

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION**

In the matter of:

**The City of Fortuna
180 Dinsmore Drive
Fortuna, California 95540**

)
) **Order R1-2017-0016**
)
) **SETTLEMENT AGREEMENT AND**
) **STIPULATION FOR ENTRY OF**
) **ADMINISTRATIVE CIVIL LIABILITY ORDER**
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Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, North Coast Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team) and the City of Fortuna (Fortuna) (collectively Parties) and is presented to the Regional Water Board for adoption as an Order, by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

- 1.** Fortuna owns and operates a municipal wastewater treatment plant and associated collection system and disposal facilities (Facility). The Facility serves approximately 7,000 residential, commercial, and institutional users in the City of Fortuna and 4,000 residential users in the Rohnerville-Campton Heights Area. The current wastewater treatment system consists of screening, grit removal, influent pumping, primary sedimentation, activated sludge processes, secondary sedimentation, chlorination, de-chlorination, as well as anaerobic biosolids digestion, dewatering and composting. The Facility is currently designed to treat an average dry-weather flow (ADWF) of 1.5 mgd and reports an influent peak wet weather flow (PWWF) capacity of 7.0 mgd. Peak influent flows over 3-4 mgd are diverted to three equalization ponds and returned for treatment during low flow periods. The Facility also has an associated sanitary sewer system consisting of 52 miles of force mains, gravity pipeline, collection lines, interceptor lines, cleanouts, and manholes. Fortuna is also responsible for 3 miles of lateral connections.
- 2.** The Regional Water Board adopted WDRs Order No. R1-2007-0007 on September 13, 2007, to regulate discharges from the Facility. WDRs Order No. R1-2007-0007 became effective November 1, 2007 and remained in effect until January 27, 2011 whereupon Order No. R1-2011-0004 became effective and serves as an NPDES permit under the federal Clean Water Act.
- 3.** In December 2016, the Prosecution Team notified Fortuna of sixteen (16) alleged violations related to exceedances of the effluent limitations set forth in Orders No. R1-2007-0007 and No. R1-2011-0004 over the period November 1, 2010, through January 31, 2016 potentially subject to Mandatory Minimum Penalties (MMPs). Of these effluent limitation exceedances, two (2) are for copper, a Group II pollutant; five (5) are for total chlorine residual, a Group II pollutant; one (1) is for Total Coliform that is exempt from MMPs because the discharge was to land; and six (8) are for dichlorobromomethane, a Group II pollutant, all subject to MMPs. Attachment A presents the MMP violations.

4. In addition to the effluent limitation violations set forth in paragraph 3 of this Order, the Prosecution Team also alleged that Fortuna had a sanitary sewer overflow (SSO) that began at 7:35 a.m. on February 5, 2015, and lasted until 7:35 a.m. on February 6, 2015. During the SSO event, raw sewage combined with storm water, discharged from four manhole locations located at Twelfth Street and I Street, Twelfth Street and Loni Drive, First Street and Spring Street, and a cleanout at 497 K Street. The SSO discharged to the storm drain system, ultimately reaching Rohner Creek and Strongs Creek, tributaries to the Eel River.

5. The Parties engaged in settlement negotiations and agreed to settle this matter without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. To resolve by consent and without further administrative proceedings all alleged violations of Water Code section 13385 set forth in the Complaint, the Parties have agreed to the imposition of administrative civil liability in the total amount of ninety-thousand five hundred seventy-three dollars (\$90,573.00), consisting of \$45,000 of mandatory minimum penalties and \$45,573 of discretionary penalties, against Fortuna. The Parties have further agreed that Fortuna will apply the majority of these penalties toward the cost to complete a Compliance Project (CP), in accordance with the terms of this Settlement Agreement and Stipulated Order.

6. On November 17, 2009, the State Water Board adopted Resolution No. 2009-0083 adopting the State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on May 20, 2010. The policy can be found at:

http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

7. The discretionary liability amount was determined using a factors analysis consistent with the Water Code and the Enforcement Policy. The Prosecution Team considered the methodology set forth in the Enforcement Policy for the alleged violations, as shown in Attachment B. Attachment B is incorporated herein by reference. Fortuna does not necessarily agree with the alleged violations, but accepts the penalties described herein in order to amicably settle this specific enforcement action.

8. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives and meets the requirements under Water Code section 13385, subdivisions (h) and (i), and the State Water Resources Control Board's Enforcement Policy, so that no further action is warranted concerning the specific violations alleged in the Complaint except as provided in this Stipulation and Order, and that this Stipulation and Order are in the best interest of the public.

9. Pursuant to Water Code section 13385, subdivision (k), the Regional Water Board may, in lieu of assessing MMPs pursuant to Water Code section 13385, subdivisions (h) and (i), allow a publicly owned treatment works (POTW) serving a small community to spend all, or a portion of, the MMPs towards the completion of a CP proposed by the POTW. The CP must conform to the requirements specified in the Enforcement Policy on Compliance Projects.

10. The Regional Water Board has determined that Fortuna meets the requirements under Water Code section 13385, subdivision (k) and the Enforcement Policy to be recognized as a "POTW serving a small community," and is therefore eligible for a CP in lieu

of all, or a portion of, the mandatory minimum penalties assessed pursuant to Water Code section 13385, subdivisions (h) and (i). Additional details regarding the financial hardship determination for Fortuna can be found in Table 2 of the "Small Disadvantaged and Financial Hardship Determination for North Coast Region Communities" Memorandum dated July 21, 2016.

Section III: Stipulations

NOW, THEREFORE, in consideration of the execution of the Settlement Agreement and Stipulated Order and the releases, satisfactions, and promises made herein, it is hereby agreed upon and the Parties stipulate to the following:

- 11. Recitals Incorporated.** The preceding Recitals are incorporated herein.
- 12. Jurisdiction:** The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and jurisdiction over the Parties to this Stipulation.
- 13. Administrative Civil Liability:** Parties stipulate to the imposition of an administrative civil liability in the amount of ninety-thousand five hundred seventy-three dollars (\$90,573.00) with \$45,000.00 as mandatory minimum penalties and \$45,573.00 as discretionary penalties. Fortuna shall pay within 30 days of issuance of this Order \$45,573.00 to the State Water Resources Control Board Cleanup and Abatement Account. The remainder of the penalty, forty-five thousand dollars (\$45,000.00) shall be suspended (Suspended Liability) pending completion of a CP, as set forth herein and described in Exhibit C, attached hereto, and incorporated by this reference.
- 14. CP Description:** Fortuna has proposed to upgrade its Wastewater Treatment Plant Communications and Programmable Logic Controller (PLC) system. This project focuses on the most prevalent issues with dichlorobromomethane and total residual chlorine, which constituted 87% of the alleged violations (13 of 15 total violations) occurring during the period covered by this Order. The purpose of the CP is to provide consistent, accurate effluent flow monitoring, which will allow for proper dosing of chemicals in the chlorination and dechlorination processes. The CP consists of four tasks:
 - (1) Hardware Design, Programming and Control Strategies
 - (2) Offsite Testing, Startup, Installation and Training
 - (3) Compliance Project Completion
 - (4) Final Report

The CP will:

- a. Allow Fortuna to modify its control strategy to increase the reliability of the Facility's effluent meters. This will provide real time effluent flow measurement and ensure the proper dosing of chemicals in the effluent.
- b. Allow Fortuna to monitor the Facility's effluent and have set points on alarms for high and low chlorine residuals. This will allow the operators to quickly detect any failures and make the necessary changes.
- c. Make it possible for the Facility's operators to make adjustments remotely through a tablet or computer. This will allow the operators to more quickly address any excursions, even when not present at the Facility.

The final report shall document CP completion and detail fund expenditures and goals achieved. The final report shall include copies of accounting records of expenditures.

The CP includes the following tasks and schedule:

TASK	DESCRIPTION	Complete By
1	Hardware Design, Programming and Control Strategies	June 1, 2017
2	Offsite Testing, Startup, Installation and Training	June 15, 2017
3	Final Compliance Project Completion	July 1, 2017
4	Submit Final Report to Regional Water Board	August 1, 2017

15. CP Costs: Fortuna has estimated the cost to be approximately \$81,477 to complete all tasks. The amount of the liability to be suspended upon completion of the CP is \$45,000 in MMPs, as authorized by Water Code section 13385, subdivision (k).

16. CP Completion Date: The CP shall be concluded by July 1, 2017 (CP Completion Date). A final report shall be provided to the Regional Water Board and the State Water Resources Control Board's Division of Financial Assistance by August 1, 2017, as specified under Task 4 in paragraph 12.

17. Failure to Complete the CP: Except as provided for in paragraph 21, if the CP as described in this Order is determined to be infeasible, or if Fortuna fails to complete the CP by the CP Completion Date, Fortuna shall be liable to pay the Suspended Liability to the State Water Pollution Cleanup and Abatement Account within 30 days of receipt of the invoice.

18. CP Oversight: Fortuna will oversee implementation of the CP. Additional oversight may be provided by the Regional Water Board.

19. CP Funding Source: As a material consideration for the Regional Water Board's acceptance of this Stipulation, Fortuna represents that it will utilize the funds as described in Exhibit C and Paragraph 13 to implement the CP in accordance with the implementation schedule set forth above. Fortuna understands that its commitment to implement the CP, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement.

20. Fortuna Agreement to Implement CP: As a material consideration for the Regional Water Board's acceptance of this Stipulation, Fortuna represents and agrees that: (1) it will implement and complete the CP as described in this Settlement Agreement and Stipulated Order (2) it will provide certifications and written reports to the Designated Regional Water Board Representative consistent with the terms of this Stipulation detailing the implementation of the CP; and (3) it will guarantee implementation of the CP identified in Paragraph 13 and Exhibit C by remaining liable for the Suspended Liability until the CP is completed and accepted by the Regional Water Board in accordance with the terms of this Stipulation. Fortuna agrees that the Regional Water Board has the right to require an audit of the funds expended by Fortuna to implement the CP.

21. Certification of Completion of CP: On or before July 1, 2017, Fortuna shall provide a certified statement of completion of the CP (Certification). The Certification shall be submitted by a responsible official under penalty of perjury under the laws of the state of California, to Regional Water Board staff. The Certification shall include the following:

- a. Certification that the CP has been completed in accordance with the terms of this Settlement Agreement and Stipulated Order. Such documentation may include plans, photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate the completion of the CP and the costs incurred by Fortuna for the CP.
- b. Certification documenting the expenditures by Fortuna during the completion period for the CP. Expenditures may include, but are not limited to, payments to outside consultants, vendors or contractors implementing the CP. Fortuna shall provide any additional information requested by the Regional Water Board staff that is reasonably necessary to verify CP expenditures.
- c. Certification that Fortuna followed all applicable environmental laws and regulations in the implementation of the CP, including but not limited to the California Environmental Quality Act (CEQA), the Federal Clean Water Act, and the Porter-Cologne Act.

22. Third Party Financial Audit of CP: At the written request of Regional Water Board staff, Fortuna, at its sole cost, shall submit a report prepared by an independent third party(ies) acceptable to the Regional Water Board staff providing such party's(ies)' professional opinion that Fortuna has expended money in the amounts claimed. The written request shall specify the reasons why the audit is being requested. The audit report shall be provided to Regional Water Board staff within three (3) months of notice from Regional Water Board staff to Fortuna of the need for an independent third party audit. The audit need not address any costs incurred by the Regional Water Board for oversight.

23. Failure to Expend the Entire Suspended Liability on the Approved CP: In the event that Fortuna is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that the entire suspended liability of \$45,000 has been spent for the completed CP, Fortuna shall pay the difference between the suspended liability of \$45,000 and the amount Fortuna can demonstrate was actually spent on the CP, as administrative civil liability. Fortuna shall be liable to pay the State Water Board Cleanup and Abatement Account the additional administrative civil liability within 30 days of receipt of notice of the Regional Water Board staff's determination that Fortuna failed to demonstrate that the entire Suspended Liability was spent to complete the CP.

24. Extension of the Implementation Schedule Deadlines: If, given written justification from Fortuna, and the Regional Water Board staff determine that a delay in the CP implementation schedule is beyond Fortuna's reasonable control, the Regional Water Board's Executive Officer may revise the implementation schedule as appropriate. Written justification must be received by the Designated Regional Water Board Representative 10 working days before the specific due date occurs, must describe circumstances causing the delay, and must state when each task of the CP will be completed. If any extension of the implementation schedule is granted, the Regional Water Board staff shall provide Fortuna with a new implementation schedule in writing, which shall include the date the CP will be completed (Revised CP Completion Date).

25. Completion of the CP to the Regional Water Board Staff's Satisfaction: Upon the Regional Water Board's satisfaction of the CP obligations under this Stipulation and any audit requested by the Regional Water Board, Regional Water Board staff shall send Fortuna a letter recognizing satisfactory completion of its obligations under the CP. Receipt of this letter shall terminate any further CP obligations by Fortuna and result in the dismissal of the Suspended Liability.

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

27. Effect of Settlement Agreement and Stipulated Order: Except as expressly provided in this Settlement Agreement and Stipulated Order, nothing in this Settlement Agreement or Stipulated 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.

28. No Waiver of Right to Enforce: The absence of the Prosecution Team or Regional Water Board choosing to enforce any provision of this Settlement Agreement or Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Settlement Agreement or Stipulated Order. The absence of the Prosecution Team or Regional Water Board choosing to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Settlement Agreement or Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Settlement Agreement or Stipulated Order shall be construed to relieve any Party regarding matters covered in this Settlement Agreement or Stipulated Order. 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 in this matter.

29. Party Contacts - for Communications related to Stipulation/Order:

For the Regional Water Board:

Justin McSmith
Water Resource Control Engineer
North Coast Regional Water Quality
Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Justin.McSmith@waterboards.ca.gov
707-576-2082

For Fortuna:

Merritt Perry
City Engineer
City of Fortuna
182 Dinsmore Dr.
Fortuna, CA 95540
mperry@ci.fortuna.ca.us
707-725-1471

30. Attorney's Fees and Costs: Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

31. Public Notice: Fortuna understands that this Settlement Agreement and Stipulated Order will be noticed for a 30-day public comment period prior to consideration by the Regional Water Board. If the Regional Water Board Assistant Executive Officer or other Prosecution Staff receives significant new information that reasonably affects the propriety of presenting the Order to the Regional Water Board for adoption, the Regional Water Board Assistant Executive Officer may unilaterally declare this Settlement Agreement void and decide not to present the Order to the Regional Water Board. Fortuna agrees that it may not rescind or otherwise withdraw its approval of this Settlement Agreement, except as otherwise set forth herein.

32. Addressing Objections Raised During Public Comment Period: The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation and related Order by the public will be adequate. In the event substantive objections are raised during the public comment period, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the proposed Order. In that event, or in the event that procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

33. Interpretation: This Settlement Agreement and Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

34. Modification: This Settlement Agreement and 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 Regional Water Board or its Executive Officer.

35. Integration: This Settlement Agreement and Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided herein.

36. If Order Does Not Take Effect: In the event that this Order does not take effect because it is not approved by the Regional Water Board or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional 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 Regional Water Board members or their advisors and any other objections that 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 as a consequence of reviewing the Stipulated 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.

37. Waiver of Hearing: Fortuna has been informed of the rights provided by Water Code section 13323, subdivision (b), and if the settlement is adopted by the Regional Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board or State Water Resources Control Board for hearing, Fortuna does not waive the right to a hearing before an order is imposed.

38. Waiver of Right to Petition: Except in the instance where the Settlement Agreement and Stipulated Order are not adopted by the Regional Water Board, Fortuna

hereby waives its right to petition the Regional Water Board's adoption of the Order 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.

39. Regional Water Board is Not Liable: Neither the Regional Water Board members nor the Regional or 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 Fortuna, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement and Stipulated Order nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by Fortuna, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Settlement Agreement and Stipulated Order.

40. Covenant Not to Sue: Upon the effective date of the Stipulated Order, Fortuna shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional 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 this action.

41. Necessity for Written Approvals: All approvals and decisions of the Regional Water Board under the terms of this Settlement Agreement and Stipulated Order shall be communicated to Fortuna in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve Fortuna of its obligation to obtain any final written approval required by this Order.

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

43. Severability: This Settlement Agreement and Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

44. No Third Party Beneficiaries: This Settlement Agreement and 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 Stipulation for any cause whatsoever.

45. Counterpart Signatures: This Settlement Agreement and 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. Further, this Settlement Agreement and Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

46. Effective Date: This Settlement Agreement is effective and binding on the Parties upon the entry of this Order by the Regional Water Board or its delegate, which incorporates the terms of this Stipulation.

IT IS SO STIPULATED.

**California Regional Water Quality Control Board,
North Coast Region Prosecution Team**

Date: _____, 2017

By: _____

**Shin-Roei Lee
Assistant Executive Officer**

City of Fortuna

Date: 2-15, 2017

By: _____

Randy M. Merz
Interim City Manager

Findings of the Regional Water Board:

IT IS HEREBY ORDERED:

1. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, Fortuna hereby agrees to comply with the terms and conditions of this Order.
2. The Regional Water Board finds that the Recitals set forth herein in Section II of the Stipulation are true.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional 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, subdivision (a)(2), title 14, of the California Code of Regulations.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if Fortuna fails to perform any of its obligations under the Order.
5. Fulfillment of the Fortuna's obligations under this Order constitutes full and final satisfaction of any and all liability for the matters alleged in the Settlement Agreement in accordance with the terms of the Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, North Coast Region.

Matthias St. John
Executive Officer

Enclosures: Exhibit A – Effluent Limitation Violations Requiring Mandatory Minimum Penalties
Exhibit B – Discretionary Penalty Methodology
Exhibit C – Proposed Compliance Project