

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. _____

MANDATORY MINIMUM PENALTY
IN THE MATTER OF
MALAGA COUNTY WATER DISTRICT
WASTEWATER TREATMENT FACILITY
FRESNO COUNTY

This Order for Administrative Civil Liability (hereafter Order) is issued to the Malaga County Water District (MCWD) based on a finding of violations of Waste Discharge Requirements (WDRs) Order No. 99-100 (NPDES Permit No. CA0084239). Imposition of Administrative Civil Liability is authorized pursuant to California Water Code (CWC) Sections 13385(h) and (i).

The California Regional Water Quality Control Board, Central Valley Region (Regional Board), finds the following:

1. On 28 July 1999, the Regional Board adopted WDRs Order No. 99-100 (NPDES Permit No. CA0084239) authorizing MCWD to discharge pollutants from its wastewater treatment facility (WWTF) to Fresno Irrigation District's Central Canal, a water of the United States.
2. WDRs Order No. 99-100 includes the following effluent limitations:

B. General Discharge Specifications:

* * *

2. Effluent shall have a pH between 6.0 and 9.0 pH units.
3. Effluent EC shall not exceed that of the source water plus 500 μ mhos/cm, or 1,000 μ mhos/cm, whichever is less.

C. Discharge 001 (Central Canal) Specifications:

* * *

3. Effluent concentrations shall not exceed the following limits:

<u>Constituent</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Daily Maximum</u>

TSS	mg/L	20	40
Turbidity	NTU	2	5
Total Residual Chlorine	mg/L		0.1

3. CWC Section 13385(a) subjects any person who violates any waste discharge requirements issued pursuant to Chapter 5.5 of the CWC to civil liability.
4. CWC Section 13385(h)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each serious violation. Section 13385(h)(2) defines a serious violation as "any waste discharge that violates the effluent limitations contained in 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.”

5. CWC Section 13385(i)(1) requires the Regional Board to assess a mandatory minimum penalty of three thousand dollars (\$3,000) for each violation, not counting the first three violations, if a discharger violates a waste discharge requirement effluent limitation four or more times in any period of six consecutive months. Section 13385(i)(2) defines a period of six consecutive months as “the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.” Violations of this frequency are termed chronic violations.
6. According to monitoring reports submitted by MCWD, it committed four (4) serious violations between 1 February 2000 and 30 June 2004. Two serious violations involved discharge of total suspended solids (TSS), a Group I waste, in concentrations exceeding the effluent daily maximum limitation. One involved exceeding the monthly average limitation by 40 percent or more. The one remaining serious violation involved discharge of total residual chlorine, a Group II pollutant, at a concentration exceeding the effluent daily maximum limitation by 20 percent or more. A summary of these serious violations is shown in Attachment A, a part of this Complaint. Pursuant to CWC section 13385(h)(1), the MMPs for these serious violations is twelve thousand dollars (\$12,000).
7. Based upon monitoring reports submitted by MCWD covering the period of 1 February 2000 through 30 June 2004, it also violated the EC effluent maximum limitation 360 times, the daily maximum turbidity limit twice, the monthly average turbidity limit nine times, and the pH limitation once for a total number of chronic violations of 372.

The total number of chronic violations subject to MMPs, pursuant to CWC section 13385, subtracting the seven excluded chronic violations (violation numbers 2,3,6-10), is 365 (Attachment A). A summary of the violations is shown in Attachment A. The mandatory penalty for these chronic violations is one million ninety-five thousand dollars (\$1,095,000).

8. The MMPs from Findings Nos. 6 and 7 total one million one hundred seven thousand dollars (\$1,107,000).
9. CWC Section 13385(k) allows the Regional Board an alternative to assessing all or a portion of the mandatory penalties pursuant to Sections 13385(h)(1) and (i)(1) against publicly owned treatment works (POTW) that serve small communities, as defined by CWC Section 79084(b). All or part of the mandatory penalties may be suspended by requiring such a POTW to spend an

equivalent amount towards completion of a compliance project (CP)¹ proposed by the POTW if the Regional Board finds all of the following:

- a. The CP is designed to correct the violations within five years;
 - b. The CP is in accordance with the State Water Resources Control Board (State Board) *Water Quality Enforcement Policy* (Enforcement Policy or WQEP); and
 - c. The POTW has demonstrated that it has sufficient funding to complete the CP.
10. The WQEP, Section V, subsection D, states that a small community with a financial hardship is a municipality with a Year 2000 population of fewer than 10,000 and a Year 1999 median household income of less than 80 percent of the State's 1999 median household income. The State Board maintains a list of designated small communities with a financial hardship. Small communities not on the list may apply to the State Board to be included on the list.
 11. Regional Board staff forwarded a 2 April 2004 MCWD letter to the State Board for evaluation of MCWD as a small community with financial hardship and on 30 June 2004, the State Board confirmed that MCWD qualified and was so designated. Accordingly, MCWD meets the qualifications for proposing to complete a compliance project in lieu of being assessed all or part of the MMPs pursuant to CWC section 13385(k).
 12. The WQEP, Section X, subsection C, provides the general conditions applicable to all compliance projects. Compliance projects must have clearly defined goals, costs, milestones, and completion dates. If the compliance project is not completed on time and to the satisfaction of the Regional Board or the Executive Officer, the suspended amount becomes due and payable to the *State Water Resources Control Board*. Payment of the suspended amount does not relieve MCWD of the independent obligation to take necessary actions to achieve compliance.
 13. The Executive Officer on 15 April 2005 issued Administrative Civil Liability Complaint No. R5-2005-0510 proposing to assess \$1,107,000 (one million one hundred seven thousand dollars) against the Discharger. The Complaint and a Notice of Public Hearing notified the Discharger and interested agencies and persons that a public hearing would be held on 23 or 24 June 2005 unless the Discharger agreed to waive the hearing and pay in full the \$1,107,000 liability or enter into a stipulated administrative civil liability order to spend at least \$1,107,000 to complete a CP to achieve compliance with Order No. 99-100, or any order that supersedes it.
 14. The Discharger submitted a letter waiving its right to hearing and proposing CPs on 2 April 2005, and it submitted amendments thereto dated 20 May 2005 and 14 July 2005. The CPs are broadly comprised of 2 components: a) construction of a new potable water well to provide lower EC

¹ The statute does not specifically allow nor prohibit crediting a discharger for costs expended toward appropriate compliance projects. In response to violations, MCWD made certain timely improvements to address violations. It is appropriate to allow credit for otherwise acceptable compliance project costs on a retroactive basis where failure to do so would penalize a small community for undertaking prompt compliance projects to address violations.

source water; and b) a series of six additional projects to reduce the EC gain as the water makes its way from the source well, through use, treatment and disposal.

15. As shown in Attachment B, MCWD reports it has spent \$975,835 towards correcting WWTF deficiencies that led to MMP violations. The expenditures include the costs associated with the analysis and determination of sources of EC (Projects 1a and 1b), establishing a pretreatment ordinance (Project 2a and 2b), and the cost of constructing a new potable water well (Project 3).
16. MCWD reports it spent \$102,906 on the analysis and determination of the sources of WWTF effluent EC (Project 1a). This includes \$17,751 for laboratory services and \$85,154 for engineering services to analyze the results of those laboratory services. The analysis has determined that: a) supplying high EC Well 4 water to its customers increases EC in the resulting WWTF effluent; b) supplying high EC water to its customers may cause them to install water softening devices which further increases the EC in the resulting WWTF effluent; and c) implementing a pretreatment program (required by Cease and Desist Order No. 5-01-001 adopted on 26 January 2001) to reduce the EC of industrial discharges to the collection system will result in a decrease of the EC in the resulting WWTF effluent. Project 1b proposes the expenditure of \$10,000 annually to monitor selected industries suspected of discharging or known to discharge high EC waste to MCWD's collection system. This annual pretreatment effort (Project 1b) is also required by the Cease and Desist Order (CDO) and federal pretreatment regulations. It would be inappropriate to credit the Discharger for required pretreatment costs.
17. Project 2a includes expenditures of \$11,910.00 to establish a pretreatment ordinance, with an additional \$5,000 to be spent to complete the ordinance (Project 2b). As the District was required to implement a pretreatment ordinance by October 2001 under the CDO, it would be inappropriate to credit MCWD for the \$11,910 and \$5,000 cost of developing this ordinance four years after being ordered to do so by this Regional Board.
18. MCWD reports it has spent \$872,929 on a water well to replace the high EC Well 4 (Project 3). Of this amount, \$726,929 has been paid to Smith Construction and the balance includes costs of design services, property acquisition and the drilling of a test well. The well was completed on 14 September 2005. MCWD expects this project to reduce EC by 75 μ mhos/cm.
19. MCWD proposes to spend \$10,000 to establish a water softener ordinance (Project 4) by June 2008. MCWD expects that this ordinance to limit and control the number and type of residential water softeners will reduce the WWTF effluent EC by 50 μ mhos/cm, helping the District achieve compliance with effluent limitations in the WDRs at issue. The source of revenue to pay for the project is MCWD's operating budget.
20. The District proposes to gain a 10 μ mhos/cm reduction in EC by exercising tighter control over chlorination and dechlorination processes (Project 5). To do so it proposes to install continuous monitoring devices and automation of chemical dosage systems for chlorination and dechlorination agents. It proposes to complete this \$70,000 project by November 2006. The system will be operational until the chlorination/dechlorination system is replaced by a UV disinfection

system in October 2008. Funding is from the District's operations budget and a financing agreement with Municipal Finance Corporation.

21. MCWD expects to reduce WWTF effluent EC by 40 µmhos/cm (Project 6) by switching disinfection to a UV system. The EC reduction will be a result of discontinuing the addition of chlorination and dechlorination chemicals. MCWD proposes to secure the required \$330,000 funding through SWRCB grant programs and complete this project by October 2008.
22. MCWD intends to install by December 2006, equipment to continuously monitor EC, turbidity, pH and total residual chlorine (Project 7) at a cost of \$100,000. While this project does not result in a reduction in effluent EC, it is expected to reduce future effluent limit violations by giving MCWD the ability to rapidly react to changes in influent or effluent characteristics or cease effluent discharge by diverting effluent flow to temporary storage before violations can occur. This gives the District the opportunity to perform additional treatment as necessary to ensure that the stored effluent meets all effluent limitations before it is discharged.
23. The Discharger, in 14 July 2005 and 30 September 2005 updates to its 20 May 2005 Compliance Project Report, proposes the following schedule:

Item	Description	Completion Date
1.a	Analysis and determination of EC sources	On going
2	Establish pretreatment ordinance	On going
3	Construct new well	Completed
		14 September 2005
4	Establish water softener ordinance	1 June 2008
5	Automate chemical feed	1 November 2006
6	Construction of UV disinfection	1 October 2008
7	Continuous monitoring of EC, turbidity, pH, Cl ₂	1 December 2006

24. MCWD has not demonstrated that it has sufficient funding to complete CPs 4, 5, 6 and 7 within the timeframe approved by the Executive Officer. However, it appears that MCWD has legitimate chances of securing the necessary funding and it is preferable not to postpone adoption of this Order pending the securing of necessary funding. Moreover, in accordance with the WQEP, if the compliance projects are not satisfactorily completed as set forth in the above schedule, the amounts associated with the uncompleted compliance projects will be due and payable as set forth below.
25. The Regional Board considered the Discharger's stated lack of available funding, the time required to obtain funding, and this Order's proposed 27 January 2006 adoption date in the completion dates for this Order.
26. Section 13267 of the CWC states, in part, "..., *the Regional Board may require that any person who...discharges...waste...that could affect the quality of waters within its region shall furnish,*

under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the Regional Board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.”

The monitoring and reporting required herein is necessary to provide documentation that MCWD has complied with the schedule and terms set forth herein sufficiently to enable the Regional Board to suspend permanently the amount of MMP not already permanently suspended by this Order and to require timely payment of any unpaid amount that cannot be permanently suspended.

27. The MCWD and interested agencies and persons were notified of the intent to adopt this Order and provided with an opportunity for a public hearing and an opportunity to submit their written views and recommendations.
28. In a public meeting, all comments pertaining to the Order were heard and considered.
29. Issuance of this enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resource Code Section 21000, et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.
30. Any person affected by this action of the Regional Board may petition the State Water Resources Control Board (State Board) to review this action. The petition must be received by the State Board within 30 days of the date on which this Order was adopted by the Regional Board. Copies of the law and regulations applicable to filing petitions are available at www.waterboards.ca.gov/water_laws/index.html and will be provided on request.

IT IS HEREBY ORDERED, pursuant to California Water Code sections 13267, 13385(a), (h)(1), (i)(1), and (k), that:

1. Malaga County Water District (hereafter District), its agents, successors, and assigns, shall be assessed a MMP of **one million and one hundred and seven thousand dollars (\$1,107,000)**.
2. **Nine hundred seventy-five thousand, eight hundred thirty five dollars (\$975,835) of the MMP is permanently suspended as follows:**
 - a. **One hundred and two thousand, nine hundred and six dollars (\$102,906)** shall be credited toward the MMP amount as having been spent by the District to complete compliance Project No.1.a (Finding 16) and correct the WWTF effluent limit violations; and
 - b. **Eight hundred and seventy-two thousand nine hundred and twenty-nine dollars (\$872,929)** shall be credited toward the MMP amount as having been spent by the District in completing the new well (Compliance Project No. 3, Finding 18) designed to correct the WWTF effluent limit violations.

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- 3. Actual costs up to a maximum of **the remaining one hundred thirty-one thousand, one hundred sixty-five dollars (\$131,165)** shall be permanently suspended if the District satisfactorily completes all or a combination of Compliance Projects 4, 5, 6, and 7 as described above that total or exceed the remaining MMP amount.
- 4. The District shall submit written progress reports describing the status of each incomplete compliance project by the 15th day of July 2006, January 2007, July 2007, January 2008, and July 2008.
- 5. Within 15 days of the completion date specified above for each compliance project, the District shall submit a written monitoring report certifying the completion date if complete, and the circumstances if not complete. If certifying completion, the report shall include a listed accounting of actual costs of completing the compliance project for which the District is requesting credit toward the unpaid balance of the mandatory penalty not yet permanently suspended.
- 6. The Executive Officer is authorized to determine whether a compliance project has been completed in accordance with the compliance schedule, above, and to determine the corresponding amount of actual expenditures that can be permanently suspended.. After each submittal pursuant to paragraph 9, above, the Executive Officer shall notify the District of his determination and the remaining MMP balance eligible for permanent suspension. The Executive Officer may, at his discretion and for good cause, grant extensions of up to three months of any of the completion dates specified above. If the District fails to timely complete a combination of approved Compliance Projects that meets or exceeds **one hundred thirty-one thousand one hundred sixty-five dollars (\$131,165)** by **1 October 2008**, the then-remaining MMP balance (amounts not permanently suspended) shall be due within 30 days of written notification from the Executive Officer. The Districts' failure or inability to acquire sufficient funds shall not be an acceptable defense against a demand for payment.

If payment becomes due, it shall be in the form of a check payable to the State Water Resources Control Board and submitted to the Regional Board's main office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670, (to the attention of Janice Tanaka). The check shall contain a reference to this Order.

I, KENNETH D. LANDAU, Acting Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the Regional Water Quality Control Board, Central Valley Region, _____.

KENNETH D. LANDAU, Acting Executive Officer