

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

In the matter of:)	
)	
City and County of San Francisco)	SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF ADMINISTRATIVE CIVIL LIABILITY ORDER
Effluent Limitation Violations at the Southeast and Oceanside Water Pollution Control Plants)	PROPOSED ORDER
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Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region Prosecution Team (Prosecution Team), and the City and County of San Francisco (CCSF) (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 California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violations alleged herein by the imposition of administrative civil liability against the CCSF in the amount of **\$236,500**.

Section II: RECITALS

1. The CCSF owns and operates the Southeast Water Pollution Control Plant (Southeast Plant) in the City and County of San Francisco, which treats combined wastewater and stormwater collected from the CCSF's combined sewer system on the east side of the city. Discharges from the Southeast Plant are regulated under National Pollutant Discharge Elimination System (NPDES) Permit CA0037664, Regional Water Board Order R2-2013-0029, which has been in effect since October 1, 2013 and establishes waste discharge requirements, including effluent limitations.
2. The CCSF owns and operates the Oceanside Water Pollution Control Plant (Oceanside Plant), which treats combined wastewater and stormwater collected from the CCSF's combined sewer system on the west side of the

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city. Discharges from the Oceanside Plant are regulated under NPDES Permit CA0037681, which is jointly issued by the Regional Water Board and the United States Environmental Protection Agency (U.S. EPA). The version of NPDES Permit CA0037681 that was in effect from October 1, 2009, to October 31, 2019, was approved through the Regional Water Board's adoption of Order R2-2009-0062 and by U.S. EPA's approval of the permit on August 12, 2009. The Regional Water Board and U.S. EPA reissued NPDES Permit CA0037681 to the CCSF through the Regional Water Board's adoption of Order R2-2019-0028, which has been effective since November 1, 2019, and U.S. EPA's decision to reissue NPDES Permit CA0047681, which became a final agency action on February 1, 2021.

3. Pursuant to Water Code section 13385, subdivision (a)(2), a person who violates a waste discharge requirement is subject to administrative civil liability under Water Code section 13385, subdivision (c), as follows:

...in an amount not to exceed the sum of both of the following: (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

4. Water Code section 13385, subdivision (h)(1), states:

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

5. Water Code section 13385, subdivision (h)(2), states:

For the purpose of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

6. The Prosecution Team alleges that the CCSF violated effluent limitations in the NPDES permits authorizing discharges from the Southeast Plant and Oceanside Plant as follows:

- a. **Group 1 – Acute Toxicity Violations:** The Prosecution Team alleges that, from November 2014 through October 2021, the CCSF had 37

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- violations of acute toxicity limitations set forth in Provision IV.A.4 of Order R2-2013-0029 as shown in Attachment A, which is incorporated in its entirety herein by reference. The CCSF is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(2) and (c).
- b. **Group 2 – June and July 2019 Violations:** The Prosecution Team alleges that, in June 2019, the Southeast Plant experienced several effluent limitation violations, including weekly and monthly average biochemical oxygen demand (BOD) limits, weekly and monthly average total suspended solids (TSS) limits, monthly average oil and grease limits, and monthly 90th percentile fecal coliform limits. Specifically, from June 1, 2019, to July 31, 2019, the CCSF exceeded 12 effluent limitations in violation of Provisions IV.A.1, IV.A.2, and IV.A.3.b of Order R2-2013-0029, as shown in Attachment A. The CCSF is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(2) and (c).
- c. **Group 3 – Mandatory Minimum Penalties or No Liability:** The Prosecution Team alleges that, from October 2013 through May 2019, the CCSF experienced twelve additional effluent limitation violations, as shown in Attachment A. Of the twelve violations, one is subject to a \$3,000 mandatory minimum penalty pursuant to Water Code section 13385, subdivision (h). No liability is proposed for the remaining eleven violations in this Group.
7. To resolve the alleged violations in Section II, paragraph 6, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$236,500** against the CCSF. The settlement amount is less than the liability the Prosecution Team calculated using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy* (Enforcement Policy) (May 2010 and October 2017¹) as shown in Attachment A. The CCSF disagrees with the Prosecution Team's application of the Enforcement Policy's history of violations factor for the Group 1 violations. The CCSF contends that a score of 1.0 is justified because the Regional Water Board has not imposed administrative civil liability against it within the last five years. The Prosecution Team maintains that its application of the history of violations factor in Attachment A is consistent with the Enforcement Policy. However, for purposes of settlement, the final liability proposed in Attachment A for the Group 1 violations was reduced by \$6,200 in consideration of

¹ In November 2009, the State Water Resources Control Board adopted a *Water Quality Enforcement Policy* that became effective in May 2010. That policy applies to violations that occurred from May 20, 2010, through October 4, 2017. In April 2017, the State Water Resources Control Board updated the policy, and the revisions became effective in October 2017. That revised policy applies to violations that occurred from October 5, 2017, to present.

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hearing and/or litigation risk in accordance with Enforcement Policy section VI.B.

8. The Parties have engaged in settlement negotiations and agree 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 an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
9. 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 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:

1. **Administrative Civil Liability:** The CCSF hereby agrees to the imposition of an administrative civil liability of **\$236,500** to resolve the alleged violations set forth in Section II, paragraph 6, as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the CCSF shall mail a check for **\$118,250**, made payable to "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order, to:

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

The CCSF shall email a copy of the check to the State Water Board, Office of Enforcement (paul.ciccarelli@waterboards.ca.gov), and to the Regional Water Board (sam.plummer@waterboards.ca.gov).

- b. The Parties agree that the remaining **\$118,250** of the administrative liability shall be paid to the Regional Monitoring Program, care of the San Francisco Estuary Institute (SFEI), for implementation of a Supplemental Environmental Project (SEP) named "Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh," as follows:
 1. **\$118,250** (SEP Amount) shall be paid in the manner described in Section III, paragraph 1.b.2, solely for use toward the SEP Fund for the "Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh" project. Funding this project will allow an

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investigation of the influence of tides, waves, and water levels on sediment delivery and deposition on two tidal marshes in North and Central San Francisco Bay. A description of the project is provided in Attachment B, which is incorporated herein by reference.

2. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the CCSF shall mail a check for **\$118,250**, made payable to “Regional Monitoring Program,” referencing the Order number on page one of this Stipulated Order, to:

Regional Monitoring Program
c/o San Francisco Estuary Institute
4911 Central Avenue
Richmond, CA 94804

The CCSF shall email a copy of the check to the State Water Board, Office of Enforcement (paul.cicarelli@waterboards.ca.gov), and to the Regional Water Board (sam.plummer@waterboards.ca.gov).

2. **The SEP and Suspended Liability:** In accordance with the State Water Board’s *Policy on Supplemental Environmental Projects* (May 2018) and State Water Board Resolution 2018-0015, the Parties agree that the CCSF’s payment of the SEP Amount to fund the “Temporal Variability in Sediment Delivery to a North and Central San Francisco Bay Salt Marsh” project is a SEP, and that the SEP Amount shall be treated as a suspended administrative civil liability for purposes of this Stipulated Order. The CCSF’s SEP obligations shall be satisfactorily completed, and the SEP Amount will be permanently suspended, upon SFEI’s written notification to the Regional Water Board and the CCSF acknowledging that the Regional Monitoring Program received payment of the SEP Amount from the CCSF and that the payment will be spent on the project described in Section III, paragraph 1.b.1, and Attachment B in accordance with the terms of this Stipulated Order. SFEI’s annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.
3. **Publicity Associated with the SEP:** Whenever the CCSF 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 the CCSF.
4. **Regional Water Board Not Liable:** The Regional Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the CCSF or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order. The Regional Water Board, its members, and its staff shall not be held as parties to, or guarantors of, any contract entered into by the

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CCSF or its directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.

5. **Compliance with Applicable Laws:** The CCSF 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.

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

For the Regional Water Board:

Samuel Plummer
San Francisco Bay Regional Water
Quality Control Board
1515 Clay Street, 14th Floor
Oakland, CA 94612
sam.plummer@waterboards.ca.gov
(510) 622-2485

Counsel:

Paul Ciccarelli
State Water Resources Control Board
Office of Enforcement
801 K Street, 23rd Floor
Sacramento, CA 95814
paul.ciccarelli@waterboards.ca.gov
(916) 322-3227

For the CCSF:

Amy Chastain
San Francisco Public Utilities
Commission
525 Golden Gate Ave.
San Francisco, CA 94102
achastain@sfwater.org
(415) 554-3155

Counsel:

Estie Kus
Deputy City Attorney
San Francisco City Attorney's
Office
1390 Market Street, Suite 700
San Francisco, CA 94102
Estie.Kus@sfcityatty.org
(415) 554-3924

7. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
8. **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 violations alleged in Section II, paragraph 6, 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 deadlines specified in Section III, paragraph 1.
9. **Public Notice:** The CCSF 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

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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 CCSF agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.

10. **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 and the Regional Water Board or its delegate 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 this Stipulated Order as necessary or advisable under the circumstances.
11. **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.
12. **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.
13. **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 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 liability 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. 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 the Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein. The Parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or

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judicial review to the extent such period has been extended by these settlement proceedings.

14. **Waiver of Hearing:** The CCSF has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter proceeds to the Regional Water Board or State Water Board for hearing, the CCSF does not waive its right to a hearing before an order is imposed.
15. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board or its delegate, the CCSF hereby waives its right to petition the Regional Water Board's or its delegate'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 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, SEP completion, and other terms contained in this Stipulated Order.
16. **Covenant Not to Sue:** The CCSF 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 SEP.
17. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the CCSF does not admit to any of the allegations stated herein or admit to any violations of the Water Code or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior "history of violations" consistent with Water Code sections 13327 and 13385, subdivision (e).
18. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its delegate under the terms of this Stipulated Order shall be communicated to the CCSF 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 CCSF of its obligation to obtain any final written approval this Stipulated Order requires.
19. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf they execute the Stipulated Order.

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20. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.
21. **Severability:** This Stipulated Order is severable; if any provision is be found to be invalid, the remainder shall remain in full force and effect.
22. **Counterpart Signatures; Facsimile and Electronic Signatures:** 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.
23. **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.

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IT IS SO STIPULATED.

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

Date: _____

By: _____

Thomas Mumley
Assistant Executive Officer

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IT IS SO STIPULATED.

CITY AND COUNTY OF SAN FRANCISCO

Date: _____

By: _____

Dennis J. Herrera
General Manger
San Francisco Public Utilities Commission

Approved as to Form:

Date: _____

By: _____

Estie M. Kus
Deputy City Attorney

ORDER OF THE REGIONAL WATER BOARD

1. This 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 or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the State Water Board's Enforcement Policy, which is incorporated herein by reference. The consideration of these factors and application of the Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegation 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. The Regional Water Board or its delegate finds that issuance of this 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 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.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the CCSF 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.

Eileen White
Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region

Date

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ATTACHMENT A

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ATTACHMENT B