conditions that formed the basis for the Executive Order and Emergency Regulations continue to exist and will likely continue to exist for the foreseeable future.
11. IWA has a conservation target, pursuant to Section 865(c)(9), of 32 percent savings over its water usage in 2013. As of the date of its last report, IWA is cumulatively 10.4 percent behind in meeting the applicable conservation standard, which translates to an estimated 300,816,000 gallons of water.
12. On August 7, 2015 the State Water Board Office of Enforcement issued a Notice of Violation and an Information Order pursuant to its authority outlined in Section 866(b) of the Emergency Regulations, to determine what actions IWA had taken to comply with its conservation standard. IWA responded to the Information Order on August 14, 2015.
13. Water Board staff reviewed the information provided by IWA in response to the Information Order and have been monitoring ongoing conservation efforts. There are significant deficiencies in IWA's conservation program including: failure to update their water rate structure to include a water conservation incentive, as well as a failure to issue penalties for water users who waste water or violate the local ordinance.
14. Water Board staff reviewed the urban supplier monthly reports and used two metrics assess the nature and persistence of the water conservation standard violations: 1) monthly and cumulative performance in meeting the numeric conservation standard, and 2) the total volume of water produced by the water supplier above the applicable conservation standard. These metrics were analyzed together to compile a single ranking. IWA was identified as a water supplier whose violation of the regulation was one of the most severe.
15. The circumstances described above indicate that IWA has violated section 865(c)(9) by failing to reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013, or for a total of 122 days from the effective date of the Emergency Regulation on June 1, 2015 and the September 30, 2015 date tabulated in its last report.

PROPOSED CIVIL LIABILITY

16. Water Code section 1846, subdivision (a)(2), provides that any person or entity that violates a regulation adopted by the Board may be liable for up to five hundred dollars (\$500) for each day the violation occurs.
17. The evidence provided by IWA in the monthly reports that are submitted in compliance with Section 865(b)(2) demonstrates that IWA is in ongoing violation of the Conservation Order, beginning on June 1, through at least September 30th – a total of 122 days.
18. The maximum civil liability for the alleged violations is \$61,000.

19. In determining the amount of civil liability, California Water Code section 1055.3 requires that the State Water Board consider all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the nature and persistence of the violation, the length of time over which the violation occurs, and any corrective action taken by the violator.
20. In this case, IWA has consistently failed to meet its conservation standard, even after a Notice of Violation was issued by the State Water Board. IWA has issued no penalties to its customers, and as such has failed to enforce its own water restrictions put in place to meet the conservation standard. IWA's violation of the emergency regulation has spanned four months, and is ongoing with little to no change in behavior, regardless of the enforcement actions taken by the State Water Board.
21. Although not required under Water Code section 1055, State Water Board staff evaluated IWA's ability to pay the proposed civil liability. Water Board staff reviewed IWA's ability to satisfy immediate financial obligations by reviewing its financial reports and found the budgetary reserve is more than enough to pay the proposed civil liability.
22. Having taken into consideration the factors described above, the Director for the Office of Enforcement recommends an ACL for violating the emergency regulation of \$61,000. The recommended penalty is based on the circumstances known to this time: IWA continued failure to meet its conservation standard despite repeated warnings during extreme ongoing drought conditions, IWA's ability to pay, and the need to provide a strong disincentive for continued violation by IWA, its ratepayers and any similarly-situated parties.

RIGHT TO HEARING

23. IWA may request a hearing on this matter before the State Water Board. Any such request for hearing must be in writing and received or postmarked within 20 days of the date this notice is received. (California Water Code, § 1055, subd. (b).)
24. If IWA requests a hearing, IWA will have an opportunity to be heard and to contest the allegations in this Complaint and the imposition of an ACL by the State Water Board. If a hearing is requested, separate notice setting the time and place for the hearing will be mailed not less than 10 days before the hearing date.
25. If IWA requests a hearing, the State Water Board will consider at the hearing whether to impose the civil liability, and, if so, whether to adjust the proposed liability within the amount authorized by statute. Based on the evidence received at the hearing, the State Water Board may take any appropriate action in accordance with sections 100, 275, and 1050 et seq. of the California Water Code. Any State Water Board order imposing an ACL shall become final and effective upon issuance.
26. If IWA does not wish to request a hearing, please remit a cashier's check or money order within 20 days of the date of this Complaint for the amount of the ACL set forth above to:

State Water Resources Control Board
Division of Administrative Services
Accounting Branch 1001 I Street, 18th Floor,
Sacramento, CA 95814
27. If IWA does not request a hearing and does not remit the ACL amount, the State Water Board may seek recovery of the ACL amount as authorized by Water Code section 1055.4, may issue a Cease and Desist Order subjecting IWA to up to \$10,000 in civil liabilities for each day of non-compliance, or may see any other remedy authorized by law..

STATE WATER RESOURCES CONTROL BOARD



Christian M. Carrigan, Director
Office of Enforcement

Dated: 10/29/2015

Exhibit B

Supplemental Environmental Project

Project Name: Indio Water Authority Conserve MORE (More Outreach, Rebates, and Education) Project; hereafter referred to as the "Project"

Project Developed by: Indio Water Authority (IWA)

Project to be Performed by: Indio Water Authority

Contact: Brian Macy, PE
General Manager

Compliance with SEP Criteria:

1. Benefit to Water Conservation

IWA's Project will benefit water conservation by enhancing public outreach to all customers with a focus on disadvantaged areas and school education activities, creating an evaporative cooler rebate to incentivize customers to install more water efficient evaporative coolers, developing a customer portal/website to allow our customers to better understand their water usage, budget, and conservation in real-time versus every 30 days.

2. SEP is not a pre-existing obligation of IWA

IWA is not required to develop, implement or fund the Project by any permit or order or any local, state or federal law, nor has this program been previously contemplated as a funded program or included in prior IWA budgets, because of the following reasons:

- Public outreach activities utilizing school programs – Since 2011 IWA has been sponsoring LivingWise, an energy efficiency program which includes water conservation targeting kindergarten through 6-grade students. Due to a lack of staff availability and funding, IWA had no plans to enhance outreach activities at local schools.
- Evaporative cooler rebate – IWA offers numerous rebates (turf removal, irrigation equipment, washing machine, and toilet) and felt that the existing rebates were the most appropriate for its customers. Thus, there is no current budget or program for rebates to customers who replace inefficient evaporative coolers with more water-efficient devices.
- Developing a customer portal/website – IWA is in the fourth year of a 5-year meter replacement program which is replacing old manual read meters with new radio-read meters which allows remote meter reading. Remote meter reading is necessary to obtain real-time water usage and get the most out of a customer portal. Due to a lack of funding, the meter replacement program was not

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accelerated and the customer portal/website has not been part of current and future capital improvement projects.

3. No Fiscal Benefit to Water Board

The Project does not provide any fiscal benefit to the Water Board's functions, its members or its staff.

4. Nexus Between Violation and SEP

A nexus exists between IWA's violation of its urban water conservation standard and the Project because of the following reasons:

- Public outreach activities utilizing IWA staff – Many of the non-HOA neighborhoods in the City of Indio are disadvantaged areas that are not organized where information can be easily disseminated to its residents. IWA staff will go door-to-door distributing flyers and handouts (in both Spanish and English) promoting IWA water conservation programs. The focus of these "Weekend Walk-Abouts" will be the recently implemented Drought Penalty Surcharge until June 30, 2016 with Customer Portal/AMI added on May 1, 2016 and also continuing until June 30, 2016. The Weekend Walk-Abouts were successful to promote the implementation of watering restrictions in May 2015 when IWA initiated a Stage III – Water Emergency reducing the watering to Tuesday, Thursday, Saturday and Sunday between 6 pm – 6 am.
- Public outreach activities utilizing school programs – By utilizing school programs, IWA will be able to promote water conservation to all ages, demographics, and students who use Spanish as their primary language. IWA will also be able to hold school sponsored events where both students and their parents can attend and learn about water conservation. In the fall of 2016, IWA will initiate a customer portal/website sign-up program through school flyers to be held at local schools. The intent of this sign-up program using school resources and facilities is that parents who may not have transportation resources to attend IWA or City functions will be more willing to attend a school related function.
- Evaporative cooler rebate – Evaporative coolers can use from 20 to 100 gallons of water per day, depending on the size of the swamp cooler and whether or not the water is collected and pumped through the pads more than once. This rebate will promote water conservation by incentivizing IWA customers to purchase more water efficient evaporative coolers.
- Developing a customer portal/website – IWA customers have been asking for more control over their water budgets and usage. Currently, IWA reads a customer's meter once a month. If there is a leak, the customer may not know about it until their bill arrives. A customer portal/website will provide real-time data to the customer such as 15-minute interval flags for leak, tamper, and

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reverse flow detection thus allowing the customer to fix the leak within minutes instead of months.

To provide the real-time metering information to the customer portal/website, IWA will be implementing an advanced metering infrastructure (AMI) project consisting of: meter replacement and register upgrades, installation of data collectors, software upgrades, and necessary cloud services. The AMI project will consist of two (2) phases:

- Phase 1 will include the replacement and/or upgrade of approximately 7,000 meters in disadvantaged areas of Indio.
- If the Emergency Conservation Regulations continue through June 2016, IWA will initiate Phase 2 of the AMI project which will replace and/or upgrade the remaining 15,000 meters in the IWA service area.

The AMI project is not part of the SEP, but is necessary to support the SEP. The AMI project scope, budget, and schedule are included with this SEP for informational purposes only.

Description of Project:

1. The goal(s) of the SEP and detailed plans for achieving the goal(s)

The goal of the project is to promote and achieve water conservation goals by enhancing public outreach to all customers with a focus on disadvantaged areas and school education activities, creating an evaporative cooler rebate to incentivize customers to install more water efficient evaporative coolers, developing a customer portal/website to allow our customers to better understand their water usage, budget, and conservation in real-time versus every 30 days.

IWA intends to achieve these goals by:

- Public outreach activities utilizing IWA staff – IWA staff will began Weekend Walk-Abouts which consist of 2-3 teams of two (2) IWA employees interacting with customers within designated non-HOA neighborhoods. Many of the non-HOA neighborhoods in the City of Indio are disadvantaged areas that are not organized where information can be easily disseminated to its residents. IWA staff will go door-to-door distributing flyers and handouts (in both Spanish and English) promoting IWA water conservation programs. The focus of these Weekend Walk-Abouts will be the recently implemented Drought Penalty Surcharge until June 30, 2016 with Customer Portal/Website added on May 1, 2016 and also continuing until June 30, 2016.

The Weekend Walk-Abouts were successful to promote the implementation of watering restrictions in May 2015 when IWA initiated a Stage III – Water

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Emergency reducing the watering to Tuesday, Thursday, Saturday and Sunday between 6 pm – 6 am.

- Public outreach activities utilizing school programs
 - Meet with school faculty and staff members and start supporting the following school programs which focus on water conservation:
 - Career Technical Education
 - Freshman Seminar / Success 101
 - Environmental Horticulture Science
 - Nursery Team
 - Hydrology, Landscape & Sustainable Environmental Design
 - Floral Design
 - Future Farmers of America
 - Environmental Design and Gardening
 - Support the District's Science Fair
 - Provide water conservation flyers to students
 - Organize customer portal/website signup meeting at each school and incentivize parents (\$25 gift certificates) to log into the IWA website and establish email or text notifications for water leaks and excess water use

- Evaporative cooler rebate
 - Establish water efficiency goals (such as 5 gallons per ton-hour) and minimum evaporative cooler size for the rebate
 - Establish rebate amount
 - Develop a flyer to explain the evaporative cooler rebate
 - Place flyer on website
 - Distribute evaporative cooler rebate flyer with other rebate flyers at all outreach events
 - Distribute flyer to all IWA customers as a bill insert

- Developing a customer portal/website
 - Develop a Request for Qualifications (RFQ) outlining the requirements of the IWA customer portal/website
 - Select the best qualified firm based on the proposals received
 - Develop a press release and flyer explaining the benefits of the customer portal/website and how to sign-up
 - Distribute customer portal/website flyer at all outreach events
 - Distribute flyer to all IWA customers as a bill insert

2. Key personnel involved in SEP

All IWA staff will participate in this SEP.

- IWA Administration which includes the Water Conservation Programs Coordinator will be responsible for all the outreach activities (Weekend Walk-Abouts and School Activities).

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- IWA Engineering Department will be responsible for the technical details of the evaporative cooler rebate flyer and customer portal/website RFQ.
- IWA Customer Service and Finance Department will:
 - be responsible for the customer data to support the customer portal/website
 - attend the necessary training to fully understand the evaporative cooler rebate and customer portal/website in preparation of customer questions
 - processing all evaporative cooler rebates
- IWA Information and Technology Department will be responsible for the connectivity between the water meters, meter data collectors, customer portal/website, software updates, and necessary cloud services.
- IWA Distribution Department will be responsible for Weekend Walk-Abouts which will promote the evaporative cooler rebate and customer portal/website.
- IWA Production Department staff will also have the opportunity to participate in the Weekend Walk-Abouts.

3. Plans to continue or maintain the SEP beyond the SEP-funded period

IWA does plan to continue or maintain elements of the SEP in the following manner:

- Public outreach activities utilizing IWA staff – The Weekend Walk-Abouts will be continued as necessary to promote the customer portal/website through the implementation of the AMI project. The cost of weekend walk-about will be included within ongoing salaries and benefit costs.
- Public outreach activities utilizing school programs – The support of school programs and customer portal/website sign-up program will continue as necessary. The IWA labor costs to support the school programs and customer portal/website sign-up program will be included within ongoing salaries and benefit costs. The funding to support the sign-up incentives (\$25 gift certificates) will be evaluated and continued based on effectiveness and IWA budget constraints.
- Evaporative cooler rebate – The evaporative cooler rebate program will be evaluated and continued based on effectiveness and IWA budget constraints. If evaporative cooler rebate funds remain past December 15, 2016, the funds will be reallocated to other SEP programs (customer portal/website implementation) and the rebate program will be terminated to allow for SEP completion.
- Customer portal/website – Once implemented, the IWA customer portal/website will be continued and budgeted as required as it will be considered an essential function similar to meter reading, water treatment, and billing.

4. Documented Support

IWA met with Desert Sands Unified School District (DSUSD) on January 13, 2016 to discuss: existing school water conservation activities, how IWA can support and

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enhance those activities, IWA's desire to hold educational activities for parents, and school flyers IWA would like to participate in. Later that morning, we received an email supporting our efforts as well as a list of water conservation school activities and DSUSD's Flyer Distribution Requests Form.

Project Milestones and Budget:

1. The Project will include the following milestones:

See Attachment A: Schedule

- 2. IWA shall submit monthly status reports as further described below in the section entitled "Reports to the State Water Board" on or before the 15th of each month until the Project is complete.**
- 3. IWA shall submit a final report and certification of completion as further described in the Settlement Agreement for this matter on: December 30, 2016.**

Project Performance Measures:

IWA will measure the success of the Project by water conservation through its new evaporative cooler rebate and customer portal/website.

- Evaporative cooler rebate – A typical evaporative cooler will consume 20 to 100 gallons of water per day, if it is maintained properly. An evaporative cooler that is in disrepair, or improperly maintained might waste more than 1,000 gallons per day¹. As part of this SEP, the measurable goal will be the removing 25 evaporative coolers that are in disrepair, or improperly maintained. Removing 25 evaporative coolers will conserve up to approximately 3,000,000 gallons/year.
- Customer portal/website – Approximately 1,200 customers are registered for e-billing. We would expect the same 1,200 customers to re-register for the customer portal/website. As part of this SEP, the measurable goal will be to enlist an additional 400 customers through our Public Outreach Activities (weekend walk-about and school activities).

4. The Project will have the following budget:

The SEP budget will be based on the administrative civil penalty amount of \$61,000. However, IWA will be supporting the SEP with other related activities such as: drought penalty outreach, contract services, AMI, and state reporting in the amount of \$1,939,000 (see Attachment B – Budget).

¹ "Evaporative Cooling Introduction" (Alliance for Water Efficiency, 2010), <http://www.allianceforwaterefficiency.org>

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Suspension of \$61,000 in administrative civil penalty shall occur after successful completion of the Project and compliance with the SEP provisions in the Settlement Agreement for this matter, which include the requirement that IWA demonstrate that it has expended a minimum of \$61,000 to implement the Project.

The difference between \$61,000 and the suspended amount shall be paid by IWA to the State Water Resources Control Board Division of Administrative Services.

Reports to the State Water Board:

The City will provide a monthly progress report to the State Water Board's designated representative in accordance with schedule set forth in the Project Milestones and Budget section above. Each report shall include:

- Executive Summary
- Report Status
 - Work performed during the reporting period
 - Major accomplishments
 - Any issues or concerns that may affect the schedule or budget and include recommendations on how to correct the matter(s)
 - Activities planned for the next reporting period
- Cost Information
 - Costs incurred during progress period for IWA Employees, Consultants, and Equipment
 - Project Budget Summary
 - Tasks
 - SEP Cost
 - IWA Cost
 - Total Cost
- Schedule Information
 - Project schedule showing actual progress versus planned progress
 - Delays due to unforeseen circumstances
 - Revised project schedule (if necessary)
- Backup Materials
 - Coversheet/Summary
 - Backup Material

IWA will provide a final report and certification of completion of the SEP in accordance with the Settlement Agreement for this matter.

