STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0006

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
DISCHARGING WITHOUT A PERMIT
CALIFORNIA WATER SERVICE COMPANY
1452 BEL AIRE ROAD
SAN MATEO, SAN MATEO COUNTY

This Complaint is issued to the California Water Service Company (Discharger) to assess administrative civil liability pursuant to California Water Code (CWC) Section 13385. The Complaint addresses the Discharger's September 25 and 27, 2007 unpermitted discharges of approximately 93,000 gallons of chloraminated potable water

The Assistant Executive Officer of the California Regional Water Quality Control Board (Regional Water Board) hereby gives notice that:

1. The Discharger is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC Section 13385. This Complaint proposes to assess $199,350 in penalties for the violations cited based on the considerations described herein. The deadline for comments on this Complaint is June 19, 2009, at 5 p.m.

2. Unless waived, the Regional Water Board will hold a hearing on this matter on August 12, 2009, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representative(s) will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. You will be mailed an agenda approximately ten days before the hearing date. You must submit all comments and written evidence concerning this complaint to the Regional Water Board not later than 5 p.m. on June 19, 2009, so that such comments may be considered. Any written evidence submitted to the Regional Water Board after this date and time will not be accepted or responded to in writing.

3. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability. You can waive your right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full or by taking other actions as described in the attached waiver form.

ALLEGATIONS

4. The following facts are the basis of the alleged violations in this matter:

   a. The Discharger is a water purveyor in the State of California, and it operates a potable water storage tank at 1452 Bel Aire Road (the site) in the City of San Mateo, San Mateo County. The Discharger treats the water in this tank with chloramines.

   b. On September 27, 2007, Mr. Dale Gonzales, the Discharger's Environmental Affairs Manager, reported an unauthorized discharge to the Regional Water Board's office and to other regulatory agencies, including to the Governor's Office of Emergency Services (OES) (now Cal EMA). Mr. Gonzales stated that a storage tank overflow occurred during a refilling operation due to a malfunction in the overfill relay circuit. The discharge was to Polhemus Creek, a perennial stream that drains a small watershed east of Crystal Spring Reservoir and is a main tributary to San Mateo Creek.

   c. On September 27, 2007, the San Francisco Public Utility Commission (SFPUC) staff notified Regional Water Board staff by phone that an unexpected discharge upstream from their restoration project had caused excessive erosion and sediment transport at the restoration project. The SFPUC's Polhemus Creek Restoration Project, which is downstream from the site, was under construction at the time. The Regional Water Board issued a Conditional 401 Water Quality Certification in June 2006 for this project.

   d. On September 27, 2007, SFPUC's contract biologists observed twenty-one dead steelhead (*Oncorhynchus mykiss*), a federally-listed threatened species and two dead three-spine stickleback (*Gasterosteus aculeatus*) in Polhemus Creek immediately downgradient of SFPUC's restoration site.

   e. Based on the information provided by the Discharger in the spill report, the unauthorized discharge had been stopped when the spill report notification was made to OES. In response to the spill report, Regional Water Board staff gave the Discharger verbal instruction to apply appropriate control and remedial measures, assess the impacts to water quality and aquatic habitat, and submit a report documenting the full assessment of the incident within 5 business days.

   f. On September 28, 2007, Regional Water Board staff inspected Polhemus Creek and the SFPUC's restoration project and assessed the extent of the environmental damage and water quality impacts associated with the discharges. Regional Water Board staff observed three more dead fish along the banks of Polhemus Creek. The streambed of the restoration area showed signs of severe erosion, and the pool immediately downstream was highly turbid.

   g. On October 4, 2007, the Discharger submitted a spill report describing two unplanned chloramine-treated potable water discharges which occurred from the storage tank located at 1452 Bel Aire Road in San Mateo into Polhemus Creek. In this report, the

Discharger stated that these discharges happened on September 25 and 27 after a primary control system known as Supervisory Control and Data Acquisition (SCADA), designed to prevent overflows failed, causing the storage tank to overflow.

The Discharger did not include chlorine concentration in its October 4, 2007, spill report. This information was provided in response to Regional Water Baord's staff's.

h. On December 12, 2007, the National Oceanic and Atmospheric Administration (NOAA) prepared an Investigative Report on the Polhemus Creek fish kill. The investigative report states that Mr. Paul Molder, the Discharger's San Mateo facility superintendent, confirmed that the water company typically employs 1.9 milligram per liter (mg/L) of chloramines concentration in the public water supply systems.

i. On February 10, 2009, at Regional Water Board staff's request, the Discharger submitted additional information on specific improvements and upgrades it made to the facility after the incidents. The Discharger confirmed that it maintains in its tank chloramine concentration as total chlorine at 1.97 mg/L and 0.46 mg/L of ammonia. The Basin Plan specifies an instantaneous effluent limit of 0.0 mg/L chlorine/chloramines and an annual median of 0.025 mg/L for un-ionized ammonia. Had the discharges been permitted, the amount of chloramines and ammonia in them would have exceeded the Basin Plan's limits for those pollutants.

j. On February 18, 2009, Regional Water Board staff inspected the control system work station and the storage tank area. The Discharger had completed improvements to the control systems, power backup contingency plan, and other automated emergency response phone and radio lines. Regional Water Board staff estimated the distance between the discharge point and Polhemus Creek to be about 2,000 feet—less than half a mile. Flow between the discharge point and the receiving water body, Polhemus Creek, is entirely through a piped storm drain.

k. **Overflow Incidents:**

(a) The first tank overflow occurred on September 25, 2007. As reported, the discharge lasted for 45 minutes at a rate of 200 gallons per minute (gpm). The discharged potable water flowed into a nearby storm drain that drains into Polhemus Creek. The total volume discharged was approximately 9,000 gallons. The Discharger did not report this discharge until October 4, 2007, nine days later.

(b) The second major overflow occurred on September 27, 2007, from approximately 12:00 AM to 7:00 AM. According to the Discharger's spill report, this discharge lasted about 7 hours at an estimated flow rate of 200 gpm. The discharged potable water flowed into a nearby storm drain that drains into Polhemus Creek, about 2,000 feet downstream of the potable water storage tank. The total volume discharged during the second overflow was approximately 84,000 gallons. The Discharger

notified the Regional Water Board and other regulatory agencies, including OES, of the incident about four hours after it became aware of the discharge.

l. **Cause of the Discharge:**

(a) The Discharger uses a computer system called SCADA to remotely monitor and act as the primary control system for its water facilities, including the booster pump stations that fill drinking water storage tanks. On September 25, the Discharger experienced intermittent problems with the SCADA system hardware. The Discharger claimed that an operator fixed and restored the system to normal condition at the time. In less than two days, however, the SCADA problem reoccurred and the backup pump control system also failed.

(b) The September 27 discharge overwhelmed SFPUC's Creek Restoration Project's bypass dewatering system located about several hundred feet downstream of the Discharger's storm drain discharge point along Polhemus Creek. The dewatering system was installed to divert stream flows around an ongoing 315 linear-foot creek and wetland restoration project. This restoration project was approved by several regulatory agencies

SFPUC's contractor and field biologists estimated that the flow of Polhemus Creek for that time of the year was approximately 70 gpm. SFPUC had installed two pumps, each capable of pumping 210 gpm, to divert the creek flow and isolate the work area during construction. SFPUC had oversized the dewatering system to provide buffer capacity to handle unexpected flows. The primary dewatering pump operated 24 hours per day with a float valve that would automatically activate the backup dewatering pump if the primary pump failed or flooded. The backup dewatering pump was installed to handle unforeseen rain events during the dry season.

(c) The unexpected discharge appears to have exceeded the Creek Restoration Project's dewatering system's capacity and washed out the stretch of the streambed that was under restoration, causing excess erosion and turbidity downstream. The chloramines and high turbidity levels exceeded water quality objectives in Polhemus Creek and may have exceeded water quality objectives in San Mateo Creek.

m. In both discharge incidents, the overall total volume discharged into Polhemus Creek was approximately 93,000 gallons of potable water containing chloramines. Given that the Discharger seeks to maintain a total chlorine concentration of amount 1.97 mg/L, it is likely that the discharge concentration was about that amount.

VIOLATIONS

n. Chloramines are pollutants that are extremely toxic to aquatic life. The unauthorized discharge of pollutants is prohibited. The unauthorized discharges of chloraminated water that occurred on September 25 and 27, 2007, are violations of CWC Section 13376, for which administrative civil liability may be imposed pursuant to CWC Section 13385.

PROPOSED CIVIL LIABILITY

6. **Maximum Liability:** Under CWC Section 13385(c), the Regional Water Board may impose administrative civil liability for the Discharger's unauthorized discharges in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars ($10,000) for each day in which the violation occurs; and, (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars ($10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

   The violations occurred on two separate days. The volume discharged is estimated at 93,000 gallons. The maximum civil liability the Regional Water Board may impose is ten thousand dollars ($10,000) for each day in which the violation occurred, plus ten dollars ($10) per gallon for the 91,000 gallons of chloraminated water discharged that was not cleaned up in excess of 2,000 gallons (1,000 gallons per each of the two discharges resulting in violations). The maximum civil liability for the unauthorized discharge of approximately 93,000 gallons of polluted water on September 25 and 27, 2007, is $930,000.

7. **Minimum Liability:** according to CWC § 13385(e), at a minimum, liability shall be assessed at a level that recovers the economic benefit or savings, if any, derived from the unauthorized discharge violation.

8. Under Section 13385(e) of the CWC, the Regional Water Board shall consider the following factors in determining the amount of civil liability to be imposed:

   a. <u>The Nature, Circumstances, Extent, and Gravity of the Violation</u>:

      The subject discharges to Polhemus likely caused or significantly contributed to a kill of at least 32 steelhead (*Oncorhynchus mykiss)*, a federally threatened species. San Mateo Creek, including its Polhemus Creek tributary, provides potential habitat for steelhead trout, which are federally listed as threatened in the Central California ecologically significant unit. Considering the high level of development within the watershed, the steelhead population within the watershed is likely at very high risk of local extinction.[1]

[1] Leidy, R.A., G.S. Becker, and B.N. Harvey. 2005. Historical distribution and current status of steelhead/rainbow trout (*Oncorhynchus mykiss*) in streams of the San Francisco Estuary, California. Center for Ecosystem

The chlorinated potable water discharges on September 25 and 27, 2007, were neither authorized nor permitted discharges. A total of approximately 93,000 gallons of chloraminated potable water was discharged to Polhemus Creek, a major tributary to San Mateo Creek. Both creeks are known habitat of steelhead. The discharges also damaged SFPUC's Polhemus Creek restoration project, which was under construction at the time. The discharges caused significant erosion and elevated turbidity levels in both Polhemus and San Mateo Creeks. As a result, between September 27 and 29, 2007, SFPUC contract biologists recovered 35 dead fish, 32 of which were steelhead. The dead fish were recovered from Polhemus Creek immediately downstream of the restoration site.

Regional Water Board staff inspected SFPUC's creek restoration site on September 28, one day after the spill, and found no violation of the provisions of the conditional 401 Water Quality Certification issued to SFPUC for its project. Regional Water Board staff found that the work area was properly isolated to bypass ambient creek flow and the two dewatering pumps, cofferdams and screening measures upstream of the work area were in compliance with the terms of the permit for that time of the year. The restoration site was inspected daily for environmental compliance by SFPUC's two contracted professional ecologists and biologists.

About 0.25 inches of rain fell on September 22, 2007, in the area of the discharges. This rain may have increased the turbidity levels in Polhemus Creek. It is not unusual for creek turbidity to increase as the result of rain storms. Such increases are typically temporary in nature and are generally not observed to result in significant fish kills in the absence of exacerbating factors. In addition, small early season rains, such as the 0.25-inch rain on September 22, typically result in limited runoff and more limited turbidity changes due to the dry antecedent conditions that are present at the end of the dry season.

Given the nature of the dead fish that Regional Water Board staff observed during site inspection on September 28, it is improbable that the 0.25 inches of rain that fell on September 22 were responsible for the fish kill. Regional Water Board staff's judgment is supported by SFPUC's contract biologists and NOAA's investigative report. In addition, there was no separate spill or equipment failure reported by SFPUC or its contractor at the restoration site prior to September 27 or after, and Regional Water Board staff did not identify an equipment failure at the restoration site. Regional Water Board staff photos from their September 28, 2007 inspection are included as Attachment A.

Drs. Michael Fawcett and Jim Roth, SFPUC's contract biologists, reported that they observed dead, stressed, and active juvenile steelhead along Polhemus Creek downstream

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Management and Restoration, Oakland, CA.
Spence, B.C, E.P. Bjorkstedt, J.C. Garza, J.J. Smith, D.G. Hankin, D. Fuller, W.E. Jones, R. Macedo, T.H. Williams, and E. Mora. A framework for assessing the viability of threatened and endangered salmon and steelhead in the North-Central California Coast Recovery Domain. US Department of Commerce, NOAA Fisheries, Southwest Fisheries Science Center, Santa Cruz, CA.

of the restoration site when they were collecting the dead fish following the unauthorized discharges. They also reported that they spotted several active juvenile (yearlings) steelhead fish along San Mateo Creek at the time.[2] Such observations confirm that the juvenile steelhead fish spotted in both creeks were able to survive the larger rains and turbidity from the previous year (2006), since these species are believed to stay in freshwater at least for one to three years before they migrate to the ocean.

The chloramines and excess turbidity associated with the unauthorized discharges likely caused or significantly contributed to the death of a locally significant number of threatened fish and therefore the gravity of the violation is high.

b. Toxicity of Discharge and Susceptibility to Cleanup:

Discharges of chlorinated/chloraminated potable water are prohibited because of its moderate to high acute toxicity to fish and other aquatic life, including steelhead, at concentrations below those likely present in the discharge. The spill and its effects appear to be the primary cause of the observed fish kill. A 1982 study by Alabaster and Lloyd found that rainbow trout fingerlings and yearlings died in 2 hours at chlorine concentration of 0.3 mg/L (or 300 microgram/L (µg/L)), and in 4-5 hours at concentrations of 0.250 mg/L (or 250 µg/L).[3]

The use of chlorine and chloramines as disinfectants to treat potable water is regulated by the United States Environmental Protection Agency. A maximum residual disinfectant level of up to 4 mg/L in drinking water is allowed for these disinfectants.[4] The Basin Plan effluent limitation for permitted discharges that may have chlorine or chloramines residual (free chlorine and chloramines) is zero (0.0 mg/L). In a February 10, 2009, email message, the Discharger confirmed that it maintains chloramines concentration as total chlorine at 1.97 mg/L in the storage tanks. NOAA's investigative report stated "*the presence of chloramines in the water, which burns fish gills (affecting the ability of fish to breathe), is sufficient to kill the juvenile fish, especially with the exacerbating problem of turbidity, which would certainly expedite the demise of the steelhead, given their inability to breathe.*"[5]

Based on the information provided by the Discharger, the total chlorine in the discharged potable water was 1.97 mg/L at a flow of 200 gpm. The ambient flow rate of Polhemus Creek was estimated to be 70 gpm at the time. This results in a potential total maximum

[2] Memorandum from Michael Fawcett and Jim Roth to Dan Logan, NMFS, and Norm Simons, NOAA Enforcement, Santa Rosa, *Report on Polhemus Creek Overflow and Fish Kill Events, 27-29 September 2007*, dated 29 October 2007.
[3] Alabaster and Lloyd study was cited in U.S. Department of Commerce NOAA, National Marine Fisheries Service, Offense Investigation Report, *Investigative Report-ESA Polhemus Creek, San Mateo CA* (December 12, 2007)
[4] http://www.epa.gov/regiona09/water/chloramine.html
[5] U.S. Department of Commerce NOAA, National Marine Fisheries Service, Offense Investigation Report, *Investigative Report-ESA Polhemus Creek, San Mateo CA* (December 12, 2007)

chlorine concentration of about 1.46 mg/L, to which the creek was exposed for about 45 minutes on September 25 and about seven hours on September 27.[6]

The chlorine concentrations likely found in the creek as a result of the spills were more than an order of magnitude above the lethal concentration (LC_{50}) that will kill half of the sample population of a specific test. The acute toxicity of total residual chlorine for rainbow trout/steelhead *salmo gairdneri* ranges from 52 µg/L for rainbow trout (sac fry) to 69 µg/L for rainbow trout (juveniles), according to EPA's ambient water quality criteria for chlorine measured using the flow through method.[7] These species are similar to the steelhead species found dead in Polhemus Creek on September 27 and 28, 2007.

c. Discharger's ability to pay and continue in business:

The Discharger appears able to pay the proposed amount. According to the Discharger's 2007 financial reports as shown on its website, California Water Service Group, the publically owned parent company of the Discharger, recorded net income of $31.2 million in 2007. The revenue of the company also grew by 10% to $367.1 million in 2007.[8] From 2003 through 2007, the Group had total net income of more than $129.4 million. In 2008, the Discharger had net income of $39.9 million on $410 million in revenue.[9]

d. Voluntary cleanup actions taken:

The Discharger did not, on its own initiative, assess or fully evaluate the environmental damages and fish kill in Polhemus Creek downstream of its discharges. The Discharger became involved only after SFPUC alerted it to the spills' magnitude and the environmental damage caused by the spill, specifically the fish kill, including steelhead, and the impacts to SFPUC's creek and wetland restoration project. The dead fish from the fish kill were recovered from Polhemus Creek by SFPUC contract ecologists and biologists.

e. Prior history of violations:

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[6] Chloramines are relatively stable compounds and do not as rapidly react with organic materials in water as free chlorine to create unsafe byproducts, such as trihalomethane, in potable water distribution systems. An effect of this is that chloramines remain in water or soil much longer than chlorine does. For example, in its Strawberry Creek Water Quality – 2006 Status Report, the University of California, Berkeley, stated that "chlorine residual in chloraminated discharges is reduced only marginally by contact with the soil. East Bay Municipal Utility District (EBMUD) found chlorine residual of 1.4 mg/L in muddy water from main repair trench water from a distribution system with a concentration of 1.7 mg/L."
http://strawberrycreek.berkeley.edu/naturalhistory/documents/SC2006wqstatuspdf10.02.2006.pdf

[7] Ambient Water Quality Criteria for Chlorine – 1984, EPA Publication # 4400584030 or
http://www.epa.gove/ost/pc/ambientwqc/chlorine1984.pdf

[8] http://ir.calwatergroup.com/phoenix.zhtml?c=108851&p=irol-reportsannual

[9] http://biz.yahoo.com/e/090302/cwt10-k.html

We are not aware of any prior violations at this facility. The Discharger operates a raw potable water treatment facility at its Bear Gulch District Surface Water Treatment Plant located at 120 Reservoir Road in Atherton, San Mateo County. Its 2007 and 2008 annual self-monitoring reports indicated occasional effluent limitation violations for pH and suspended solids.

f. Degree of culpability:

The Discharger is fully culpable for failing to implement appropriate safeguards, effective systems, and appropriate dechlorination BMPs to prevent impacts to water quality and aquatic life. The Discharger did not fully assess the extent of the impact associated with the discharge downstream, nor did it implement BMPs to reduce the impact.

In its September 27 spill report phone notification, the Discharger appeared to show a lack of understanding of the persistence of chloramines in water and likely impacts, stating "*the chlorine will dissipate on its own.*" This statement significantly understated the potential toxicity of chloramines to aquatic habitat, especially to fish and amphibians.

Since the incident, the Discharger has implemented new testing procedures to verify the operation of the primary and backup control systems to prevent a similar system failure. In addition, the Discharger placed dechlorination BMPs at the tank overflow basin. See Section 8.g below for details.

(i) The September 27 incident could have been prevented if the Discharger had thoroughly inspected its facility and identified and properly fixed the problem, including ensuring that the backup system was in proper working order after its September 25 discharge.

(ii) The Discharger did not report the September 25, 2007, incident in a timely manner, nor did it thoroughly inspect its system to find the core cause of the overflow. It did not repair the malfunctioning system sufficiently to avoid a reoccurrence of the conditions leading to the discharge. It also did not check to ensure the water tank's spill prevention backup system was functioning properly. The September 27 incident would have been prevented if the Discharger had adequately fixed the problem that occurred on September 25 or if either the primary or backup control systems had been functioning properly.

(iii) The Discharger did not have a system or an attendant to stop the September 27 overflow discharge in a timely manner. As a result, the discharge continued for reportedly 7 hours before the Discharger became aware of the system's failure and stopped the discharge. Then, the Discharger manually operated the potable water pump until a SCADA specialist repaired the system hardware and visually monitored the system for 24 hours to ensure the system was functioning properly.

g. Savings resulting from the violation:

The Discharger has realized cost savings by failure to timely implement appropriate BMPs and functional control systems. Based on the Discharger's February 10, 2009, submittal of additional information, since the September 2007 incident, the Discharger has invested about $52,500 to improve and upgrade its San Mateo storage tank facility. Below are the Discharger's stated significant improvements and their associated estimated costs:

- Replaced the Remote Terminal Unit at the 1452 Bel Aire Road (aka Baywood tank) facility and radio based system to improve its communications reliability, at a cost of about $10,000;
- Built a secure room for the SCADA server to prevent anyone from accidentally disconnecting the equipment, at a cost of about $15,000;
- Replaced the SCADA server to improve the reliability of the hardware, at a cost of $20,000;
- Replaced the SCADA monitors as part of the server replacements, at a cost of $5,000; and,
- Upgraded the Uninterruptible Power Supply at the office, at a cost of $2,500.

If these upgrades had been in place, the spills may have been prevented or detected earlier. Such savings while below the proposed liability represent the minimum liability that can be imposed.

h. Other matters that justice may require:

Staff time to inspect the site, review spill investigation reports, prepare Complaint, and supporting information is estimated to be 85 hours. Based on an average cost to the State of $150 per hour, the total staff cost is $12,750. Public noticing the Complaint requires publishing a Public Notice in a newspaper of general circulation, at a cost of approximately $600. The total staff cost to prepare the Complaint is thus approximately $13,350.

Basis for Liability Amount

9. Per CWC Section 13385(e), the following factors in determining an appropriate civil liability amount were considered: the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, and prior history of violations, the degree of culpability, economic benefit or saving, if any, resulting from the violation, and such other matters as justice may require. The proposed liability was derived

using this section as a guide as well as the monetary assessment guidance set forth in the State Water Resources Control Board's Enforcement Policy.

10. Based on the above factors, the Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of $199,350. Of this amount, $13,350 is for recovery of staff costs and $186,000 is the proposed liability.

    If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this complaint through completion of the hearing.

11. The Discharger may submit information demonstrating an inability to pay the proposed liability. Such information should substantively demonstrate that the Discharger cannot, and could not, pay the proposed liability. It may consist, for example, of two years of income tax returns or an audited financial statement.

12. Further unpermitted discharges and/or failure to comply with Basin Plan discharge prohibitions beyond the date of this Complaint may subject the Discharger to additional administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.

13. **CEQA Exemption:** Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

Dyan C. Whyte
Assistant Executive Officer

May 19, 2009
Date

Attachment: Waiver of Hearing form
Photos

In the Matter of:	)	COMPLAINT NO. R2-2009-0006
	)	for
California Water Service Company	)	ADMINISTRATIVE
1452 Bel Aire Road	)	CIVIL LIABILITY
San Mateo, San Mateo County	)	
_____	)	

WAIVER OF HEARING

If you waive your right to a hearing, the matter will be included on the agenda of a Regional Water Board meeting but there will be no hearing on the matter, unless a) the Regional Water Board staff receives significant public comment during the comment period, or b) the Regional Water Board determines it will hold a hearing because it finds that new and significant information has been presented at the meeting that could not have been submitted during the public comment period. If you waive your right to a hearing but the Regional Water Board holds a hearing under either of the above circumstances, you will have a right to testify at the hearing notwithstanding your waiver. Your **waiver is due no later than June 19, 2009, by 5 p.m.**

❑ Waiver of the right to a hearing and agreement to make payment in full.

By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No. R2-2009-0006 and to remit the full penalty payment of $199,350 to the State Water Pollution Cleanup and Abatement Account, c/o Regional Water Quality Control Board at 1515 Clay Street, Suite 1400, Oakland, CA 94612, within 30 days after the scheduled Hearing date. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Assistant Executive Officer in this Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability.

❑ Waiver of right to a hearing and agree to make payment and undertake an SEP.

By checking the box, I agree to waive my right to a hearing before the Regional Water Board with regard to the violations alleged in Complaint No. R2-2009-0006, and to complete a supplemental environmental project (SEP) in lieu of the suspended liability up to $93,000 and to pay the balance of the fine to the State Water Pollution Cleanup and Abatement Account (CAA) within 30 days after the scheduled Hearing date. The SEP proposal shall be submitted no later than **July 3, 2009 at 5 p.m**. I understand that the SEP proposal shall conform to the requirements specified in Section IX of the Water Quality Enforcement Policy, which was adopted by the State Water Resources Control Board on February 3, 2009, and be subject to approval by the Assistant Executive Officer. If the SEP proposal, or its revised version, is not acceptable to the Assistant Executive Officer, I agree to pay the suspended penalty amount within 30 days of the date of the letter from

the Assistant Executive Officer rejecting the proposed/revised SEP. I also understand that I am giving up my right to argue against the allegations made by the Assistant Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed unless the Regional Water Board holds a hearing under either of the circumstances described above. If the Regional Water Board holds such a hearing and imposes a civil liability, such amount shall be due 30 days from the date the Regional Water Board adopts the order imposing the liability. I further agree to satisfactorily complete the approved SEP within a time schedule set by the Assistant Executive Officer. I understand failure to adequately complete the approved SEP will require immediate payment of the suspended liability to the CAA.

❑ Waiver of right to a hearing within 90 days.

By checking this box, I hereby waive my right to have a hearing within 90 days after service of the Complaint, but I reserve the right to have a hearing in the future. I agree to promptly engage the Regional Water Board prosecution staff in discussions to resolve the outstanding violations. By checking this box, the Discharger requests that the Regional Water Board delay the hearing so the Discharger and Regional Water Board Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing.

_____	_____
Name (print)	Signature
_____	_____
Date	Title/Organization