

**MEMORANDUM
DEPARTMENT OF FACILITY SERVICES
COUNTY OF PLACER**

To: **BOARD OF SUPERVISORS**

Date: JULY ²¹~~22~~, 2008

From: **JAMES DURFEE / WILL DICKINSON**

Subject: **PAYMENT OF AN ADMINISTRATIVE CIVIL LIABILITY FOR THE DRY CREEK SEWER COUNTY SERVICE AREA**

ACTION REQUESTED / RECOMMENDATION: Authorize staff to pay \$96,000 as the County's share of the attached Administrative Civil Liability Complaint (ACLC) issued by the Regional Water Quality Control Board (RWQCB) for a sewer spill in the Dry Creek Sewer County Service Area.

BACKGROUND: CSA 28 Zone 173 (Dry Creek Sewer) provides sewer collection service to approximately 1,150 equivalent dwelling units in the Dry Creek area. Treatment is provided at the City of Roseville's Dry Creek Waste Water Treatment Plant. On December 1, 2007, a contractor constructing a water line for the new West Placer Middle School ruptured the County's force main. An estimated 460,000 gallons of untreated sewage spilled from the damaged force main. Of that amount, approximately 104,400 gallons were recovered by County and Roseville utility crews. The remaining sewage flowed into Dry Creek. There were no fish kills observed after the spill.

As a result of the spill, the RWQCB issued the attached ACLC jointly fining the County and the City of Roseville \$126,000. The County has a legal right to protest this decision before the RWQCB, and could attempt to have the fine reduced or set aside. As an alternative to allow the County to settle the matter without a hearing, staff has negotiated a proposed settlement with the City of Roseville whereby the County would pay \$96,000 of the fine and the City of Roseville would pay the remaining \$30,000. In order to resolve the ACLC, staff is seeking your Board's approval to pay \$96,000 to the RWQCB. By agreeing to the proposed payment, the County is not admitting liability in this matter.

ENVIRONMENTAL CLEARANCE: Payment of the ACLC is not considered a project under the California Environmental Quality Act Guidelines.

FISCAL IMPACT: Because this cost was incurred close to the end of the last fiscal year, an accrual for \$96,000 was entered on the Dry Creek Sewer ledger for FY 07-08. The accrual could be reversed if your Board does not take the recommended action. This unanticipated expense was funded by budget savings and contingencies.

Attch: ACLC

JD:WD:BZ:LM

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California Regional Water Quality Control Board

Central Valley Region

Karl E. Longley, Sc, P.E., Chair



Arnold

Schwarzenegger
Governor

Linda S. Adams
Secretary for
Environmental
Protection

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27 June 2008

CERTIFIED MAIL

7006 0100 0000 5887 2811

Will Dickinson, Deputy Director
Placer County Facility Services Department
11476 C Avenue
Auburn, CA 95603

CERTIFIED MAIL

7006 0100 0000 5887 2804

Arthur O'Brien, Wastewater Utility Manager
City of Roseville
2005 Hilltop Circle
Roseville, CA 95747

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ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0543, PLACER COUNTY FACILITY SERVICES DEPARTMENT AND CITY OF ROSEVILLE, PLACER COUNTY

Enclosed is an Administrative Civil Liability (ACL) Complaint, issued pursuant to California Water Code (CWC) section 13385. The Complaint charges Placer County Facility Services Department (Placer County) and the City of Roseville (Roseville) with civil liability in the amount of **one hundred twenty six thousand dollars (\$126,000)** and rescinds previous ACL Complaint No. R5-2008-0930.

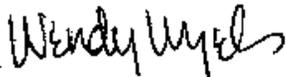
Pursuant to CWC section 13323, Placer County and Roseville may either pay the civil liability and waive their right to a hearing before the Regional Water Board, or may contest the Complaint and exercise their right to a hearing. Placer County and Roseville have the right to a hearing before the Regional Water Board within 90 days of service of this Complaint. If both Placer County and Roseville choose to waive this right and settle the Complaint without a hearing, then duly authorized agents must sign the enclosed waiver and submit it to this office along with a check (or checks) by **27 July 2008**. The Regional Water Board will consider submittal of the waiver and payment of the full penalty amount as a settlement of the Complaint. However, settlement will only be considered effective after a 30-day period, starting from the date of this complaint, during which time interested parties may comment on this action by submitting information to this office, attention Spencer Joplin.

If the Regional Water Board does not receive a waiver and a check or checks for the total amount within 30 days of the date of this Complaint (by **27 July 2008**), then a hearing will be scheduled for the **11/12 September 2008** Regional Water Board meeting in Rancho Cordova. Specific notice about this hearing and its procedures will be provided under separate cover.

Any comments or evidence concerning the enclosed Complaint must be submitted to this office, attention Spencer Joplin, no later than **5 p.m. on 27 July 2008**. This includes material submitted by the discharger to be considered at a hearing and material submitted by interested parties, including members of the public, who wish to comment on the proposed settlement. If the Regional Water Board does not hold a hearing on the matter, and the terms of the final settlement are not significantly different from those proposed in the enclosed Complaint, then there will not be additional opportunities for public comment on the proposed settlement. Written materials received after **5 p.m. on 27 July 2008** will not be accepted and will not be incorporated into the administrative record if doing so would prejudice any party.

For your information, we have attached a description of the factors that were considered, pursuant to CWC section 13385(e), in assessing this civil liability.

If you have any questions or comments regarding the Complaint, please contact Spencer Joplin at (916) 464-4660 or Patricia Leary at (916) 464-4623.



WENDY WYELS
Environmental Program Manager
Compliance and Enforcement Section

Enclosures: Factors Considered in Assessing Liability
Administrative Civil Liability Complaint No. R5-2008-0543

cc w/enc: Ms. Pamela Creedon, Executive Officer
Mr. Ken Greenberg, US Environmental Protection Agency, San Francisco

cc w/o enc: Mr. Patrick Pulupa, Office of Chief Counsel, State Water Board, Sacramento
Mr. Reed Sato, Enforcement Unit, State Water Board, Sacramento
Ms. Emel Wadhvani, Office of Chief Counsel, State Water Board,
Sacramento
Ms. Carol Oz, Department of Fish and Game, Rancho Cordova
Placer County Department of Health and Human Services, Auburn
Mr. Arthur O'Brien, City of Roseville Environmental Utilities Department,
Roseville
Ms. Jacqueline McHaney, Thurbon and McHaney, LP representing Dry Creek
Joint Elementary School District, Gold River
Mr. Ed da Silva, Roebelen Construction Management Services, Inc., El
Dorado Hills
Mr. Doug Schneider, Collet Construction, Inc., Woodland
Mr. Bill Jennings, California Sportfishing Protection Alliance, Stockton

**Attachment to ACL Complaint No. R5-2008-0543
Factors Considered in Assessing Liability**

NATURE AND CIRCUMSTANCES

During the late fall of 2007, a contractor who was working on behalf of the Roseville Unified School District, was excavating in the vicinity of Cook Riolo Road and Dry Creek. On 1 December 2007, the contractor ruptured Placer County's force main, which leads to the City of Roseville's Dry Creek wastewater treatment plant. After breaking, sewage flowed from the force main at approximately 2,550 gallons per minute. Sewage continued to flow from the break after both the contractor's foreman and Placer County staff confirmed that the valve on the force main between the lift station and the excavation site had been closed. Analyses support that most of the wastewater that spilled from the broken force main flowed through the Dry Creek WWTP site. This wastewater flowed downhill, from the Dry Creek WWTP site, backwards through the force main, to the break.

The lack of adequate advance planning between Placer County and Roseville resulted in a three hour delay between when the force main was broken and when Roseville isolated the force main by closing a valve at the WWTP site. Notification to other agencies was generally satisfactory.

The Roseville and Placer County collection systems were modeled with computational fluid dynamics software which estimated that sewage flowed from the Dry Creek WWTP at 2,550 gallons per minute over three hours, for a total of 460,000 gallons released from the break. Of this amount, approximately 104,410 gallons of the sewage was collected in pumping trucks and vacuum trucks by Placer County and Roseville while approximately 357,000 gallons of the sewage flowed into Dry Creek. The modeling shows that approximately 82% of the spilled sewage flowed through the Dry Creek WWTP site.

EXTENT

Raw sewage flowed from the broken force main for over three hours into Dry Creek. The Dry Creek WWTP discharges effluent to Dry Creek upstream of the break in the force main, and therefore both the effluent discharge and upstream flows would have substantially diluted the sewage which flowed into the creek. However, contamination was probably present in Dry Creek downstream of the spill for several days. Solids, inorganic matter, and other common sewage constituents would adversely impact the aquatic environments and aquatic life in Dry Creek.

GRAVITY

The sewage spill potentially threatened public health and the environment in the days following the event. The Placer County Health Department posted notices of the raw sewage spill along Dry Creek in Placer County.

CLEANUP OR ABATEMENT

Other dischargers have accomplished significant recovery of sewage spilled to surface water by installing sand bag dams in small water bodies and pumping water directly into

nearby sewer collection systems. Because of the large flow in Dry Creek (26.7 mgd) at the time of the spill, neither Placer County nor Roseville attempted to recover any contaminated water from Dry Creek. According to the Dischargers, installing sand bags and pumping water directly into nearby collection systems was not advisable for numerous reasons.

Placer County cooperated by repairing the pipe within four hours of the flow being stopped and cleaning sewage solids from around the spill location was completed by 5 December 2007. Placer County and Roseville cooperated in the investigation and responded to information requests in a timely manner.

TOXICITY

The degree of toxicity from a raw sewage discharge would likely be significant to aquatic life due to the high ammonia concentrations found in raw sewage. In addition, raw sewage poses a significant human health hazard. There were no reported fish kills subsequent to the surface water spills. Because of the 26.7 mgd of flow in Dry Creek upstream of the force main break, some dilution would be expected. The Discharger collected water samples after the spill event.

ABILITY OF THE DISCHARGER TO PAY

The Regional Water Board does not have any evidence to suggest that Placer County and Roseville could not continue to operate after paying this liability.

PRIOR HISTORY OF VIOLATIONS

Placer County's CSA 173 satellite collection system was not formally regulated by the Regional Water Board or State Water Board before November 2006, and the Regional Water Board has no documentation of sanitary sewer overflows (SSOs) from the CSA 173 collection system in the period January 2002 to November 2006. The Regional Water Board did regulate Roseville's Dry Creek collection system prior to November 2006 under Waste Discharge Requirements Order No. 5-00-164. The Regional Water Board has documentation of six SSOs from the Roseville collection system between June 2000 and November 2006, the largest of which was 1,715 gallons on 17 April 2001.

Both Placer County and Roseville enrolled in State Water Board Order No. 2006-0003-DWQ prior to November 2006. Between November 2006 and 1 December 2007, Placer County reported one other SSO since enrolling. On 10 November 2007, a contractor independent of Placer County broke Placer County's force main while excavating, causing 1,600 gallons of sewage to be spilled, all of which was recovered. Roseville reported no SSOs between November 2006 and 1 December 2007.

CULPABILITY

Placer County operates a sewage collection system without adequate means to isolate portions of the pipe in case of a break. Construction near the force main proceeded without adequate advance planning from both parties to ensure a quick response to any break. The City of Roseville is also culpable because sewage flowed through the Dry Creek WWTP site, back through the force main, and out the break.

ECONOMIC BENEFIT

Regional Water Board staff did not have adequate information to accurately calculate the economic benefit derived from the acts that constitute the violation. Placer County and Roseville gained economic benefit from the following, but the total economic benefit is estimated to be less than the proposed ACL amount:

- Placer County and Roseville deferred the cost of installing additional isolation valves, or check valves, or a more durable pipe material, such as concrete or iron.
- Placer County and Roseville deferred the cost of preparing a coordinated spill response plan.
- Placer County and Roseville avoided the cost of implementing a coordinated spill response plan.

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0543

IN THE MATTER OF
PLACER COUNTY FACILITY SERVICES DEPARTMENT
AND
CITY OF ROSEVILLE
PLACER COUNTY

This Complaint is issued to the Placer County Facility Services Department (Placer County) and the City of Roseville (Roseville) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that Placer County violated provisions of the State Water Resources Control Board Order No. 2006-0003-DWQ. This Complaint is also based on findings that Roseville violated provisions of Waste Discharge Requirements Order No. 5-00-164 (NPDES No. CA0079502).

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

Placer County

1. On 2 May 2006, the State Water Resources Control Board (State Water Board) adopted Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.
2. Placer County owns and operates the Placer County Service Area 28 Zone 173 wastewater collection system that serves the unincorporated communities west of the City of Roseville.
3. Placer County is required to operate and maintain its sewage collection system to prevent sanitary sewer overflows and spills in compliance with requirements of State Water Board Order No. 2006-0003-DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.
4. Placer County owns and operates a 14,000-foot long sewer force main connecting a lift station near the intersection of Walerga Road and PFE Road to the City of Roseville's Dry Creek Wastewater Treatment Plant (WWTP). The lift station pumps sewage to the WWTP. There is one isolation valve in the force main, approximately 7,100 feet from the Dry Creek WWTP.
5. On 1 December 2007, a contractor working on behalf of the Roseville Unified School District, ruptured Placer County's force main. According to a hydraulic model provided to Regional Water Board staff after the spill, approximately 461,400 gallons of sewage flowed from the force main, of which approximately 104,400 gallons were recovered and

357,000 gallons were discharged into Dry Creek, a water of the United States.

6. Placer County and Roseville did not perform adequate planning that would address how the two entities would coordinate in the event that the construction project would cause a release of sewage from Placer County's force main.
7. The discharge of untreated sewage to a water of the United States is a violation of State Water Board Order No. 2006-0003-DWQ Prohibition C.1.
8. CWC section 13376 states, in part, the following: "*Any person discharging pollutants or proposing to discharge pollutants to the navigable waters of the United States...shall file a report of the discharge in compliance with the procedures set forth in Section 13260.... The discharge of pollutants...except as authorized by waste discharge requirements [NPDES permit]...is prohibited....*"
9. Section 301 of the Clean Water Act (33 U.S.C. § 1311) and CWC section 13376 prohibit discharge of pollutants to surface waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.
10. State Water Board Order No. 2006-0003-DWQ is not an NPDES permit. Therefore, by failing to file a report of waste discharge as set forth in CWC section 13260 and failing to obtain an NPDES permit prior to the discharges described in the above Findings, Placer County violated CWC section 13376.

Roseville

11. The City of Roseville owns and operates the Dry Creek WWTP, which provides sewerage service for Roseville and unincorporated portions of Placer County.
12. On 16 June 2000, the Regional Water Board adopted Waste Discharge Requirements Order No. 5-00-164 (NPDES No. CA0079502) to regulate the discharge of wastewater from the Dry Creek WWTP to Dry Creek.
13. Waste Discharge Requirements Order No. 5-00-164 Discharge Prohibitions No. A.1 states the following: "*Discharge of wastewater at a location or in a manner different from that described in the Findings is prohibited.*"
14. Waste Discharge Requirements Order No. 5-00-164 Discharge Prohibitions No. A.2 states, in part, the following: "*The by-pass or over flow [sic] of wastes to surface waters is prohibited, except as allowed by Standard Provision A.13.*"
15. During the spill event on 1 December 2007, wastewater flowed through the Dry Creek WWTP site, downhill (upstream) through the force main, out the break in the force main,

and into Dry Creek.

16. The discharge violated Discharge Prohibitions A.1 and A.2 of Waste Discharge Requirements Order No. 5-00-164 when sewage flowed through the Dry Creek WWTP site to the broken force main and into Dry Creek. As a result of inadequate planning, Roseville did not close the isolation valve at the Dry Creek WWTP for approximately three hours following the force main break, allowing 460,000 gallons of sewage to flow backwards, from the Dry Creek WWTP, downhill (upstream) through the force main, out the break in the force main, discharging approximately 357,000 gallons of raw sewage into Dry Creek.

Regulatory Considerations

17. CWC section 13385 states, in part:

"(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160."

"(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 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."

18. Pursuant to CWC section 13385, the maximum monetary penalty the Regional Water Board may administratively assess for the discharge is \$3,570,050, calculated as follows:

$\$10,000/\text{day} \times 1 \text{ day} + \$10/\text{gallon} \times (357,005 \text{ gallons spilled, but not cleaned up} - 1,000 \text{ gallons})$

19. CWC section 13385(e) states: *"In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation*

or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

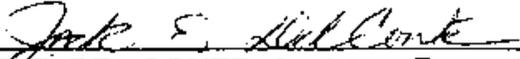
20. Regional Water Board staff did not have adequate information to accurately calculate the economic benefit derived from the acts that constitute the violation. Placer County and Roseville would have gained economic benefits from the discharge, including deferred costs of installing additional isolation valves in the force main and preparing an adequate spill response plan, and avoided costs of properly supervising the excavation and implementing an adequate spill response plan. The economic benefit is estimated to be less than the ACL amount.
21. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

**PLACER COUNTY FACILITY SERVICES DEPARTMENT AND THE CITY OF ROSEVILLE
ARE HEREBY GIVEN NOTICE THAT:**

1. Administrative Civil Liability Complaint No. R5-2008-0530 is rescinded.
2. The Assistant Executive Officer of the Regional Water Board charges Placer County Facility Services Department and the City of Roseville collectively with administrative civil liability in the amount of **one hundred twenty-six thousand dollars (\$126,000)**.
3. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **11/12 September 2008**, unless both Placer County Facility Services Department and the City of Roseville agree to complete the following by **27 July 2008**:
 - a. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b. Pay the proposed civil liability of **one hundred twenty-six thousand dollars (\$126,000)** in full.
4. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO.R5-2008-0543
PLACER COUNTY FACILITY SERVICES DEPARTMENT AND
CITY OF ROSEVILLE
PLACER COUNTY

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JACK E. DEL CONTE, Assistant Executive Officer

27 June 2008

WSW: 24 June 2008

WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

By signing this waiver, we affirm and acknowledge the following:

1. We are duly authorized to represent Placer County Facility Services Department and the City of Roseville (hereinafter collectively referred to as "Dischargers") in connection with Administrative Civil Liability Complaint No. R5-2008-0543 (hereinafter the "Complaint");
2. We are informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. We hereby waive the Dischargers' right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of service of the Complaint; and
4. We certify that the Dischargers will remit payment for the civil liability imposed in amount totaling **one hundred twenty-six thousand dollars (\$126,000)** by check or checks, which contain a reference to "ACL Complaint No. R5-2008-0543" and are made payable to the "*State Water Pollution Cleanup and Abatement Account.*"
5. We understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Regional Board receive new information during this comment period, the Regional Board may withdraw the complaint, return payment, and issue a new complaint.
6. We understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

(Name of Placer County Representative)

(Name of Roseville Representative)

(Title of Placer County Representative)

(Title of Roseville Representative)

(Signature of Placer County Representative)

(Signature of Roseville Representative)

(Date)

(Date)