

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

In the matter of:	)	
	)	
<b>EAST BAY MUNICIPAL UTILITY</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>DISTRICT, ORINDA WATER</b>	)	<b>STIPULATION FOR ENTRY OF</b>
<b>TREATMENT PLANT, CONTRA</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
<b>COSTA COUNTY</b>	)	<b>ORDER</b>
	)	
<b>Failure to Comply with Monitoring</b>	)	<b>PROPOSED</b>
<b>Requirements and Total Chlorine</b>	)	<b>ORDER</b>
<b>Residual Discharge Violation</b>	)	

**Section I: INTRODUCTION**

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 East Bay Municipal Utility District (Discharger) (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 the Discharger in the amount of \$120,100.

**Section II: RECITALS**

1. The Discharger owns and operates the Orinda Water Treatment Plant (Facility), a potable water treatment plant in Orinda. The Facility discharges treated wastewater to San Pablo Creek, a water of the United States.
2. The Discharger is required to operate and maintain its Facility in compliance with National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038342 (Permit), an NPDES permit for point source discharges to surface water issued pursuant to Clean Water Act section 402 and California Water Code (Water Code) Chapter 5.5, Division 7 (commencing with section 13370). The Permit was re-issued September 9, 2015, through Order No. R2-2015-0041 (2015 Order), which became effective on January 1, 2016.
3. The Discharger is required to comply with 2015 Order Provision VI.B, which requires compliance with Monitoring and Reporting Program (MRP) Requirements (2015 Order Attachment E). The 2015 Order MRP requires the Discharger to monitor effluent chlorine residual concentrations in its Facility's discharge either by continuous monitoring or, at a minimum, once per hour. In addition, the Discharger is required to comply with the 2015 Order Effluent Limitation IV.A for total chlorine residual concentration (instantaneous

maximum) of 0.0 mg/l. For the purpose of compliance determination, the Order specifies a minimum level (ML) of 0.1 mg/L.

4. The Prosecution Team alleges that, for 607 days from January 1, 2016, through December 20, 2017, the Discharger failed to properly monitor total chlorine residual in Facility effluent as required by the 2015 Order. Instead, the Discharger obtained only three grab samples per day during eight-hour work shifts for that period.<sup>1</sup>
5. The Prosecution Team alleges that, on September 5, 2017, the Discharger discharged to San Pablo Creek (a water of the United States) effluent containing 0.22 mg/l of total chlorine residual, exceeding the 2015 Order effluent limit.
6. These alleged violations in Section II paragraphs 4 and 5 constitute violations of the Water Code for which discretionary and minimum mandatory penalties may be assessed pursuant to Water Code section 13385.
7. The Parties entered into settlement discussions and agreed to resolve the alleged violations in Section II, paragraphs 4 and 5, by consent and without further administrative proceedings. The Parties agreed to the imposition of an administrative civil liability of \$120,100 against the Discharger. The administrative civil liability is the proposed liability the Prosecution Team calculated and asserted using Steps 1 through 10 of the State Water Resources Control Board's Water Quality Enforcement Policy (May 2010) (Enforcement Policy) as shown in Attachment A.
8. Payment of \$60,050 to the State Water Pollution Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board or its delegate executing this Stipulated Order. The remaining \$60,050 in penalties shall be treated as a suspended liability pending completion of an Enhanced Compliance Action (ECA) as outlined in Section III, paragraph 2.
9. The Parties have engaged in settlement negotiations and agreed to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as a Stipulated Order by settlement pursuant to Government Code section 11415.60.
10. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable, and fulfills all of its enforcement objectives; that no further action, including administrative issuance of a cleanup and abatement, cease and desist, or compliance order, or pursuit of injunctive relief in a civil action, is warranted concerning the 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:

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<sup>1</sup> The Discharger has stated that it had continuously monitored the effluent for chlorine. However, the accuracy of the continuous monitoring system the Discharger used was not consistently compliant with the Permit's monitoring requirements.

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **\$120,100** to resolve the alleged violations as set forth in Section II, paragraphs 4 and 5, as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Discharger shall submit a check for **\$60,050** made payable to the “State Water Pollution Cleanup and Abatement Account,” with reference to the Order number on page one of this Stipulated Order, to the following address:

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 email to the State Water Resources Control Board, Office of Enforcement ([catherine.hawe@waterboards.ca.gov](mailto:catherine.hawe@waterboards.ca.gov)) and the Regional Water Board ([michael.chee@waterboards.ca.gov](mailto:michael.chee@waterboards.ca.gov)).

- b. The Parties agree that **\$60,050** of the administrative civil liability amount shall be suspended pending completion of the ECA described in Section III, paragraph 2, and Attachment B, incorporated by reference herein.

2. **Enhanced Compliance Action:** The proposed ECA allows the Discharger to improve its operational equipment beyond those actions required by law and is separate from projects designed to bring the Discharger into compliance with the 2015 Order and the Clean Water Act.

- a. The ECA involves the purchase and installation of 15 chlorine analyzers at 15 potable drinking water distribution reservoirs. The total cost to purchase and install the 15 chlorine analyzers will exceed the suspended portion of the administrative civil liability. The location of each chlorine analyzer will be determined based on operational needs.
- b. The ECA will improve the Discharger’s ability to monitor chlorine residual levels in the potable water distribution system. The analyzers will provide real-time chlorine data to the Discharger’s operations staff, which will allow its operation staff to quickly respond to low chlorine residual in the potable water distribution system.

3. **Representations and Agreement Regarding ECA**

- 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 of \$60,050 (ECA Amount) to implement the ECA set forth in Section III, paragraph 2, and Attachment B. The Discharger understands that its promise to implement the ECA, in its entirety, 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 ECA Amount as described in this Stipulated Order, (2) provide certified, written reports to the Regional Water Board detailing ECA

implementation consistent with the terms of this Stipulated Order, and (3) within 30 days of ECA completion, 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 ECA, including the California Environmental Quality Act (CEQA), Porter-Cologne Act, and 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 ECA at the Discharger's cost, and that the Discharger bears ultimate responsibility for meeting all deadlines specified in Attachment B.

4. **Publicity Associated with the ECA:** Whenever the Discharger, or its agents or subcontractors, publicizes one or more elements of the ECA, it shall state in a **prominent manner** that the project is undertaken as part of a settlement of a Regional Water Board enforcement action against the Discharger.
5. **Progress Reports and Inspection Authority:** As described in Attachment B, the Discharger shall provide reports to the Regional Water Board and a third-party oversight organization describing its progress in implementing the ECA. The Discharger agrees that Regional Water Board staff has permission to inspect the ECA installation and deployment progress at any reasonable time during normal business hours, with 24 hours' notice.
6. **Certification of ECA Completion:** On or before September 30, 2020, a responsible official of the Discharger shall submit a final report and certified statement that documents the Discharger's ECA expenditures and the Discharger's completion of the ECA in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include 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 ECA completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate ECA completion and the costs incurred. The Discharger shall provide Regional Water Board staff with any additional information reasonably necessary to verify ECA expenditures and completion.
7. **Request for Extension:** The Executive Officer may extend the ECA deadlines contained in this Stipulated Order for good cause if the Discharger demonstrates delay from circumstances beyond the Discharger's control, such as a delay in receipt of chlorine analyzers or installation issues and justifies the extension. The Discharger's request for extension shall be in writing. The Executive Officer shall not unreasonably withhold approval of an extension request.
8. **Regional Water Board Acceptance of Completed ECA:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, ECA completion, and any audits, the Executive Officer will issue a "Satisfaction of Order" terminating any further Discharger obligations under this Stipulated Order, permanently suspending the remaining liability and resolving the Administrative Civil Liability proceedings.

- 9. Failure to Expend All Suspended Funds on Approved ECA:** If the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire ECA Amount was spent on the completed ECA, the Discharger shall pay the difference between the ECA Amount and the amount the Discharger can demonstrate was actually spent on the ECA (the Difference). The Executive Officer shall issue a “notice” that will require the Discharger to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the notice issuance date. The Discharger shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the Difference shall satisfy the Discharger’s obligations to implement the ECA.
- 10. Failure to Complete ECA:** If the ECA is not fully implemented by September 30, 2020, or by the due date extended pursuant to Section III, paragraph 7, 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. The Discharger shall be liable to pay the entire ECA Amount, some portion thereof less the value of any completed milestones (if shown by the Discharger) as stipulated to by the Parties in writing, or an amount determined by the Motion for Payment of Suspended Liability. 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 ECA prior to the issuance date of the Notice of Violation. Within 30 days of the Regional Water Board’s or its delegate’s determination of the suspended liability amount to be assessed, the Discharger shall submit payment consistent with the payment method described in Section III, paragraph 1. Payment of the assessed amount shall satisfy the Discharger’s obligations to implement the ECA.
- 11. 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 or 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 its staff be held as parties to, or guarantors of, any contract entered into by the Discharger or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
- 12. Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and compliance with 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.

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

**For the Regional Water Board:**

Michael Chee  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
michael.chee@waterboards.ca.gov  
(510) 622-2333

**For the Discharger:**

Chandra Johannesson  
Manager of Environmental Compliance  
East Bay Municipal Utility District  
375 11<sup>th</sup> Street  
Oakland, CA 94607  
chandra.johannesson@ebmud.com  
(510) 287-0412

**14. Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear its own attorneys' fees and costs incurred pursuant to this Stipulated Order.

**15. 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 violations contained in Section II, paragraphs 4 and 5, 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 1.

**16. 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.

**17. Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this Stipulated Order and the Regional Water Board's or its delegate's adoption 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 or revise this Stipulated Order as necessary or advisable under the circumstances.

**18. 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.

**19. Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. Except as discussed in Section III, paragraph 7, all modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.

20. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Resources Control 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 or in any other administrative or judicial proceeding. With the exception of State and federal statutes of limitations for actions to enforce alleged violations under the Clean Water Act or the Porter-Cologne Act, and laches or delay or other equitable defenses based on the time period for administrative or judicial review as raised by the Discharger during the course of settlement discussion, the Parties agree to waive any and all objections based on settlement communications in this matter, including but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors or 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 this Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein in this matter.
21. **Waiver of Hearing:** The Discharger has been informed of its rights under Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to this Stipulated Order's adoption. However, if the Stipulated Order is not adopted and if the matter proceeds to the Regional Water Board or State Water Resources Control Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
22. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board, the Discharger hereby waives its right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including but not limited to time extensions, ECA completion, and other terms contained in this Stipulated Order.
23. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or 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 ECA, except that this covenant is not intended to bar 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, its officers, Regional Water

Board members, employees, representatives, agents, or attorneys to the extent that 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.

24. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Discharger does not admit to liability or 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 its attachments, or admit to any violations of the Water Code, any Regional Water Board order, any permit, or any other federal, State, or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of resolution of a prior enforcement action consistent with Water Code section 13327 and the Enforcement Policy. By entering into this Stipulated Order, the Discharger does not waive any defenses or arguments related to any new enforcement action the Regional Water Board may bring, including any brought under its discretionary enforcement authority reserved herein.
25. **Necessity for Written Approvals:** All Regional Water Board approvals and decisions 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 final written approval when required to do so by this Stipulated Order.
26. **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 this Stipulated Order.
27. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
28. **Severability:** The Discharger's obligations under Section III, paragraphs 1-6, are contingent upon the entry of the Stipulated Order by the Regional Water Board or its delegate in the form attached hereto. Otherwise, this Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
29. **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. Furthermore, this Stipulated Order may be executed by electronic signature and any such 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 electronic signature were an original signature.
30. **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.

**IT IS SO STIPULATED.**

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

Date: April 10, 2019

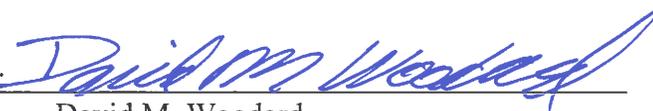
  
By:  
Thomas Mumley  
Assistant Executive Officer

Approved as to form:

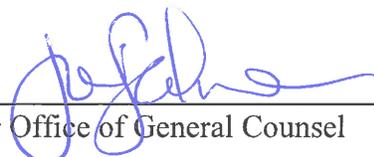
  
By:  
Catherine Hawe, Attorney  
State Water Resources Control Board  
Office of Enforcement

**East Bay Municipal Utility District**

Date: 4/16/2019

By:   
David M. Woodard  
Manager of Regulatory Compliance

Approved as to form:

By:   
for Office of General Counsel

## ORDER OF THE REGIONAL WATER BOARD

1. This Stipulated Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, 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 by reference herein. 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.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board, which therefore finds issuance of this Stipulated Order 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.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this 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.

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Michael Montgomery  
Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

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Date

**Attachment A**  
**to**  
**Settlement Agreement and Stipulation**  
**for Entry of Administrative Civil Liability Order**

**East Bay Municipal Utility District**  
**Orinda Water Treatment Plant**

**Exhibits A and B**

## **EXHIBIT A**

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

#### **EAST BAY MUNICIPAL UTILITY DISTRICT ORINDA WATER TREATMENT PLANT MONITORING AND DISCHARGE VIOLATIONS ORINDA, CONTRA COSTA COUNTY**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Using the methodology addresses the factors required by Water Code sections 13327 and 13385, subdivision (e). Each Enforcement Policy factor 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 are not replicated herein. The Enforcement Policy is available online 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 607 days from January 1, 2016, to December 20, 2017, the East Bay Municipal Utility District (Discharger) failed to monitor total chlorine residual in its Orinda Water Treatment Plant effluent as required by Order No. R2-2015-0041, NPDES Permit No. CA0038342 (NPDES Permit). The NPDES permit requires the Discharger to monitor the total chlorine residual concentration continuously or, at a minimum, every hour. However, the Discharger only obtained three grab samples per day during eight-hour work shifts.<sup>2</sup> The basis of the penalty associated with these monitoring violations is presented below.

For the above violations, the Discharger is subject to administrative civil liabilities pursuant to Water Code sections 13383 and 13385.<sup>3</sup>

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<sup>2</sup> The Discharger has stated that it had continuously monitored the effluent for chlorine. However, the accuracy of the continuous monitoring system the Discharger used at the time was not consistently compliant with its NPDES Permit monitoring requirements.

<sup>3</sup> The 2010 Enforcement Policy was effective from May 20, 2010, until October 5, 2017, when the 2017 Enforcement Policy became effective. Prosecution staff used the 2010 Enforcement Policy for the violations discussed herein because the violations began prior to the effective date of the 2017 Enforcement Policy.

PENALTY FACTOR	ASSESS-MENT	DISCUSSION
Per-Day Factor for Non-Discharge Violations	0.35	<p><b>Potential for Harm:</b> moderate            A “moderate” potential for harm is selected because the Discharger’s improper monitoring substantially impaired the Water Board’s ability to perform its statutory and regulatory functions. In addition, discharge of chlorine to the receiving water can present a moderate potential for harm if not detected. The Enforcement Policy defines moderate potential for harm to beneficial uses as when impacts are observed or reasonably expected and likely to attenuate without appreciable acute or chronic effects. The Discharger detected chlorine once despite monitoring less frequently than the NPDES permit requires. If the Discharger had undertaken all the required monitoring, it may have identified additional instances of chlorine discharges. Chlorine is toxic to fish in low levels; however, the Discharger did not observe any evidence of impacts to the receiving water or aquatic life, and there is no evidence of other chlorinated discharges from this location. The continuous monitoring system used at the time, while insufficient to meet permit monitoring and reporting requirements, was sufficient to allow the Discharger to manage chlorine levels in this discharge in real time.</p> <p><b>Deviation from Requirement:</b> moderate            A “moderate” deviation from requirement is selected for failing to monitor pursuant to the Discharger’s NPDES permit requirements. The Enforcement Policy defines “moderate” deviation as a circumstance whereby “the intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was partially achieved).” Here, the Discharger monitored total chlorine residual, but less frequently than the NPDES permit requires, potentially missing some chlorine discharges.</p>
Total Days	607	<p>On 607 days the Discharger failed to properly monitor chlorine from January 1, 2016 (the effective date of the NPDES permit), to December 20, 2017, when the Discharger installed permit-compliant continuous monitoring equipment. Since the Discharger did not continuously discharge effluent from the Orinda Water Treatment Plant due to major capital improvements and maintenance, monitoring violations occurred only on days of discharge. Thus, the Discharger discharged effluent on the following 607 days: January 1, 2016 to November 3, 2016 (308 days); February 18, 2017, to March 14, 2017 (25 days); March 18, 2017, to March 24, 2017 (7 days); March 28, 2017, to March 31, 2017 (4 days); and April 2, 2017, to December 20, 2017 (263 days).</p>
Multiple Day Violation Reduction	26	<p>In accordance with the Enforcement Policy, the violations qualify for a multiple day violation adjustment because they lasted more than 30 days and did not cause daily detrimental impacts to the environment or the regulatory program. While the Discharger did not fully comply with the monitoring requirement, the samples the Discharger did take indicate that the Discharger was not experiencing major issues with exceeding the total chlorine residual effluent limit except for one instance on September 15, 2017. Therefore, the reduction of days of violation is appropriate. For the multiple day violation adjustment, the Enforcement Policy provides that an initial liability shall, at a minimum, be assessed for the first day of violation, plus each five-day period until the 30<sup>th</sup> day, plus each 30-day period of violation thereafter. Applying this calculation reduces the number of days of violation from 607 days to 26 days.</p>

PENALTY FACTOR	ASSESSMENT	DISCUSSION
<b>Initial Liability</b>	<b>\$91,000</b>	<p>The statutory maximum per-day liability is \$10,000 per Water Code sections 13383, 13385(a)(3), and 13385(c). The initial liability is determined as follows:</p> <p>Initial liability = (per day factor) x (maximum per-day liability) x (adjusted number of days of violation)</p> <p>\$91,000 = 0.35 x 26 days x \$10,000/day</p>
<b>Adjustments for Discharger Conduct</b>		
Culpability	1.3	<p>A higher-than-neutral culpability factor is appropriate because the Discharger is responsible for compliance with its NPDES permit requirements, including complying with the total chlorine residual effluent monitoring requirement. The NPDES permit requires that the Discharger engage in continuous monitoring or hourly monitoring for the total chlorine residual effluent limitation. In contrast to this requirement, the Discharger took three daily grab samples to determine compliance with the total chlorine residual effluent limitation. In addition to the grab samples, the Discharger also used a continuous analyzer to monitor chlorine in the discharge and adjust the concentration as needed, but the monitoring instrument used at the time was not sufficiently precise or accurate to meet permit requirements, and the Discharger did not report the continuous monitoring data, instead reporting only the grab sample data. A reasonable discharger under similar circumstances would have understood its NPDES permit monitoring requirements and installed a continuous chlorine analyzer sufficient to meet permit requirements, or taken 24 daily grab samples to determine compliance with the total chlorine residual effluent limitation.</p>
Cleanup and Cooperation	0.9	<p>A lower-than-neutral cleanup and cooperation factor is appropriate because the Discharger returned to compliance promptly after it learned, on its own, that it had not been complying with its NPDES permit. In fall of 2017, the Discharger discovered that it had not been complying with the total chlorine residual monitoring requirement, which it self-reported to the Water Board. After the chlorinated water discharge, the Discharger promptly increased sodium bisulfite dosing and corrected the calibration of the continuous analyzer in use at the time. Subsequently, on October 18, 2017, the Discharger provided updated tailgate training to its Orinda Water Treatment Plant staff focused on its NPDES monitoring and reporting requirements. The Discharger's environmental compliance staff improved its training materials to address all monitoring and reporting requirements, has developed a program and regular schedule of regulatory audits at its Orinda Water Treatment Plant to ensure compliance with the NPDES permit, and has completed the first audit. On December 20, 2017, the Discharger installed replacement continuous monitoring equipment with appropriate precision for compliance reporting.</p>
History of Violations	1.1	<p>A higher-than-neutral history of violations factor is appropriate because the Discharger has had a formal enforcement action for three chlorinated potable water discharge violations in 2017 resulting from unplanned water main breaks in the Discharger's drinking water distribution system.</p>
Total Base Liability	\$117,117	<p>Each applicable factor relating to the Discharger's conduct is multiplied by the initial liability to determine the <b>Total Base Liability</b>.</p> <p>\$117,117 = \$91,000 x 1.3 x 0.9 x 1.1</p>
Ability to	No	<p>Prosecution staff has no financial information indicating that the Discharger</p>

EBMUD Orinda Water Treatment Plant: Monitoring and Discharge Violations  
 Attachment A - Administrative Civil Liability Factors

<b>PENALTY FACTOR</b>	<b>ASSESS- MENT</b>	<b>DISCUSSION</b>
Pay and Continue in Business	adjustment	cannot pay the proposed liability.
Other Factors as Justice May Require	No adjustment	The costs of investigation and enforcement could be added to the liability. However, Prosecution staff has chosen not to include these costs in consideration of settlement.
Economic Benefit	\$2,400	Pursuant to Water Code section 13385(e), civil liability must be assessed, at a minimum, at a level that recovers the Discharger's economic benefit, if any, derived from the acts that constitute the violations. The Discharger benefitted from not installing permit-compliant continuous chlorine monitoring equipment on January 1, 2016, instead of when it did install the equipment on December 20, 2017. The Discharger purchased a chlorine residual analyzer at a cost of \$7,800, and it took 80 hours to install at a cost of \$3,700. Therefore, the Discharger received an economic benefit of approximately \$2,400, based on an interest rate of 10 percent, due to its delay in purchasing and installing the monitoring equipment.
Maximum Liability	\$6,070,000	Water Code section 13385 allows up to \$10,000 for each day in which a violation occurs.
Minimum Liability	\$2,600	The Enforcement Policy states that the total liability must be at least 10 percent higher than the economic benefit "so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations." Therefore, the minimum total liability associated with the economic benefit of \$2,400 is \$2,600.
<b>Final Liability</b>	\$117,100 (rounded)	The final liability is the total base liability after appropriate adjustments for ability to pay, economic benefit, other factors, and minimum and maximum liability.

CIWQS Place ID: 246192, WDID: 2 071113001

**EXHIBIT B**

**Discharger:** East Bay Municipal Utility District  
 Orinda Water Treatment Plant, 190 Camino Pablo, Orinda, Contra Costa County  
 NPDES Permit CA0038342

The following table lists the alleged violation for which the Discharger is subject to civil liability pursuant to Water Code section 13385. The table lists the mandatory minimum penalty (MMP) that applies.

CIWQS Violation ID No.	Violation Date	Parameter (Unit)	Effluent Limitation	Reported Value	Percent Exceedance <sup>1</sup>	Violation Type	MMP <sup>2</sup>
1038585	9/5/2017	Chlorine, Total Residual Instantaneous Maximum (mg/L)	0.0	0.22	> 20 <sup>3</sup>	S	\$3,000
<b>Total</b>							<b>\$3,000</b>

**Legend:**

CIWQS = California Integrated Water Quality System database that the Water Boards use to track violations and enforcement.

Violation ID = Identification number assigned to each permit violation within CIWQS.

S = Serious. A penalty applies under Water Code section 13385(h) whenever an effluent limitation is exceeded by 40 percent or more for a Group I pollutant or 20 percent or more for a Group II pollutant.

**Note(s):**

1. Percent that a discharger's reported value exceeds the effluent limitation for a Group I or Group II pollutant.
2. The MMP required under Water Code section 13385(h).
3. Chlorine is a Group II pollutant and the percent above the limit of 0.0 mg/L is more than 20 but not quantifiable.

**Attachment B**  
**to**  
**Settlement Agreement and Stipulation**  
**for Entry of Administrative Civil Liability Order**

**East Bay Municipal Utility District**  
**Orinda Water Treatment Plant**

## ATTACHMENT "B"

### East Bay Municipal Utility District Description of Enhanced Compliance Action (ECA) Drinking Water Distribution Reservoir Chlorine Analyzer Installation Project

1. **Project Title:** Drinking Water Distribution Reservoir Chlorine Analyzer Installation Project
2. **Service Area:** East San Francisco Bay
3. **Name of Responsible Entity:** East Bay Municipal Utility District (EBMUD)
4. **Estimated Cost for Project Completion:** EBMUD will install approximately 10 chlorine analyzers at 10 locations in 2019 and 5 analyzers at 5 locations in 2020, for a total of 15 analyzers at 15 locations. The precise number for each year may be adjusted depending on field conditions. The estimated cost to purchase 15 chlorine analyzers is \$45,000. The estimated cost of instrument technician staff time to install the 15 analyzers is \$30,000. Accordingly, the total estimated cost to complete this project is \$75,000, which exceeds the suspended liability of \$60,050. The project's actual cost may exceed this estimate and will include staff costs associated with engineering design support and project management.
5. **EBMUD Contact Information:**

Chandra Johannesson, Manager of Environmental Compliance  
East Bay Municipal Utility District  
375 11<sup>th</sup> Street  
Oakland, CA 94607  
Tel. No.: (510) 287-0412  
Email: [chandra.johannesson@ebmud.com](mailto:chandra.johannesson@ebmud.com)
6. **Project Goals and Description:** The goal of this project is to improve EBMUD's ability to monitor chlorine residual levels in the potable water distribution system by purchasing and installing 15 new chlorine analyzers at potable drinking water distribution reservoirs. The analyzers can provide real-time chlorine data to operations staff.

EBMUD has approximately 4,200 miles of pipelines and approximately 165 drinking water distribution reservoirs throughout its service area. Currently, EBMUD monitors the chlorine residual in the pipes by collecting and analyzing instantaneous grab samples from 125 dedicated sampling stations on either a weekly or monthly basis depending on the area served. EBMUD also collects and analyzes grab samples from each reservoir at least once each month. While this level of chlorine residual monitoring meets regulatory requirements, it does not provide information about changes in chlorine residuals that occur between grab

sampling events. In particular, significant changes in chlorine residual can occur in distribution reservoirs, particularly if they undergo nitrification.

EBMUD has evaluated different chlorine analyzer technologies to determine the most effective analyzer based on EBMUD's variable site needs and has selected the ChemTrac HydroAct 2 (HA2) sensor. EBMUD will begin a phased installation of 15 online (continuous) analyzers in 2019. A phased installation is necessary because of varying conditions in the distribution system (i.e., many sites are remote, all are unmanned, and some do not have plumbing connections, power, and communication for the analyzers). Therefore, each site must be engineered individually. Phase 1 will include installation of approximately 10 analyzers in 2019. Phase 2 will include installation of approximately 5 analyzers in 2020. The location of each analyzer will be determined based on operational needs.

- 7. Water Quality and Beneficial Uses:** The installation of chlorine analyzers at distribution reservoirs furthers the Water Boards' goal to protect potable water resources, waterways, and riparian habitats from pollution and to enhance water quality. EBMUD staff may use data provided by the chlorine analyzers to more quickly respond to low chlorine residual in the distribution system. Access to accurate, real-time chlorine residual data is anticipated to improve public health by ensuring more consistent chlorine residuals in potable water. Additionally, when there is a need to discharge from a distribution reservoir monitored by a chlorine analyzer, the real-time chlorine data may allow EBMUD staff to fine-tune best management practice selection and deployment to reduce the risk of impacts to the environment. The project has a nexus to the location and nature of the violations alleged in this Settlement Agreement because it is designed to improve chlorine residual monitoring in the potable water distribution system in the same region where the alleged violations occurred.
- 8. Confirmation that the ECA Contains Only Measures that Go Above and Beyond Applicable Obligations of the Discharger:** EBMUD is under no prior obligation to install this chlorine analyzer equipment. This installation exceeds regulatory monitoring requirements. Accordingly, the project qualifies as an ECA.
- 9. Demonstration that the ECA Does Not Directly Benefit, in a Fiscal Manner, a Water Board's Functions, Its Members, or Its Staff:** The project does not directly benefit, in a fiscal manner, the Water Board's functions, its members, or its staff. The project does not advance a project or activity directly under the purview or under the direction of the Water Board, its members, or its staff, nor is it related to any abatement order or other legal or administrative mandate imposed upon the Water Board. Accordingly, the project neither replaces the Water Board ordinary regulatory functions nor suggests an actual or apparent conflict of interest for the Water Board.
- 10. Project Schedule, Milestones, and Deliverables:** EBMUD is responsible for providing all deliverables described below and in Table 1 for each project phase.
  - a. Purchase Equipment:** EBMUD has funds in its existing budget to purchase the chlorine analyzers.

- b. Plan for Deployment:** Once the Stipulated Order is adopted, EBMUD will purchase the chlorine analyzers for this project in phases each year. Due to the nature of the technology, the analyzers must be installed within six months of purchase per the manufacturer specification and warranty. Approximately ten analyzers will be purchased and installed in 2019 and the remaining analyzers will be purchased and installed in 2020.

Deliverable: Chlorine analyzers purchased and list of locations installed

Due Dates: December 31, 2019 (analyzers installed in 2019) and June 30, 2020  
(analyzers installed in 2020)

- c. Quarterly Reports:** EBMUD shall submit Quarterly Reports on its progress with project implementation as described in Table 1.
- d. Final Report:** EBMUD shall provide a Final Report documenting project completion. The Final Report shall summarize all tasks completed, including the purchase and installation of the chlorine analyzers. The accounting must clearly document that the final cost of the project is equal to or more than the suspended liability of \$61,550. The report shall be completed under penalty of perjury.

Deliverable: Final Report including the above information

Due Date: September 30, 2020

**Table 1 – Deliverables Table**

<b>Due Date</b>	<b>Deliverable</b>	<b>Description</b>
9/30/2019	Quarterly Report No. 1	Submit Quarterly Report, including status on the following items: <ul style="list-style-type: none"> <li>• Chlorine Analyzers purchased (proof of payment, invoices)</li> <li>• Chlorine Analyzers locations (table with location for each device)</li> <li>• Ongoing tracking of staff time costs associated with devices installation, engineering design support, and project management</li> </ul>
12/31/2019	Quarterly Report No. 2	Submit Quarterly Report, including the following items: <ul style="list-style-type: none"> <li>• Chlorine analyzers deployment summary</li> <li>• Table of costs to date for chlorine analyzers</li> <li>• Most recent invoices for chlorine analyzers</li> <li>• Ongoing tracking of staff time costs associated with devices installation, engineering design support, and project management</li> <li>• Summary of any chlorine analyzer installation problems</li> <li>• Summary of instances where chlorine was added due to chlorine analyzer monitoring results</li> </ul>
3/31/2020	Quarterly Report No. 3	Quarterly Report, including but not limited to the items for Quarterly Report No. #2
6/30/2020	Quarterly Report No. 4	Quarterly Report, including but not limited to the items for Quarterly Report No. #2
9/30/2020	Final Report	Submit Final Report

**11. Reports to the Water Board:** EBMUD shall submit all deliverables, reports, and accounting invoices pertaining to this project to the Regional Water Board and a third-party oversight organization (San Francisco Estuary Partnership or “SFEP”). SFEP will review reports to ensure that they meet the requirements set forth here and the Stipulated Order. EBMUD will be deemed to have fully performed its ECA-related obligations at such time that it has timely completed the actions, including the reporting and accounting obligations, described in paragraph 10, above, and in compliance with Stipulated Order, section III, paragraphs 3.b and 6.

**12. Third Party Oversight Organization:** EBMUD shall cover the full costs of project oversight. Oversight costs are not considered part of the project’s direct cost. EBMUD shall use SFEP to provide third party oversight for this project and shall pay SFEP’s invoice for oversight services, which will be sent to EBMUD after the Stipulated Order becomes effective. If the Executive Officer extends the ECA Completion Date past September 30, 2020, EBMUD shall be responsible for any additional oversight costs incurred as a result of

the extension. For oversight of the project, SFEP will report directly to the Regional Water Board.

All reports shall be emailed to the following:

Adrien Baudrimont  
San Francisco Estuary Partnership  
375 Beale Street, Suite 700  
San Francisco, CA 94105  
(415) 778-6682  
Adrien.Baudrimont@sfestuary.org

Michael Chee  
Regional Water Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612  
(510) 622-2333  
Michael.Chee@waterboards.ca.gov