

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

In the matter of:	)	
	)	
<b>MARIN MUNICIPAL WATER DISTRICT, MARIN COUNTY</b>	)	<b>SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER</b>
<b>July 16, 2016, unplanned discharge of chlorinated potable water</b>	)	
	)	<b>PROPOSED ORDER</b>
	)	
	)	
	)	

**Section I: INTRODUCTION**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region, Prosecution Team (Prosecution Team) and Marin Municipal Water District (MMWD) (collectively Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate, for adoption as an Order by settlement pursuant to Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against MMWD in the amount of **\$129,250**.

**Section II: RECITALS**

2. MMWD is a water purveyor and operates a drinking water system in south and central Marin County. MMWD operates and maintains a potable water main located near San Anselmo Creek, a tributary to Corte Madera Creek, in the Town of Fairfax.
3. On July 16, 2016, MMWD allegedly discharged approximately 105,000 gallons of potable water with a chlorine residual up to 2 mg/L to San Anselmo Creek in violation of Statewide NPDES Permit for Drinking Water System Discharges to Waters of the United States, Order WQ 2014-0194-DWQ (Permit), section V. The unplanned discharge violated the Permit's receiving water limitation for toxicity because it resulted in an unquantified fish kill. The fish kill mainly involved sculpin, California roach, and at least one rainbow trout or steelhead.
4. Pursuant to Water Code section 13385, the unauthorized discharge subjects MMWD to administrative civil penalties not to exceed \$10,000 per day of violation and \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons.

5. The settlement amount (\$129,250) is less than the liability amount the Prosecution Team calculated or asserted using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A. The final proposed administrative civil liability amount was reduced by approximately 12 percent (\$17,600) in consideration of hearing and/or litigation risks related to equitable factors and mitigating circumstances.
6. To resolve the alleged violations in Section II, paragraph 3, by consent and without further administrative proceedings, the Parties have agreed to the imposition of an administrative civil liability of **\$129,250** against MMWD. Payment of \$66,250 to the "State Water Pollution Cleanup and Abatement Account" is due no later than 30 days following the Regional Water Board's execution of this Stipulated Order. The remaining \$63,000 shall be treated as a suspended liability pending completion of a Supplement Environmental Project (SEP) and shall be dismissed upon the SEP's completion as provided in paragraph 17.
7. 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.
8. The Prosecution Team believes that the resolution of the alleged violation is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the violation 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:

9. **Administrative Civil Liability:** MMWD hereby agrees to the imposition of an administrative civil liability totaling **\$129,250** to resolve the alleged violation. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, MMWD shall submit a check for \$66,250 made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Stipulated Order, and mail the check to:

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

MMWD shall email a copy of the check to the State Water Board Office of Enforcement ([Paul.Cicarelli@waterboards.ca.gov](mailto:Paul.Cicarelli@waterboards.ca.gov)) and the Regional Water Board ([Habte.Kifle@waterboards.ca.gov](mailto:Habte.Kifle@waterboards.ca.gov)).

10. **SEP Description:** The SEP requires MMWD to assist Marin County Parks with the implementation of a stream crossing project in the Cascade Canyon Open Space Preserve. The SEP will prevent hikers and bikers from walking and riding through San Anselmo Creek (Creek), an activity known to contribute excess sediment to the Creek. (Excess sediment in the Creek potentially harms aquatic life, including a struggling steelhead population.) Specifically, MMWD will assist Marin County Parks with the construction of two multi-use trail bridges over the Creek and the decommissioning of a defunct trail that runs along the Creek, the High Water Trail. MMWD will supply salvaged old-growth redwood for the two bridges and will provide personnel to help Marin County Parks with the decommissioning and restoration of the High Water Trail. The complete SEP description, project milestones, budget, and reporting schedule are contained in Attachment B, incorporated herein by reference.

11. **Representations and Agreements Regarding the SEP**

- a. As a material condition for the Regional Water Board's acceptance of this Stipulated Order, MMWD represents that it will use the suspended \$63,000 (SEP Amount) to implement the SEP set forth in Attachment B. MMWD understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedule, is a material condition of this settlement of liability between MMWD and the Regional Water Board.
- b. MMWD agrees to (1) spend the SEP Amount as described in this Stipulated Order; (2) provide certified, written reports to the Regional Water Board consistent with the terms of this Stipulated Order detailing SEP implementation; and (3) provide as part of the final report due December 31, 2019 (SEP Completion Date), a certification by a responsible official, signed under penalty of perjury, that MMWD followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and federal Clean Water Act. MMWD further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the SEP at MMWD's cost, and that MMWD bears ultimate responsibility for meeting all deadlines and requirements specified in Attachment B.

12. **SEP Oversight Costs:** The San Francisco Estuary Partnership (SFEP) will oversee implementation of the SEP in lieu of Regional Water Board staff oversight. SFEP will report directly to the Regional Water Board. As set forth in Attachment B, MMWD shall reimburse SFEP for all oversight costs associated with the SEP. Oversight costs are not included in the SEP Amount.

13. **Publicity Associated with the SEP:** Whenever MMWD or its agents or subcontractors publicize one or more elements of the SEP, 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 MMWD.

14. **Progress Reports and Inspection Authority:** MMWD shall provide reports describing progress implementing the SEP to the Regional Water Board as described in Attachment B. MMWD agrees that Regional Water Board staff, or its third party oversight staff, have permission to inspect the SEP at any time without notice.
15. **Certification of SEP Completion:** On or before the SEP Completion Date, a responsible official of MMWD shall submit a final report as described in Attachment B and certified statement that documents MMWD's expenditures during the SEP completion period, and documents that MMWD completed the SEP 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 MMWD staff. In making such certification, the signatories may rely on 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 SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and the costs incurred. MMWD shall provide Regional Water Board staff with any additional information reasonably necessary to verify MMWD's SEP expenditures and completion.
16. **Time Extension for SEP:** The Executive Officer of the Regional Water Board may extend the SEP deadlines contained in this Stipulated Order if MMWD demonstrates delays from unforeseeable circumstances, such as an unforeseeable delay in construction of the two trail-crossing bridges, provided that MMWD continues to undertake all appropriate measures to meet the deadlines. MMWD shall make any deadline extension request in writing at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or its delegate must be in writing.
17. **Regional Water Board Acceptance of Completed SEP:** Upon MMWD's satisfaction of its obligations under this Stipulated Order, SEP completion, and any audits, the Executive Officer will issue a "Satisfaction of Order." The Satisfaction of Order shall terminate any further MMWD obligations under this Stipulated Order and result in the dismissal of the remaining penalty amount.
18. **Failure to Expend All Suspended Funds on the Approved SEP:** If MMWD is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed SEP by the SEP Completion Date, MMWD shall pay the difference between the SEP Amount and the amount MMWD can demonstrate was actually spent on the SEP (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require MMWD to pay the Difference to the "State Water Pollution Cleanup and Abatement Account" within 30 days of the Notice of Violation's issuance date. MMWD shall submit payment consistent with the payment method described in Section III, paragraph 9. Payment of the Difference shall satisfy MMWD's obligations to implement the SEP.

- 19. Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date, or if there has been a material failure to satisfy a project milestone, the Executive Officer shall issue a Notice of Violation. 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. MMWD shall be liable to pay the entire SEP Amount, or, if shown by MMWD, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Regional Water Board or its delegate determines otherwise, MMWD shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP 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 MMWD to pay, MMWD shall submit payment consistent with the payment method described in Section III, paragraph 9. Payment of the assessed amount shall satisfy MMWD's obligations to implement the SEP.
- 20. Regional Water Board is not Liable:** Neither the Regional Water Board members nor 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 MMWD, 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 MMWD, its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
- 21. Compliance with Applicable Laws:** MMWD understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

**22. Party Contacts for Communications related to this Stipulated Order:**

**For the Regional Water Board:**

Habte Kifle  
Water Resource Control Engineer  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
Habte.Kifle@waterboards.ca.gov  
(510) 622-2300

**For MMWD:**

Krishna Kumar  
General Manager  
Marin Municipal Water District  
220 Nellen Avenue  
Corte Madera, CA 94925  
kkumar@marinwater.org  
415-945-1460

23. **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.
24. **Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the alleged violation as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 9, and MMWD's full satisfaction of the obligations to implement the SEP.
25. **Public Notice:** MMWD 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. MMWD agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
26. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Stipulated Order, 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. If procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.
27. **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.
28. **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.
29. **If the Order Does Not Take Effect:** If the Stipulated 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 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 the following:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections 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 violation alleged herein; and
  - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent that the period has been extended by these settlement proceedings.
30. **Waiver of Hearing:** MMWD has been informed of the rights Water Code section 13323, subdivision (b), provides and hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.
31. **Waiver of Right to Petition or Appeal:** MMWD hereby waives its right to petition the Regional Water Board's adoption of the Stipulated 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.
32. **Covenant Not to Sue:** MMWD covenants not to sue or pursue any administrative or civil claim against any State agency or the State of California, their officers, Board members, employees, representatives, agents, or attorneys arising out of, or relating to, any matter expressly addressed by this Stipulated Order or the SEP.
33. **No Admission of Liability:** In settling this matter, MMWD does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code or any other federal, State, or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional Water Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 or 13385, subdivision (e).
34. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to MMWD 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 MMWD of its obligation to obtain any final written approval this Stipulated Order requires.
35. **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.

36. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
37. **Severability:** This Stipulated Order is severable; if any provision is found invalid, the remainder shall remain in full force and effect.
38. **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 signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
39. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters an Order incorporating the terms of this Stipulated Order.




**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Date: March 5, 2018

By: \_\_\_\_\_  
Thomas Mumley  
Assistant Executive Officer

Approved as to form:

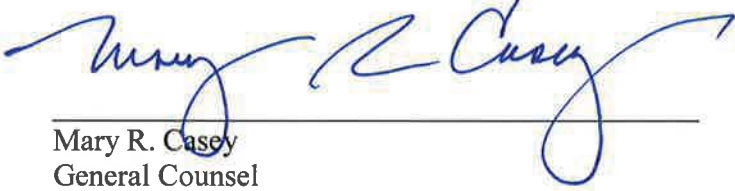
By:  \_\_\_\_\_  
Paul D. Ciccarelli  
Attorney  
State Water Resources Control Board  
Office of Enforcement

**MARIN MUNICIPAL WATER DISTRICT**

Date: 03/01/18

By:   
\_\_\_\_\_  
Krishna Kumar  
General Manager

Approved as to form:

  
\_\_\_\_\_  
Mary R. Casey  
General Counsel

**ORDER OF THE REGIONAL WATER BOARD**

- 40. This Stipulated Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
  
- 41. In accepting this Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the Penalty Calculation Methodology set forth in the Enforcement Policy, which is incorporated herein by this reference. The Regional Water Board’s consideration of these factors and application of the Penalty Calculation Methodology is based on information the Prosecution Team obtained in investigating the allegations set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
  
- 42. This is an action to enforce the laws and regulations administered by the Regional Water Board. This Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Stipulated Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
  
- 43. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if MMWD fails to perform any of its obligations under the Stipulated 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, San Francisco Bay Region.

\_\_\_\_\_  
Bruce H. Wolfe  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

\_\_\_\_\_  
Date

## Attachment A

### **Factors in Determining Administrative Civil Liability**

#### **MARIN MUNICIPAL WATER DISTRICT DISCHARGE OF 105,000 GALLONS CHLORINATED POTABLE WATER TO SAN ANSELMO CREEK, FAIRFAX, MARIN COUNTY**

The State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code (Water Code) section 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms may not be replicated herein. The Enforcement Policy is at:

[http://www.waterboards.ca.gov/water\\_issues/programs/enforcement/docs/enf\\_policy\\_final111709.pdf](http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf)

#### **ALLEGED VIOLATIONS**

On July 16, 2016, Marin Municipal Water District (Discharger) discharged 105,000 gallons of potable water with a chlorine residual of 2.2 mg/L to San Anselmo Creek in violation of the Statewide NPDES Permit for Drinking Water System Discharges to Waters of the U.S., Order WQ 2014-014-0194 (Permit) section V.E. This discharge violated the Permit's receiving water limitation for toxicity because it resulted in an unquantified fish kill.

The unplanned discharge started at 11:43 a.m. and lasted until 3:11 p.m., when the Discharger was able to stop the flow. The discharge occurred due to a blow-off valve failure on a 6-inch steel water main that was installed in 1962. The Discharger's biologist reported that the fish kill mainly involved sculpin and California roach. At least one rainbow trout or steelhead was also killed.

The Discharger is subject to administrative civil liabilities pursuant to Water Code section 13385, subdivision (a)(2).

<b>PENALTY FACTOR</b>	<b>SCORE</b>	<b>DISCUSSION</b>
Harm or Potential for Harm to Beneficial Uses for Discharge Violations	4	A score of 4 (above moderate) is appropriate because the chlorinated water discharged into San Anselmo Creek killed fish. The environmental impacts from the discharge were observed and substantial, and posed a "more than moderate threat to beneficial uses . . ." (Enforcement Policy, p. 12.) San Anselmo Creek is a tributary of Corte Madera Creek. The San Francisco Bay Water Quality Control Plan (Basin Plan) designates the following beneficial uses of Corte Madera Creek: cold freshwater habitat (COLD), preservation of rare and endangered species (RARE), noncontact water recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD). In

Marin Municipal Water District  
Attachment A - Administrative Civil Liability Factors

		addition, the Basin Plan designates the following potential beneficial uses of Corte Madera Creek: fish migration (MIGR), water contact recreation (REC1), and fish spawning (SPWN). The beneficial uses most affected by the chlorinated potable water discharge were RARE and WARM.
Physical, Chemical, Biological, or Thermal Characteristics	2	A score of 2 (moderate toxicity risk) is appropriate because the discharge had “some level of toxicity or pose[d] a moderate level of concern regarding receptor protection.” ( <i>Ibid.</i> , p. 13.) Specifically, the discharge consisted of 2.2 mg/L chlorine residual, which is more than 100 times the U.S. EPA water quality criterion of 0.019 mg/L (expressed as a one-hour average) for acute (lethal) effects to aquatic life. <sup>1</sup>
Susceptibility to Cleanup or Abatement	1	A score of 1 is appropriate because the discharge was not susceptible to cleanup; it quickly comingled with the receiving water and flowed downstream. The Enforcement Policy requires a score of 1 where less than 50 percent of a discharge is susceptible to cleanup or abatement. ( <i>Ibid.</i> , p. 13.)
Final Score	7	The scores for the above three factors are added together to provide a “Potential for Harm” score of 7 (4+2+1=7).
Deviation from Requirement	Major	A “major” deviation from requirement is selected because the unplanned discharge contained toxic concentrations of chlorine that killed fish. Permit section V.E. prohibits a discharge from causing or contributing to an occurrence of toxicity. <sup>2</sup> Because the discharge contained toxic concentrations of chlorine that produced detrimental physiological responses in aquatic life (i.e., killed fish), the receiving water limitation was rendered ineffective.
Per-Gallon and Per-Day Factors for Discharge Violations	0.310	Enforcement Policy Tables 1 and 2 contain per-gallon and per-day factors based on the “Potential for Harm” score of 7 and the degree of Deviation from Requirement (Major). Using the tables, both the Per-Gallon Factor and the Per-Day Factor are 0.310.
Adjustment for High Volume Discharges	\$4/gallon	A high volume adjustment for this incident is selected because 105,000 gallons is a marginally high volume discharge. The Enforcement Policy allows a reduction of the maximum per-gallon amount (\$10/gallon) for high volume discharges. For example, it recommends a maximum of \$1/gallon for high volume discharges of recycled water unless “reducing [the] maximum amounts results in an inappropriately small penalty ... a higher amount, up to the maximum per gallon amount, may be used.” ( <i>Ibid.</i> p. 14.) Potable water is similar to recycled water in that both contain chlorine residual concentrations toxic to aquatic life. However, application of \$1/gallon for this incident would result in an inappropriately small penalty relative to its impact on beneficial uses. Instead, \$4/gallon is used to calculate the initial liability amount because the resulting penalty is a suitable deterrent and bears a

<sup>1</sup> U.S. EPA, *Quality Criteria for Water* (1986).

<sup>2</sup> The Permit defines “toxicity” as “toxic substances to be present, individually or in combination, in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.”

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 Attachment A - Administrative Civil Liability Factors

		reasonable relationship to the gravity of the violation and the harm to beneficial uses.
<b>Initial Liability</b>	<b>\$132,060</b>	<p>The initial liability is calculated as follows:</p> <p><b>\$132,060 = (0.310 x \$4/gallon x 104,000 gallons) + (0.310 x \$10,000/day x 1 day)</b></p> <p>The per-gallon factor (0.310) is multiplied by the high-volume-adjusted per-gallon amount (\$4) and the volume exceeding 1,000 gallons that was discharged and not cleaned up (105,000 gallons minus 1,000 gallons). The product is then added to the per-day factor (0.310) multiplied by the maximum per-day liability (\$10,000) and the number of days of violation (1).</p>
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.0	<p>A neutral culpability multiplier of 1.0 is appropriate because the discharge was unplanned and there is no evidence that the Discharger had prior indication that the blow-off valve would break. The Discharger reported that the valve was installed in 1962 and had no history of leaks or breaks in the segment that broke. The Discharger, however, did not provide the expected life span of the pipe.</p>
Cleanup and Cooperation	1.1	<p>A higher-than-neutral multiplier is appropriate. After becoming aware of the adverse impact to beneficial uses (i.e., the fish kill), the Discharger failed to timely report the incident to the Regional Water Board, as Permit Attachment E, section E.IV requires. Moreover, although the Discharger notified the National Oceanic and Atmospheric Administration on the afternoon of July 18, 2016, it did not notify the California Department of Fish and Wildlife in time to collect and count the dead fish.</p> <p>The Discharger submitted a 5-day written report on July 18, 2016, and additional information on July 19 and August 10, 2016, in response to our requests to comply with Permit Attachment E, section E.IV. The Discharger has also updated its standard operating procedures to ensure future compliance with the 24-hour reporting requirement.</p>
History of Violations	1	The Discharger does not have a history of enforcement actions associated with its water mains.
<b>Total Base Liability</b>	<b>\$145,266</b>	<p>The initial liability amount is multiplied by each factor related to the Discharger's conduct to determine the Total Base Liability as follows:</p> <p><b>\$145,266 = \$132,060 x 1 (culpability) x 1.1 (cleanup) x 1 (history)</b></p>

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 Attachment A - Administrative Civil Liability Factors

Ability to Pay and Continue in Business	No adjustment	The Discharger has not provided evidence that it cannot pay the proposed penalty. The Discharger's 2014 budget for fiscal year revenue (not including fire flow) was approximately \$71 million, which suggests that its annual budget is more than adequate to pay the proposed penalty.
Economic Benefit	No adjustment	The Discharger did not enjoy a significant economic benefit associated with the violation since this was an unplanned discharge due to an unanticipated failure of a blow-off valve on a water main.
<b>Other Factors as Justice May Require</b>		
Staff Costs	\$1,583	<p>The Enforcement Policy gives the Regional Water Board discretion to consider staff costs in relation to the Total Base Liability. The Regional Water Board incurred at least \$1,583 in staff time to review spill reports, investigate this case, and prepare this analysis and supporting information. This includes time spent by all members of the Prosecution Team, excluding legal counsel, based on the low end of the salary range for each classification. Increasing the Total Base Liability by \$1,583 in consideration of investigation and enforcement costs is warranted given the totality of the circumstances and is intended to serve as a general and specific deterrent against future violations.</p> <p>Staff costs were calculated as follows:</p> <p style="padding-left: 40px;">\$1,140 = 20 hours x \$57/hour (Water Resource Control Engineer)</p> <p style="padding-left: 40px;">\$200 = 2 hours x \$100/hour (Section Leader)</p> <p style="padding-left: 40px;">\$110 = 1 hour x \$110/hour (Division Chief)</p> <p style="padding-left: 40px;">\$133 = 1 hours x \$133/hour (Assistant Executive Officer)</p> <p style="padding-left: 40px;"><b>\$1,583 = Total staff costs</b></p>
Other factors	none	
Maximum Liability	\$1.05 million	<p>Water Code section 13385 allows up to \$10,000 for each day in which the violation occurs, and \$10 for each gallon exceeding 1,000 gallons that is discharged and not cleaned up. The maximum liability is calculated based on 105,000 gallons and one day of violation as follows:</p> <p>\$1.05 Million = (104,000 gallons x \$10/gallon) + \$10,000</p>
<b>Final Liability</b>	<b>\$146,850 (rounded)</b>	<p>The final liability amount is the Total Base Liability adjusted for ability to pay, economic benefit, other factors, and maximum and minimum liabilities. The final liability is the sum of the Total Base Liability plus staff costs, as follows:</p> <p><b>\$146,850 = \$145,266 (Total Base Liability) + \$1,583 (staff costs)</b></p>

## Attachment B

### **Supplemental Environmental Project Cascade Canyon Preserve Stream Crossings**

**1. Project Name**

Cascade Canyon Preserve Stream Crossings

**2. Project Amount**

\$63,000

**3. Project Lead**

Marin Municipal Water District (District) and Marin County Parks

**4. Contacts**

- Matt Sagues, Grant Fund Coordinator, District, (415) 945-1542, [msagues@marinwater.org](mailto:msagues@marinwater.org)
- Jon Campo, Senior Road and Trail Planner, Marin County Parks, (415) 473-2686, [jcampo@marincounty.org](mailto:jcampo@marincounty.org)

**5. Project Description**

The District will assist Marin County Parks in the construction of two multi-use trail bridges over San Anselmo Creek. The trail bridges are needed because of environmental impacts from hikers and bikers who walk and ride through the creek in the preserve. Such activity contributes excess sediment to the creek, potentially harming aquatic habitat. Bridge construction is expected to aid the struggling steelhead population that exists in the preserve. The projected construction cost for the two bridges is estimated at \$500,000. Under this SEP proposal, the District will assist Marin County Parks with this project, specifically with the following two phases:

- a) District staff will assist Marin County Parks with the decommissioning of the High Water Trail, a defunct trail running along the creek. Marin County Parks staff plan to remove the problematic trail, construct two new trail bridges, and restore the area to protect creek beneficial uses, including aquatic habitat. The District will provide personnel to help decommission the trail, reconstruct the hill slope adjacent to the creek, re-plant the slope with native plants, and water the plants. The District may also install slope stabilization measures, such as jute netting or willow mats, to further ensure there is no erosion of the restored slope.
- b) The District will provide old-growth redwood, salvaged from recently deconstructed water tanks, for the construction of the two new trail bridges over the creek. The District will cut the salvaged redwood to 7-foot decking lengths (from current lengths of 18-feet), and plane, sand, load, and transport the planks to Marin County Parks. Use of this material will allow Marin County Parks to avoid using pressure-treated Douglas fir in this aquatic environment. These two bridges, which have a 60-foot span and a 90-foot span, will require approximately 1,050 square feet of thick redwood decking, assuming a 7-foot width on each bridge.



**6. Compliance with SEP Criteria**

A SEP must directly benefit or study groundwater or surface water quality or quantity and the beneficial uses of the waters of the State.<sup>1</sup> This project meets this SEP criterion by preventing bridge users from continuing to walk and ride bikes through the creek, which is a known problem for resident steelhead in the creek. In addition, using recycled redwood for the bridge materials will allow Marin County Parks to avoid using pressure-treated lumber, which could leach chemicals into the waterway that would be detrimental to salmonids.

**7. Above and Beyond Discharger's Obligations**

This SEP contains only measures that go above and beyond the District's obligations. The project is not part of the District's normal business nor is the District otherwise required to implement any portion of the project.

**8. No Benefit to the Water Board Functions, Members, or Staff**

This SEP provides no direct fiscal benefit to the San Francisco Bay Regional Water Quality Control Board's functions, its members, its staff, or family members of staff.

**9. Nexus to the Nature or Location of Violations**

The SEP has a nexus to the nature and location of the violation. This SEP is part of the settlement of an unauthorized discharge to San Anselmo Creek resulting in a fish kill that occurred in July 2016. San Anselmo Creek is a habitat for steelhead and rainbow trout. The SEP location is on the same creek, about half a mile upstream from the violation location, and will protect fish habitat. Thus, the nexus of nature and location of the violation is met.

**10. Project Maintenance**

The project is part of Marin County Parks' major restoration plan, and the project maintenance will be part of Marin County Parks' annual budget.

**11. Documented Support**

A letter of support from Marin County Parks is attached.

**12. California Environmental Quality Act (CEQA) Compliance**

The CEQA process for bridge construction is underway. The District will provide a copy of the final documentation to the Regional Water Board. Marin County Parks, the project proponent, is the lead agency for CEQA.

**13. Project Milestones, Schedule, and Budget**

Table 1 lists the primary project milestones, deliverables, and schedules. Table 2 includes the projected cost associated with each milestone.

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<sup>1</sup> State Water Resources Control Board Policy on Supplement Environmental Projects, February 3, 2009

**Table 1 – Project Milestones and Deliverables**

<b>Due Date</b>	<b>District Activities</b>	<b>Deliverables</b>
03/02/2019	Complete the agreement with San Francisco Estuary Partnership (SFEP) for SEP Oversight	Payment of Oversight Fees
03/20/2019	Prepare and submit quarterly report. Include as appropriate pre-project, during-project, and post-project construction photos. Account for expenditures.	Quarterly Report #1
04/01/2019	Complete agreement with Marin County Parks for transfer of materials and labor.	Signed Agreement
06/20/2019	Prepare and submit quarterly report. Include status report on Public Agency approvals, entitlements, and permits, as well as rights of way documentation. Include as appropriate pre-project, during-project, and post-project construction photos. Account for expenditures.	Quarterly Report #2
06/30/2019	Milestone 1: Deliver materials (decking) to Marin County Parks	On-site photos with geolocations
09/20/2019	Prepare and submit quarterly report. Include status report on ongoing decommissioning of High Water Trail and status report on delivery of materials (decking). Include as appropriate pre-project, during-project, and post-project construction photos. Account for expenditures.	Quarterly Report #3
10/15/2019	Milestone 2: Complete assistance with decommissioning the High Water Trail.	On-site photos with geolocations
12/20/2019	Prepare and submit quarterly report. Include status report on completion of decommissioning the High Water Trail. Include pre-project, during-project, and post-project construction photos. Account for expenditures.	Quarterly Report #4
12/31/2019	Submit final SEP Report including documentation supporting completion of construction of the two bridges, attainment of all Performance Measures, and final post-project accounting of expenditures.	Final Report

**Table 2– Line Item Project Budget by Milestone**

Description	Hours	Cost
<b>Milestone 1:</b> Prepare and deliver 1,785 board feet of salvaged redwood decking to Marin County Parks (Implementation due date: June 30, 2019)		
<ul style="list-style-type: none"> <li>• Labor and Equipment:                             <ul style="list-style-type: none"> <li>a) Project coordinator</li> <li>b) Heavy equipment operator and trucking</li> <li>c) Maintenance crew leader</li> <li>d) Equipment (e.g., trucking)</li> </ul> </li> </ul>	30 40 25 –	\$2430 \$3,000 \$2784.75 \$574.50
<ul style="list-style-type: none"> <li>• Redwood Decking Material:                             <ul style="list-style-type: none"> <li>a) 1,785 linear feet (lft)</li> </ul> </li> </ul>	\$20/lft <sup>2</sup>	\$35,700
<b>Subtotal</b>		<b>\$44,489.25</b>
<b>Milestone 2:</b> Assist Marin County Parks with the decommission, restoration, and replanting of High Water Trail (Implementation due date: October 15, 2019)		
<ul style="list-style-type: none"> <li>• Labor:                             <ul style="list-style-type: none"> <li>a) Project coordinator</li> <li>b) Maintenance crew leader</li> <li>c) Maintenance worker II</li> <li>d) Park ranger II</li> <li>e) Watershed maintenance supervisor</li> <li>f) Watershed manager</li> </ul> </li> </ul>	30 54 162 10 20 10	\$2,430 \$2,784.75 \$9,796 \$600 \$1,840 \$1,060
<b>Subtotal</b>		<b>\$18,510.75</b>
<b>Total SEP Cost</b>		<b>\$63,000</b>

**14. Final Post-Project Accounting of Expenditures**

The District will track all costs in its SAP database and include financial data with quarterly reports to SFEP. The District will also provide the Regional Water Board with a final report, submitted under penalty of perjury, that declares SEP completion and addresses how the expected performance measures for the project were met, certifies that the District followed all applicable environmental laws and regulations in implementing the SEP, and provides a final accounting of SEP expenditures, as required by Stipulated Order paragraphs 11(b) and 15.

**15. Extension if Necessary**

The SEP Completion Date is the due date of the final report, December 31, 2019, unless the Executive Officer approves an extension. If an extension is granted, it shall apply also to the reports to the Water Board (section 17) and to the third party oversight (section 18). If an extension is necessary, the District shall submit a written request for such extension to the

<sup>2</sup> A third-party reclaimed lumber business in the East Bay, Lumber Baron, estimated the value of the District’s salvaged old-growth redwood at \$20 to \$30 per board foot. The lower end of the estimate was used to determine the budget for raw materials in Milestone 1.

Executive Officer and shall provide the justification for the delay as required by Stipulated Order paragraph 16.

#### **16. Project Performance Measures**

The SEP must achieve all of the following performance measures to be deemed complete:

- a) **Milestone 1:** Prepare and deliver 1,785 board feet salvaged old-growth redwood decking to Marin County Parks to construct two suspended bridges across San Anselmo Creek. The District shall certify that Marin County Parks completed construction of the two new trail bridges over San Anselmo Creek;
- b) **Milestone 2:** Assist Marin County Parks with decommission, restoration, and replanting of High Water Trail. Decommissioning activities include removing the existing trail, reshaping the slope, and compacting the slope to stabilize it. Restoration activities include replanting the slope and creek banks with native plants to stabilize the slope, watering the plants to ensure stability, and installing best management practices for erosion and sediment control;
- c) Prepare and submit deliverable reports to San Francisco Estuary Partnership (SFEP) by the deadlines set forth in Table 1 above; and
- d) Submit SEP Completion final report with demonstrative photos by **December 31, 2019**.

#### **17. Reports to the Water Board**

Reports on the progress of SEP completion will be submitted on a quarterly basis, at a minimum, to the Regional Water Board, a third party oversight organization, and the State Water Board Office of Enforcement. The District will coordinate with SFEP to provide the following reports:

- a) Progress quarterly reports due as set forth in Table 1 – Project Milestones and Deliverables, starting with the first full calendar quarter after SEP approval and ending with the final report. Quarterly reports shall inform SFEP of project progress. Expenditure justifications for SEP-related work shall be included in the reports, including a running table of expenditures with backup documentation (invoices, hourly rates, time sheets, etc.)
- b) Final report due December 31, 2019, unless the due date is extended pursuant to section 15, above.

#### **18. Third Party Oversight Organization**

The District will use SFEP to provide oversight for this SEP. SFEP has extensive experience overseeing SEP implementation in the San Francisco Bay Region. The District shall reimburse SFEP for oversight; such costs shall not be part of the cost of the SEP. For SEP oversight, SFEP shall report directly to the Regional Water Board. In case of a time extension of this SEP, additional oversight fees shall be paid to SFEP.

Supplemental Environmental Project  
Cascade Canyon Stream Crossings

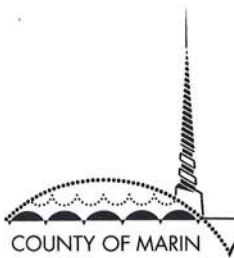
All reports will be sent to the following:

Adrien Baudrimont  
San Francisco Estuary Partnership  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
(510) 622-2337  
[Adrien.Baudrimont@sfestuary.org](mailto:Adrien.Baudrimont@sfestuary.org)

Jasmine Oaxaca  
State Water Resources Control Board  
Office of Enforcement  
801 K Street, 23rd Floor  
Sacramento, CA  
(916) 322-5327  
[Jasmine.Oaxaca@waterboards.ca.gov](mailto:Jasmine.Oaxaca@waterboards.ca.gov)

Habte Kifle  
Water Resource Control Engineer  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[Habte.Kifle@waterboards.ca.gov](mailto:Habte.Kifle@waterboards.ca.gov)  
(510) 622-2300

Attachment: Letter of Support from Marin County Parks, July 10, 2017



# MARIN COUNTY PARKS

Preservation • Recreation

July 10<sup>th</sup>, 2017

**MARIN COUNTY**  
**PARKS**  
PRESERVATION • RECREATION



Linda Dahl  
DIRECTOR  
GENERAL MANAGER

Marin County Civic Center  
3501 Civic Center Drive  
Suite 260  
San Rafael, CA 94903  
415 473 6387 T  
415 473 3795 F  
415 473 2495 TTY  
[www.marincountyparks.org](http://www.marincountyparks.org)

Habte Kifle  
Water Resources Control Engineer  
San Francisco Bay Regional Water Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Re: Proposed SEP Project with Marin Municipal Water District

Dear Habte,

We have been in discussions with the Marin Municipal Water District regarding a potential Supplemental Environmental Project (SEP) at our Cascade Canyon Open Space Preserve. The proposed SEP would allow our District to use sustainable, salvaged materials for our new trail bridges, and would aid us in our effort to decommission and restore a poorly functioning trail. These efforts would ultimately increase water quality and salmonid habitat in this preserve by reducing sediment contributions to the creek, and reducing potential impact to spawning habitat in the direct vicinity of the trail bridges.

The Marin County Open Space District supports the proposed SEP, and we welcome the support for our efforts to improve salmonid habitat in San Anselmo Creek.

Please do not hesitate to contact me with any questions. We look forward to this project moving forward over the coming year.

Sincerely,

Jon Campo  
Senior Road and Trail Planner  
Marin County Parks