

Order R1-2022-0022
Stipulated Administrative Civil Liability Order
City of Ferndale WWTF

NPDES Permits, Discharge Point 001 is subject to Effluent Limitations for discharges to Salt River (a Water of the United States), while Discharge Point 002 is subject to Water Recycling Specifications and Requirements (Authorized Recycled Water Location).

3. On November 16, 2021, Regional Water Board staff invited the Discharger to engage in settlement negotiations pursuant to its letter of Invitation to Enter into Settlement Prior to Issuance of Formal Administrative Civil Complaint for Mandatory Minimum Penalties (MMPs). This invitation letter set forth 12 (twelve) exceedances of the effluent limitations for Total Coliform, Ammonia, Flow, and Total Suspended Solids. Of these violations, 6 (six) occurring during the period of April 13, 2016 to May 1, 2022, are subject to MMPs pursuant to Water Code section 13385, subsections (h) and (i), as identified in Exhibit A, for an administrative civil liability totaling \$18,000.
4. Pursuant to Water Code section 13385(h), the Regional Water Board shall assess a \$3,000 mandatory minimum penalty (MMP) for each serious violation. A “serious violation” means any waste discharge that violates the effluent limitations contained in the applicable WDRs by 20 percent or more for a Group II pollutant or by 40 percent or more for a Group I pollutant.
5. Pursuant to Water Code section 13385(i), the Regional Water Board shall assess a \$3,000 MMP for each violation whenever a discharger violates an effluent limitation contained in WDRs four or more times in a period of six consecutive months, except that the requirement to assess the MMP shall not be applicable to the first three violations:
6. The Discharger’s self-monitoring reports, from April 13, 2016, through May 1, 2022, document 12 violations of effluent limitations set forth in WDRs Order Nos. R1-2012-0097 and R1-2018-0046. Of the 12 effluent limitation violations, 6 violations were deemed exempt following review by the Prosecution Team. The remaining 6 violations are subject to MMPs pursuant to Water Code section 13385, subsections (h) and (i), as identified in Exhibit A. The total penalty amount is \$18,000. This Stipulated Order resolves six (6) nonexempt effluent limitation violations subject to MMPs pursuant to Water Code section 13385, subsections (h) and (i), as identified in Exhibit A, incorporated herein by reference. The total proposed administrative penalty amount is **\$18,000** (6 violations x \$3,000).
7. Pursuant to Water Code section 13385(k)(1), in lieu of assessing all or a portion of the MMPs, the Regional Water Board may require a POTW serving a small community to spend an equivalent amount toward completion of a compliance project proposed by the POTW, if the Regional Water Board finds all the following:
 - a. The compliance project is designed to correct the violations in five years;

- b. The compliance project is in accordance with the State Water Board's Water Quality Enforcement Policy; and
 - c. The POTW has prepared a financing plan to complete the compliance project.
8. For the reasons discussed in Exhibit B, Regional Water Board staff has determined that the Discharger meets the requirements under Water Code section 13385(k), and the State Water Board's 2017 Water Quality Enforcement Policy (Enforcement Policy) to be recognized as a POTW serving a small community with a financial hardship. This determination makes the Discharger eligible to complete a compliance project.
9. Pursuant to the Enforcement Policy, the Discharger must spend an amount of money on an approved compliance project that is equal to, or more than, the penalty amount held in abeyance pending completion of the project. Discharger has proposed a compliance project with an estimated cost of \$326,750, funded through money in its reserves.
10. To resolve the alleged violations set forth in Exhibit A, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$18,000** against the Discharger. The Discharger may offset up to \$18,000 of this penalty through costs incurred to implement the compliance project. Up to \$18,000 shall be permanently suspended upon timely completion of the compliance project required herein.
11. This Stipulated Order imposes an administrative civil liability in the amount of \$18,000. That amount consists of mandatory minimum penalty of \$18,000 for six (6) effluent limit violations of WDRs Orders No. R1-2012-0097 and R1-2018-0046 (NPDES Permit No. CA0022721) that occurred during the Violation Period.
12. The Parties have agreed to settle the matter without administrative or civil litigation and to present this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an Order by settlement pursuant to Government Code section 11415.60.
13. The Prosecution Team has determined that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the alleged violations, except as provided in this Stipulated Order, and that this Stipulated Order is in the public's best interest.

Section III: Stipulations

The Parties incorporate the foregoing Recitals and stipulate to the following:

14. **Jurisdiction:** The Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this agreement.
15. **Administrative Civil Liability:** The Discharger hereby agrees to pay the administrative civil liability amount of **\$18,000** to resolve the alleged violations of effluent limitations subject to MMP. The Parties agree that up to \$18,000 of this administrative civil liability shall be permanently suspended pending completion of the compliance project described in Section III, paragraph 16. If the suspended liability amount becomes due and payable pursuant to Section III, paragraphs 24 and 25, the assessed amount shall be submitted by check made payable to the "State Water Pollution Cleanup and Abatement Account," no later than 30 days following notification from the Regional Water Board Executive Officer (Executive Officer). The check shall reference the Order number on page one of the Stipulated Order, and shall be mailed to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via e-mail to the State Water Resources Control Board, Office of Enforcement (Asa.Standfeldt@waterboards.ca.gov) and the Regional Water Board (Zane.Stromberg@waterboards.ca.gov)

16. **Compliance Project Description:** The Discharger has proposed a compliance project to make capital improvements to its collection system, primarily reducing infiltration and inflow (I & I). Discharger has demonstrated that addressing I & I will reduce flow within its collection system, thereby increasing the facility's ability to maintain compliance with effluent limitations and Order conditions pursuant to its current NPDES Permit and WDRs Order No. R1-2018-0046.

The Discharger's compliance project proposal consists of three separate capital improvements related to I & I reduction within the collection system. The Discharger plans to replace a vitrified clay pipe that runs along California Street in Ferndale with polyvinyl chloride (PVC) pipe, install two (2) manholes, and replace the residential sewer laterals to the manhole cleanouts. Flow monitoring at the facility confirm that the system is allowing water to enter the sewer system year-round (I & I mentioned above). Replacing the sewer should reduce the system's total annual I & I by about 5%, which will result in a 10% reduction in total volume directed to the storage pond. Data on the evaluation of I & I on California Street suggests that replacing this section of the Discharger's collection system will provide the best benefit for the cost and will reduce the greatest possible portion of

I & I entering the collection system compared to other potential repairs or replacements.

17. **CP Milestone Requirements:** The Discharger agrees that this Stipulated Order includes the milestone requirements set forth below. The Discharger acknowledges that credit for completing any milestone requirement is dependent on the Regional Water Board's or its delegate's adoption of this Stipulated Order. The implementation schedule for completion of the CP is as follows:

Table 1: Milestones and Deliverables Schedule

Task	Description	Proposed Completion Date	Status
1	Develop Final Project Plans and Specifications	July 15, 2022	Complete
2	Place Project Out to Bid	July 31, 2022	Complete
3	Bid Opening and Contractor Selection	August 31, 2022	Incomplete
4	Begin Project Implementation	September 30, 2022	Incomplete
5	Complete Project Implementation	October 31, 2022	Incomplete
6	Submit Final Report/Certification of Completion	November 30, 2022	Incomplete

18. **Representations and Agreements Regarding the Compliance Project:**
- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, the Discharger represents that it will use the suspended liability amount of \$18,000 to implement the Compliance Project. The Discharger understands that its promise to implement the Compliance Project, in its entirety and in accordance with the schedule for implementation, is a material condition of this settlement of liability between the Discharger and the Regional Water Board.

- b. The Discharger agrees to (1) spend the Compliance Project amount as described in this Stipulated Order, (2) provide certified, written report(s) on Compliance Project implementation to the Regional Water Board consistent with the terms of this Stipulated Order, and (3) within 30 days of the Compliance Project Completion Date, provide a certification by a responsible official, signed under penalty of perjury, that the Discharger followed all applicable environmental laws and regulations in implementing the CP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and the federal Clean Water Act. The Discharger further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the Compliance Project at the Discharger's cost, and that the Discharger bears ultimate responsibility for meeting all deadlines specified in this Stipulated Order.
19. **Publicity Associated with the Compliance Project:** Whenever the Discharger or its agents or subcontractors publicize one or more elements of the Compliance Project, they shall state in a **prominent manner** that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.
20. **Progress Reports and Inspection Authority:** The Discharger shall provide quarterly reports describing the progress of Compliance Project implementation, including the status of the milestones as described in Attachment B. The Discharger agrees that Regional Water Board staff, or its third-party oversight staff, have permission to inspect the Compliance Project at any time during normal business hours and without notice. The Regional Water Board may consider Discharger's failure to submit the required reports a material breach of its obligation to complete the Compliance Project. In this case, the Regional Water Board may seek to impose the suspended liability as set forth in Paragraph 25 of this agreement.
21. **Certification of Compliance Project Completion:** No later than 90 days after the Compliance Project Completion Date (on or before November 30, 2022 unless extended), a responsible official of the Discharger shall submit a final report and certified statement, signed under penalty of perjury, which documents the Discharger's expenditures during the Compliance Project completion period and documents that the Discharger completed the Compliance Project in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include the normal, routine work undertaken by Discharger staff. In making such certification, the signatories may rely upon normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of Compliance Project completion may include photographs,

invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate Compliance Project completion and the costs incurred. The Discharger shall provide Regional Water Board staff with any additional information that is reasonably necessary to verify the Discharger's Compliance Project expenditures and completion.

22. **Time Extension for Compliance Project:** The Executive Officer may extend the deadlines contained in this Stipulated Order if the Discharger demonstrates delays from unforeseeable contingencies, provided that the Discharger continues to undertake all appropriate measures to meet its deadlines. The Discharger shall make any deadline extension request in writing at least 30 days prior to the applicable deadline. Under no circumstances may the completion of the Compliance Project extend past five (5) years from the effective date of this Stipulated Order. Any approval of extension by the Executive Officer must be in writing.
23. **Regional Water Board Acceptance of Completed Compliance Project:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, completion of the Compliance Project, and any audits, the Executive Officer or her/his designee will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further obligations of the Discharger under this Stipulated Order and permanently suspend the remaining penalty amount.
24. **Failure to Expend All Suspended Funds on the Approved Compliance Project:** If the Discharger is not able to demonstrate to the reasonable satisfaction of the Executive Officer that the entire Compliance Project amount was spent on the completed Compliance Project, the Discharger shall pay the difference between the Compliance Project amount and the amount the Discharger can demonstrate was actually spent on the Compliance Project (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Discharger to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the Notice of Violation's issuance date. The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 15. Timely payment of the Difference shall satisfy the Discharger's obligations to implement the Compliance Project.
25. **Failure to Complete the Compliance Project:** If the Compliance Project is not fully implemented by the Compliance Project Completion Date, or if there has been a material failure to satisfy a project milestone, Regional Water Board staff shall issue a Notice of Violation to the Discharger. The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Regional Water Board or its delegate. The Regional Water Board will determine whether the entire Compliance Project amount is due, or if suspension of any portion of the Compliance Project amount is appropriate. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall

not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the Compliance Project prior to the Notice of Violation's issuance date. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in Section III, paragraph 15. Payment of the assessed amount shall satisfy the Discharger's obligation to implement the Compliance Project.

26. **Regional Water Board is 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 negligent or intentional acts or omissions by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this 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 the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

27. **Party Contacts for Communications related to Stipulation/Order:**

For the Regional Water Board:

Zane Stromberg
Environmental Scientist
North Coast Regional Water Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403
Zane.Stromberg@waterboards.ca.gov
(707) 576-2674

For the Discharger:

Jay Parrish
City Manager
City of Ferndale
834 Main Street, Ferndale, CA
95536
citymanager@ci.ferndale.ca.us
(707) 786-4224

28. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order 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 herein may subject it to further enforcement, including additional administrative civil liability.

29. **Matters Addressed by Stipulation:** Upon adoption by the Regional Water Board or its delegate, this Stipulated Order represents a final and binding resolution and settlement of the alleged violations as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the completion of the Compliance Project as specified herein.

30. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution 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 Stipulated Order. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. 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 Stipulated Order.
31. **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.
32. **Public Notice:** The Discharger understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
33. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the adoption of the Order by the Regional Water Board or its delegate, and public review of this Stipulated Order, is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing on this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing 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 and/or this Stipulated Order, as necessary or advisable under the circumstances.
34. **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. The Parties are represented by counsel in this matter.
35. **Modification:** The Parties shall not modify this Stipulated Order 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 delegate.

36. **If Order Does Not Take Effect:** In the event this Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Board or a court vacates it in whole or in part, 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 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 the following:
- 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 violations alleged 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:** The Discharger has been informed of the rights provided under Water Code section 13320(a), and hereby waives its right to a hearing before the Regional Water Board prior to the Order's adoption. However, the Discharger may appear at any Regional Water Board hearing where approval of this settlement is discussed. If the settlement is not adopted and the matter proceeds to the Regional Water Board or State Water Board for a hearing, the Discharger does not waive its right to an adjudicatory hearing before any order other than this Stipulated Order is imposed.
38. **Waiver of Right to Petition or Appeal:** The Discharger 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. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Discharger covenants not to sue or pursue any administrative or civil claim(s) against any state agency or the State of California, its officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the Compliance Project,

except that this covenant is not intended to, and does not, limit the Discharger's rights to sue over other Regional Water Board orders (e.g., permits, cease and desist orders, etc.) or limit the Discharger's rights to defend against any additional enforcement or other actions taken by the Regional Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any state agency, or the State of California or its officers, Regional Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.

40. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, Discharger does not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulated Order or Attachment A, or admit to any violations of the Clean Water Act, the Water Code, any Regional or State Water Board order, or any other federal, state or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the State Water Board's Water Quality Enforcement Policy. By entering into this agreement, Discharger does not waive any defenses or arguments related to any new enforcement action that may be brought by the Regional Water Board, including any brought under its discretionary enforcement authority reserved herein.
41. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval this Stipulated Order requires.
42. **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 Stipulated Order.
43. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
44. **Counterpart Signatures; Facsimile and Electronic Signature:** 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. Further, this 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

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signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

45. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulated Order.

(Continued on next page)

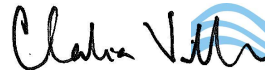
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IT IS SO STIPULATED.

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

Date: _____

By: _____



Digitally signed by Claudia E.
Villacorta
Date: 2022.08.02 16:34:49
-07'00'



**Claudia Villacorta, P.E.
Assistant Executive Officer**

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Stipulated Administrative Civil Liability Order
City of Ferndale WWTF

City of Ferndale

Date: 7/27/2022 By: Jay Parrish
Jay Parrish, City Manager

ORDER OF THE REGIONAL WATER BOARD

- 46. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
- 47. Issuance of this Order is being taken for the protection of the environment and to enforce the laws and regulations administered by the Regional Water Board and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code §21000 et seq.) in accordance with 14 California Code of Regulations (CCR) section 15321(a)(2). This Order includes a Compliance Project in the North Coast Region. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant impact on the environment that is not otherwise exempt from CEQA, the Regional Water Board will conduct the necessary and appropriate environmental review prior to approval of the applicable plan. The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment and, if so, in preparing any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.
- 48. The Executive Officer is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

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

Date: _____

By: _____

Matthias St. John
Executive Officer

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Stipulated Administrative Civil Liability Order
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Attachments:

- A. Effluent Limitation Violations Requiring Mandatory Minimum Penalties (Final MMP List)
- B. Compliance Project Description
- C. Compliance Project Eligibility Memorandum

Mandatory Penalty Administrative Civil Liability

Ferndale City

Ferndale City WWTP

WDID No. 1B83136OHUM

NPDES No. CA0022721

EXHIBIT "A"

Effluent Limitations Violations Requiring Mandatory Minimum Penalties

#	Violation Number	Violation Date	Constituent	Pollutant Group	Limitation Period	Limit	Result/Average	Units	Exempted from MMP?	Exempt Reason	% Over Limit	Date 180 Days Prior	Serious or Chronic Violation?	No. of Violations within 180 days	Mandatory Fine?	Water Code	Penalty
1	1018007	12/31/2016	Flow	Other	Monthly Average	0.95	1.1	mgd	Y	a	16%	7/4/2016	C	Ct. 1	N		\$ 0
2	1020809	01/31/2017	Flow	Other	Monthly Average	0.95	1.4	mgd	Y	a	47%	8/4/2016	C	Ct. 2	N		\$ 0
3	1022427	02/28/2017	Flow	Other	Monthly Average	0.95	1.6	mgd	Y	a	68%	8/4/2016	C	Ct. 3	N		\$ 0
4	1023901	03/14/2017	Ammonia, Total (as N)	Group 1	Monthly Average	1	1.5	mg/L	N		50%	09/15/2016	S	> Ct. 3	Y	13385(h)	\$ 3,000
5	1023902	03/14/2017	Total Coliform	Other	Daily Maximum	230	350	MPN/100	N		52%	09/15/2016	C	> Ct. 3	Y	13385(i)	\$ 3,000
6	1036090	11/07/2017	Total Coliform	Other	Daily Maximum	230	920	MPN/100	Y	a	300%	05/11/2017	C	Ct. 1	N		\$ 0
7	1040559	11/16/2017	Total Suspended Solids	Group 1	Weekly Average	15	16	mg/L	Y	a	7%	05/20/2017	C	Ct. 2	N		\$ 0
8	1036091	11/21/2017	Total Coliform	Other	Daily Maximum	230	920	MPN/100	Y	a	300%	05/25/2017	C	Ct. 3	N		\$ 0
9	1037482	12/12/2017	Total Suspended Solids	Group 1	Weekly Average	15	59	mg/L	N		293%	06/15/2017	S	> Ct. 3	Y	13385(h)	\$ 3,000
10	1037483	12/31/2017	Total Suspended Solids	Group 1	Monthly Average	10	13	mg/L	N		30%	07/04/2017	C	> Ct. 3	N	13385(i)	\$ 3,000
11	1042180	03/20/2018	Total Coliform	Other	Daily Maximum	230	350	MPN/100	N		52%	09/21/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000
12	1042179	03/31/2018	Total Coliform	Other	Monthly Median	23	26.8	MPN/100	N		17%	10/02/2017	C	> Ct. 3	Y	13385(i)	\$ 3,000

Total Penalty: \$ 18,000

Legend of Table

- a. The first three violations in a 180-day period shall not receive MMP assessment unless serious.
 - b. The violation is not subject to MMP because it was already included in a previous Enforcement Action (included in this list to show the rolling 180-day count).
- Ct. Count – The number that follows represents the number of exceedances in the past 180 days. A count > than Ct. 3 means that a penalty under Water Code Section 13385 (i) applies.

1 - Violation occurs on sample date or last date of averaging period.

2 - For Group I pollutants, a violation is serious when the limit is exceeded by 40% or more
 - For Group II pollutants, a violation is serious when the limit is exceeded by 20% or more

3 - When a serious violation occurs on the same day as a chronic, the serious violation is only assessed an MMP once and is counted last for the day when determining the number of chronic violations to be assessed a penalty.

Violation Period Between April 13, 2017 and May 1, 2022

Group I Violations Assessed MMP:	3
Group II Violations Assessed MMP:	0
Other Effluent Violations Assessed MMP:	3
Violations Exempt from MMP:	6
Total Violations Assessed MMP:	6

Mandatory Minimum Penalty = (2 Serious Violations + 4 Non-Serious Violations) x \$3,000 = \$18,000

**ADMINISTRATIVE CIVIL LIABILITY ORDER
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COMPLIANCE PROJECT DESCRIPTION**

City of Ferndale Wastewater Treatment Plant

RECORD OF VIOLATIONS (2017 through March 30, 2022) MANDATORY PENALTIES
\$18,000

Name of Responsible Entity: City of Ferndale

Contact Information:

Steve Coppini, Chief Plant Operator
City of Ferndale
PO Box 1095
Ferndale CA 95536

Tel: (707) 786-4224

Email: chiefoperator@ci.ferndale.ca.us

Project 01: Ferndale Sewer Line Replacement Project – California Street extension

Project description:

The vitrified clay pipe sewer located on California street will be replaced with PVC pipe, two manholes will be installed, and the residential sewer laterals replaced to their cleanouts. CCTV footage and flow monitoring confirm that the system is allowing water to enter the sewer system year-round. Replacing the sewer should reduce the system's total year-round Infiltration and Inflow (I&I) by about 5%, and the volume of water directed to its storage pond by about 10%. Data on the evaluation of I&I on California Street suggest that replacing this sewer section will provide the best benefit for the dollar, and for its length, reduce a greater portion of I&I entering the collection system as compared to other repairs/replacements.

Estimated Cost of Project Completion:

The cost of Installation of the new sewer line replacement project is estimated to be \$325,750

Water body, beneficial use and/or pollutant addressed by this project:

The project is expected to reduce excessive wastewater flows to the treatment plant from I&I and reduce the amount of water pumped to the retention pond. Therefore, this project will reduce the rate that the water from the retention pond is fed to the treatment plant.

**ADMINISTRATIVE CIVIL LIABILITY ORDER
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COMPLIANCE PROJECT
ATTACHMENT A – PROJECT SCHEDULE**

**City of Ferndale Sewer Line Replacement Project
Attachment A – Project schedule, milestones, and deliverables**

Deliverables

July 15, 2022, Milestone & Deliverable - Final Plans and Specifications.

July 31, 2022, Deliverable June 17, 2022 – Place project out to Bid

August 31, 2022, Deliverable August 17, 2022 – Bid opening, select contractor

September 30, 2022, Milestone– Begin Construction

October 31, 2022, Milestone– End Construction

1. Compliance Project Implementation

Project #1 Installation of replacement sewer line on California Street

- a. Solicit bids for materials and items of work. Prepare contracts and agreements for City Council approval.

Schedule: In progress and expected to be complete July 15, 2022.

Deliverable: copies of quotes and City Resolution approving the procurement

- b. Coordinate with Contractor for sewer line replacement and

Schedule: Installation expected to be complete by

October 31, 2022. Deliverable: Inspection reports, photographs, invoices.

2. Project Progress Report. The City will provide progress reports concurrent with design and construction of compliance projects.

Schedule: commencing on September 30, 2022, and continuing through October 31, 2022

Deliverable: Progress report describing progress made to date and including invoices related to the project will be provided bi-monthly.

3. Project Final Report. The City will submit a final report, which will include a summary of all completed tasks, a project success analysis, and a post-project accounting of all expenditures. The accounting will clearly show whether the final cost of the completed compliance project is less than, equal to, or more than the suspended ACL liability amount of \$18,000. This report will be completed with a certification under penalty of perjury.

Schedule: Expected to be complete by November 30, 2022.

Deliverable: Final Report

**ADMINISTRATIVE CIVIL LIABILITY ORDER
R1-2022-0022 COMPLIANCE PROJECT
ATTACHMENT B – ESTIMATED PROJECT COST**

**City of Ferndale ~ 2022 Compliance Project
Project No. 1: California Street Sewer Replacement**

CITY OF FERNDALE

Date Created:4/21/2022

PO Box 1095
Ferndale CA
95536 Tel: (707)
786-4224

Administration	\$ 5,000
Engineering	\$ 27,800
Construction	<u>\$293,950</u>
Total	\$326,750

Prepared by: Paul Gregson,
PE,
Ferndale, CA

North Coast Regional Water Quality Control Board

State of California
North Coast Water Quality Control Board
Interoffice Memorandum

TO: Kason Grady
FROM: Zane Stromberg
DATE: May 1, 2022

SUBJECT: FERNDALE COMMUNITY SERVICES DISTRICT, WASTEWATER TREATMENT FACILITY (FERNDALE WWTF), DETERMINATION OF ELIGIBILITY FOR COMPLIANCE PROJECT AS A PUBLICLY OWNED TREATMENT WORKS (POTW) SERVING A SMALL COMMUNITY WITH A FINANCIAL HARDSHIP

Background and Summary

Ferndale WWTF has accrued \$18,000 in mandatory minimum penalties (MMPs) for the period of April 13, 2017 through May 1, 2022. The analysis described below suggests Ferndale WWTF is currently eligible to complete a Compliance Project.

Analysis

Water Code section 13385, subdivision (k), provides that the State Water Resources Control Board (State Water Board) or Regional Water Board may, contingent upon certain findings, require a POTW serving a small community to spend an amount of money equivalent to the MMP amount toward the completion of a compliance project proposed by the POTW, in lieu of paying the penalty amount to the State Water Board's Cleanup and Abatement Account. Water Code section 13385, subdivision (k)(2), defines a POTW "serving a small community" as:

"[A] publicly owned treatment works serving a population of 20,000 persons or fewer or a rural county, with a financial hardship as determined by the state board after considering such factors as median income of the residents, rate of unemployment, or low population density in the service area of the publicly owned treatment works."

Determining whether a POTW is “serving a small community” entails two separate determinations, whether: (1) the POTW is either situated within a rural county or has a population of 20,000 or less; and (2) the POTW’s service area has a “financial hardship.”

1. Rural County/Population Cap

Consistent with Water Code section 13385, subdivision (k)(2), the State Water Resources Control Board’s 2017 Enforcement Policy¹, at page 26, identifies a “rural county” as a county classified by the Economic Research Service (ERS), United States Department of Agriculture (USDA), with a rural-urban continuum code of four through nine.

The Ferndale WWTF is a POTW located in Humboldt County. According to the 2013 Rural Urban Continuum Codes file updated on May 10, 2013², Humboldt County has a rural- urban continuum code of five (Nonmetro - Urban population of 20,000 or more, not adjacent to a metro area) and therefore, falls within the “rural county” classification.

Furthermore, based on United States Census Bureau data discussed below, the block groups approximating the services area for the Ferndale WWTF have a total population of 3,309. By either criterion, the community served by the Ferndale WWTF meets the definition of “small.”

2. Financial Hardship

Consistent with Water Code section 13385, subdivision (k)(2), the *Enforcement Policy*, at page 26, defines “financial hardship” in terms of median household income (MHI), unemployment rate and poverty level.³ Specifically, the Enforcement Policy defines “financial hardship” as meaning that the community served by the POTW meets one of the following criteria:

- *Median household income⁴ for the community is less than 80 percent of the California median household income;*

¹ A copy of the State Water Board’s Water Quality Enforcement Policy is available at http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

² <http://www.ers.usda.gov/data-products/rural-urban-continuum-codes.aspx>, accessed June 30, 2021.

³ *Median household income, unemployment rate, and poverty level of the population served by the POTW are based on the most recent U.S. Census block group data or a local survey approved by the Regional Water Board in consultation with the State Water Board.*

⁴ **Median household income**[.] *The median income divides the income distribution into two equal groups, one having incomes above the median and the other having incomes below the median*

- *The community has an unemployment rate⁵ of 10 percent or greater; or*
- *Twenty percent of the population is below the poverty⁶ level.*

Figure 1, below, shows the service area covered by the Ferndale WWTF, and identifies the United States Census Bureau census tracts and block groups⁷ included within the service area, including Humboldt County Tract 112, Block groups 1, 2, and 3.

In order to conduct the analysis to determine financial hardship, staff reviewed datasets available through the Census.gov portal at: <https://data.census.gov/cedsci/>. At the time of this review, the most recent available economic data are from the United States Census Bureau's ongoing 5-year estimates, and the most recent available 5-year estimate with block group data is that for 2019. Datasets staff reviewed to determine financial hardship included those for Total Population (B01003); Number of Households (B19001); Median Household Income weighted by number of households (B19013); Employment Status (B23025); and Ratio of Individuals Below the Poverty Line (C17002).

Accessing the U.S. census link above, staff entered individual dataset numbers into the search window, then filtered the results for each dataset, filtering Geography to: Block Group/California/Humboldt County/All Block Groups within Humboldt County; filtering Years to 2019; and filtering Surveys to ACS 5-Year Estimates Detailed Tables. Table 1, below, shows the results of staff's analysis.

⁵ **Unemployed**[.] *All civilians, 16 years and older, are classified as unemployed if they (1) were neither "at work" nor "with a job but not at work" during the reference week, (2) were actively looking for work during the last 4 weeks, and (3) were available to accept a job. Also included as unemployed are civilians who (1) did not work at all during the reference week, (2) were waiting to be called back to a job from which they had been laid off, and (3) were available for work except for temporary illness.*

⁶ **Poverty**[.] *Following the Office of Management and Budget's Directive 14, the Census Bureau uses a set of income thresholds that vary by family size and composition to detect who is poor. If the total income for a family or unrelated individual falls below the relevant poverty threshold, then the family or unrelated individual is classified as being "below the poverty level."*

⁷ **Block group**[.] *A subdivision of a census tract (or, prior to 2000, a block numbering area). A block group is the smallest geographic unit for which the Census Bureau tabulates sample data. A block group consists of all the blocks within a census tract beginning with the same number. Example: block group 3 consists of all blocks within a 2000 census tract numbering from 3000 to 3999. In 1990, block group 3 consisted of all blocks numbered from 301 to 399Z."*

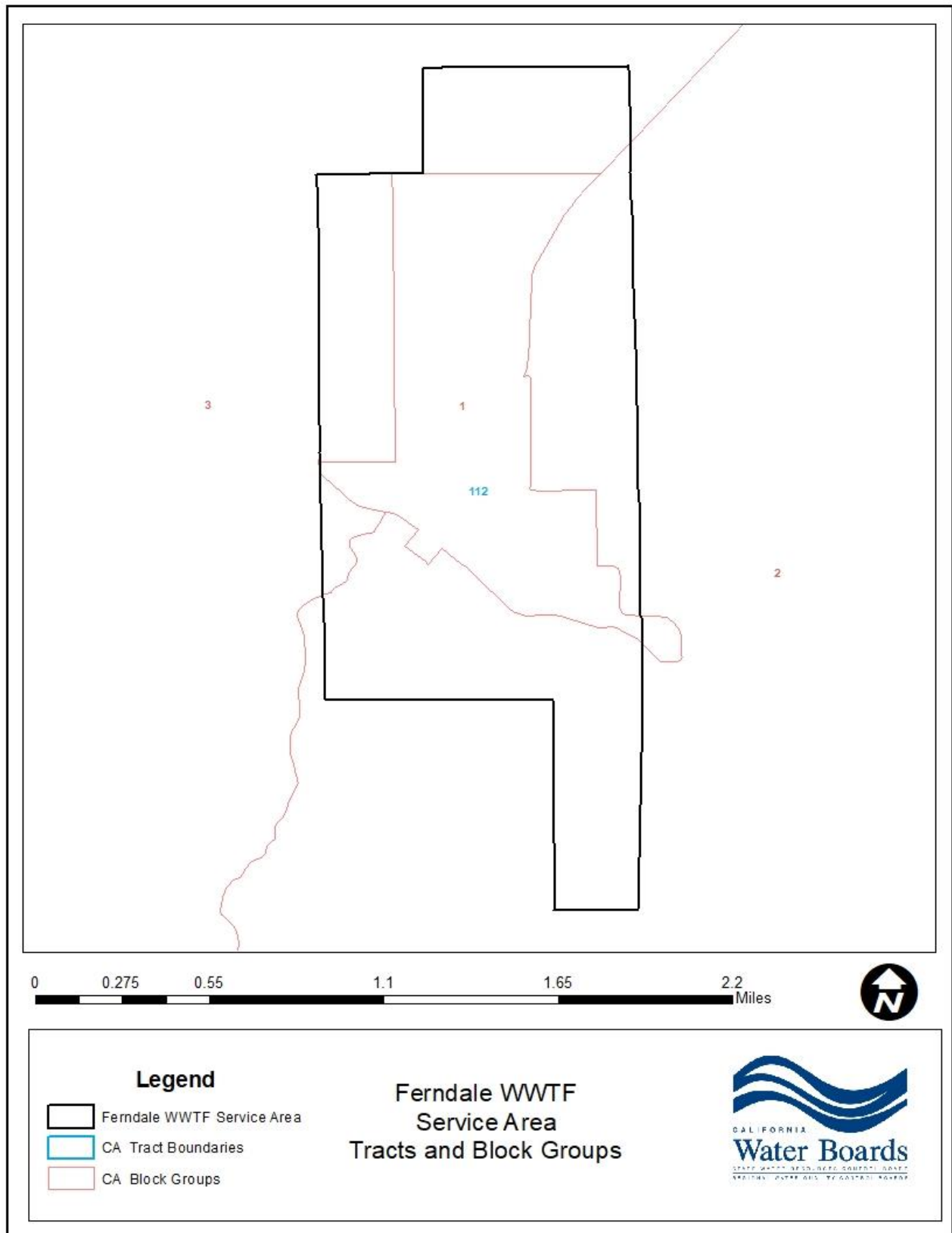


Figure 1

Table 1 – Summary of Census Data and Hardship Analysis

Dataset #	Table Description	Tract 112 Block Group 1	Tract 112 Block Group 2	Tract 112 Block Group 3	Combined Block group Data	Financial Hardship Criterion
B01003	Total Population	954 people	812 people	1,521 people	3,287 people	Population <20,000 Criterion Met
B19001	Number of Households	382 Total Households	353 Total Households	575 Total Households	1,310 Total Households	N/A
B19013	Median Household Income weighted by number of households	\$42,824	\$52,063	\$57,188	\$51,025	MHI less than 80% of CA MHI 80% CA MHI = \$60,188 Criterion Met

Dataset #	Table Description	Tract 112 Block Group 1	Tract 112 Block Group 2	Tract 112 Block Group 3	Combined Block group Data	Financial Hardship Criterion
B23025	Employment Status	720 In labor force. Of those, 36 unemployed. 5.00 % unemployed	701 In labor force. Of those, 6 unemployed. 0.9% unemployed	1,235 In labor force. Of those, 72 unemployed. 5.8% unemployed	2,771 In labor force. Of those, 114 unemployed. 4.1% unemployed	Unemployment rate 10% or greater <i>Criterion not met</i>
C17002	Ratio of individuals below the Poverty Level	17.46% below poverty level	13.71% below poverty level	10.37 % below poverty level	13.21% below poverty level	20% below poverty level <i>Criterion Not Met</i>

Based on the Enforcement Policy's criteria and the most recent U.S. Census block group data (2019), Ferndale WWTF does qualify as a small community with a financial hardship, given that the median household income weighted by the number of households in Ferndale is less than 80 percent of the California median household income.

If the Discharger believes that the U.S. Census data used in this determination do not accurately represent the population served by the Ferndale WWTF, the Enforcement Policy provides for the possibility of a local survey approved by the Regional Water Board in consultation with the State Water Board and a procedure by which the Discharger may present an alternative justification to the Regional Water Board for designation as a "POTW serving a small community (p. 27)." Pursuant to the Enforcement Policy, the Regional Water Board must consult with the State Water Board when making such determinations.