

**STATE WATER RESOURCES CONTROL BOARD**

In the matter of: )  
 )  
**MR. TITO BALLING** ) **ORDER WQ-2009-0002-EXEC**  
 ) Imposing Administrative Civil Liability and  
 ) Operator Certification Discipline Pursuant to  
 ) Settlement Agreement  
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**INTRODUCTION:**

This Stipulated Order imposing Administrative Civil Liability and Operator Certification Discipline (hereafter "Stipulated Order") is entered into by and between the Director of the Office of Enforcement of the State Water Resources Control Board ("State Water Board"), and Mr. Tito Balling (Collectively "Parties") and is presented to the State Water Board's Executive Director for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

**THE STATE WATER BOARD OFFICE OF ENFORCEMENT ALLEGES:**

1. Mr. Tito Balling is certified as a Grade II wastewater treatment plant operator by the State Water Board and holds Certificate No. II-4022.
2. Mr. Balling is the former Chief Plant Operator of the City of Mendota Wastewater Treatment Plant, and the current Chief Plant Operator for the Elkhorn Correctional Facility Wastewater Treatment Plant, and the City of Huron Wastewater Treatment Plant (together "the Facilities"). California Code of Regulations, Title 23, Section 3671(h), provides that a Chief Plant Operator is "a supervisor who is certified as an operator and who is responsible for the overall operation of a wastewater treatment plant."
3. Mr. Balling engaged in certain conduct while employed as the Chief Plant Operator of the Facilities, which subjects him to discipline pursuant to Water Code section 13627(e) and California Code of Regulations, Title 23, Section 3710, as well as administrative civil liability pursuant to Water Code section 13627.1. The details of that conduct are described in depth below:

**A. ALLOWING UNCERTIFIED OPERATION**

**A-1.** Pursuant to California Code of Regulations, Title 23, Section 3710(a)(2), a certified operator may be subject to administrative sanctions, including suspension or revocation of the operator's certificate, for "operating or allowing the operation of a wastewater treatment plant by a person who is not certified at the grade necessary for the position or whose certificate has expired, [without regard for intent or negligence]".

**A-2.** Pursuant to Water Code section 13627.1(b), any person that operates a wastewater treatment plant that allows the employment of any person as a wastewater treatment plant operator who does not hold a valid and unexpired certificate of the appropriate grade [...] may be liable civilly in an amount not to

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exceed one hundred dollars (\$100) for each day of violation. The State Water Board is authorized to impose this liability administratively pursuant to Water Code section 13627.4.

**A-3.** From the time period June 1, 2005 to February 1, 2008, a period of 974 days, Mr. Domingo Morales and Mr. Jose Almanza operated the Mendota Wastewater Treatment Plant. During this time period, neither Mr. Morales nor Mr. Almanza held a valid and unexpired wastewater treatment operator certificate. During this time period, Mr. Balling was the Chief Plant Operator of the Mendota Wastewater Treatment Plant.

**A-4.** As the Chief Plant Operator of the Mendota Wastewater Treatment Plant, Mr. Balling was responsible for ensuring that its operators were appropriately certified. Mr. Balling's failure to ensure that Mr. Morales and Mr. Almanza were appropriately certified subjects Mr. Balling to administrative sanctions pursuant to California Code of Regulations, Title 23, Section 3710(a)(2) and civil liability up to \$97,400 pursuant to Water Code section 13627.1(b).

**B. FAILURE TO USE CARE OR GOOD JUDGMENT; FAILURE TO APPLY KNOWLEDGE OR ABILITY**

**B-1.** Pursuant to California Code of Regulations, Title 23, Section 3710(a)(6), a certified operator may be subject to administrative sanctions, including suspension or revocation of the operator's certificate, for "failing to use care or good judgment in the course of employment as an operator or failing to apply knowledge or ability in the performance of duties."

**B-2.** Similarly, pursuant to Water Code section 13627(e)(3), a certified operator may be subject to administrative sanctions, including suspension or revocation of the operator's certificate, for "failure to use reasonable care or judgment in the operation of the plant". According to Water Code section 13627.1(c), a person who fails to use reasonable care or judgment in the operation of a wastewater treatment plant may also be liable civilly in an amount not to exceed five thousand dollars (\$5,000) for each violation. The State Water Board is authorized to impose this liability administratively pursuant to Water Code section 13627.4.

**City of Mendota Wastewater Treatment Plant**

**B-3.** The City of Mendota Wastewater Treatment Plant is a Class I Wastewater facility. Discharges from the City of Mendota Wastewater Treatment Plant are regulated by the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) under Waste Discharge Requirements No. 91-192 (Mendota Permit).

**B-4.** During the time that Mr. Balling was the Chief Plant Operator of the City of Mendota Wastewater Treatment Plant, the facility was poorly maintained and operated, as described below.

**B-5. Facility Maintenance:**

An inspection of the Mendota Wastewater Treatment Plant was conducted by State Water Board and Central Valley Regional Water Board staff on August 30, 2006. During this inspection, it was observed that most of the ponds were full to the point of overtopping. Weeds were pervasive along many berms. There was evidence of extreme berm erosion to the point that some of the berms separating treatment ponds were failing or had already failed. According to Mr. Domingo Morales, the Mendota Director of Public Works, the berms had been washed out since before he began working at the Mendota Wastewater Treatment Plant three years earlier. Mr. Morales stated that there were no freeboard gauges in most ponds because they had rusted away and fallen in. The investigators observed numerous, on-going discharges from the piping used to convey wastewater around the plant, in violation of discharge prohibitions A.1 and A.2 of the Mendota Permit.

**B-5a.** As the Chief Plant Operator of the City of Mendota Wastewater Treatment Plant, Mr. Balling is responsible for its overall operation. There is no evidence that Mr. Balling notified the City of Mendota of the problems at the facility or that he tried to work with the operators to address the facility's severe and on-going operational issues. Failure to do so constitutes a failure to use care or good judgment in the course of employment as an operator and failure to apply knowledge or ability in the performance of Mr. Balling's duties as the Chief Plant Operator. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-6. Supervision:** During the August 30, 2006 inspection of the Mendota Wastewater Treatment Plant conducted by State Water Board and Central Valley Regional Water Board staff, Mr. Domingo Morales told the investigators that in the three years he had worked at the facility, he had only seen Mr. Balling twice, even though Mr. Morales visits the plant on a daily basis. Mr. Balling never gave Mr. Morales routine operational advice or direction.

**B-6a.** As the Chief Plant Operator of the City of Mendota Wastewater Treatment Plant, Mr. Balling is responsible for its overall operation. However, Mr. Balling is not actively involved in the day-to-day operation of the facility. Mr. Balling is not present at the City of Mendota Wastewater Treatment Plant on a regular basis and does not appear to be adequately supervising the overall operation of the facility. Mr. Balling's lack of involvement with the City of Mendota Wastewater Treatment Plant constitutes failure to use care or good judgment in the course of employment as an operator and failure to apply knowledge or ability in the performance of Mr. Balling's duties as the Chief Plant Operator. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-7. Reporting of Monitoring Results:** Some of the data reported by Mr. Balling to the Central Valley Regional Water Board in the monthly self-monitoring reports for the City of Mendota Wastewater Treatment Plant is questionable. For example, from January 2005 through January 2006, Mr. Balling reported the effluent biological

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oxygen demand (BOD) to the Central Valley Regional Water Board as "<0.1 mg/L" every week but one. From February 2006 through July 2007, Mr. Balling no longer reported every effluent BOD as <0.1 mg/L. Instead, he often reported it as non-detectable (ND). It is nearly impossible to consistently achieve effluent with no measurable BOD, especially at a Class I treatment facility. These consistent results are not realistic for this type of facility and may indicate that the samples are being incorrectly collected and/or transported.

Furthermore, for at least the month of February 2007, Mr. Balling reported the effluent BOD to the Regional Water Board as "<0.1 mg/L," yet the laboratory analytical reports report the BOD as "ND". This is not an insignificant error. The detection limit for these analyses is 5.0 mg/L, so an "ND" means that the BOD is something less than 5.0 mg/L. The laboratory could not detect BOD down to 0.1 mg/L, so it is inaccurate to report the BOD as <0.1. Therefore, the February 2007 BOD results should have been reported as either ND or <5.0 mg/L. The laboratory analytical reports upon which the January 2005 through January 2006 self-monitoring reports are based are unavailable, so it is unknown if this reporting error occurred throughout that period as well.

**B-7a.** Mr. Balling's failure to properly report analytical results associated with the Mendota Wastewater Treatment Plant constitutes failure to use care or good judgment in the course of employment as an operator or failing to apply knowledge or ability in the performance of his duties. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-8. Records Maintenance:** It is standard practice for wastewater treatment facilities to maintain a facility logbook in which daily operations are recorded. In addition, minimum record keeping requirements are detailed in the Standard Provisions of the Mendota Permit, including Section C.3., which provides, in part, "The discharger shall retain records of all monitoring information, including all calibration and maintenance records, all original strip chart recordings of continuous monitoring instrumentation, [and] copies of all reports required by this Order.... Records shall be maintained for a minimum of three years...." During the inspection conducted by State Water Board and Central Valley Regional Water Board staff on August 30, 2006, it was observed that Mr. Balling and the other facility operators failed to maintain proper records at Mendota. For example, there were no chain-of-custody forms at the Mendota Wastewater Treatment Plant. Chain-of-custody forms are normally prepared for transferring samples for lab analysis and should be maintained on site. The only written record of sampling is a monitoring form that the operators use to enter their daily sampling results. The form lacks any indication of who performed the sampling or the time in which samples were collected. Additionally, the original forms are completed in pencil. Mr. Morales explained that the forms are prepared in pencil because the operators need to make corrections for their many mistakes.

It is standard practice for Chief Plant Operators to ensure that a log book is maintained on site in which facility operations are documented in ink. In the logbook,

it is standard practice for operators to show their calculations, including any mistakes and their corrections.

**B-8a.** Mr. Balling's failure to maintain records and failure to direct operators at the Mendota Wastewater Treatment Plant in the proper preparation and maintenance of records in accordance with Mendota Permit requirements and standard industry practice constitutes failure to use care or good judgment in the course of employment as an operator or failing to apply knowledge or ability in the performance of his duties. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-9. Oversight of the Mendota Wastewater Treatment Plant:** Roughly three weeks prior to the inspection conducted by State Water Board and Central Valley Regional Water Board staff on August 30, 2006, the totalizer at the Mendota Wastewater Treatment Plant that reads the influent volume failed. Mr. Morales called the City Engineer for the City of Mendota to report the failure. The City Engineer then reported the failure to Mr. Balling. While the totalizer was out of service, Mr. Balling failed to instruct the operators under his supervision to use the backup strip chart recorder in order to record influent volume. As the Chief Plant Operator and the direct supervisor of the certified Operators-in-Training (OITs), it is Mr. Balling's responsibility to maintain direct lines of communication between himself and the operators. It is also Mr. Balling's responsibility to instruct the OITs to use available equipment to comply with the monitoring requirements of the permit.

**B-9a.** Mr. Balling's failure to establish a direct line of communication with the operators, and failure to instruct the operators in how to best use available equipment and technology to meet the requirements of the Mendota Permit constitutes failure to use care or good judgment in his employment as an operator or failing to apply knowledge or ability in the performance of his duties. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

#### **Elkhorn Correctional Facility Wastewater Treatment Plant**

**B-10.** The Elkhorn Correctional Facility Wastewater Treatment Plant (Elkhorn Wastewater Treatment Plant) is a Class I Wastewater facility. Discharges from the Elkhorn Wastewater Treatment Plant are regulated by the Central Valley Regional Water Board under Waste Discharge Requirements No. 97-207 (Elkhorn Permit).

**B-11.** During the time during which Mr. Balling was the Chief Plant Operator of the Elkhorn Wastewater Treatment Plant, the facility was poorly maintained and operated, as described below.

**B-12. Facility Maintenance-Sludge:** Inspections of the Elkhorn Wastewater Treatment Plant were conducted by State Water Board and Central Valley Regional Water Board staff on June 28, 2006 and August 29, 2006. During these inspections,

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minor to moderate weeds were observed around the disposal pond that may be affecting the integrity of the lining. Additionally, the investigators noted a moderate amount of algae in the stabilization pond and it appeared that some of the solids had been pulled out of the stabilization pond and left to dry along the southeast bank of the pond. This did not appear to be a practice of short-term drying of the sludge prior to disposal, as the solids were completely dry. Furthermore, during the August 29, 2006 inspection, Mr. Robert Buttle, the day-to-day operator at Elkhorn, indicated that this was a long-term storage solution when he told the investigators that in his approximately four years of working at the Elkhorn Wastewater Treatment Plant, he had never known the sludge in the treatment ponds to be removed from the plant. Finding No.10 of the Elkhorn permit requires that accumulated sludge is to either be spread on a reclamation site or disposed of at an approved solid waste disposal site. Furthermore, section D.1. of the Elkhorn permit states that "Collected screenings, sludges, and other solids removed from liquid wastes shall be disposed of in a manner approved by the Executive Officer and consistent with Consolidated Regulations for Treatment, Storage, Processing, or Disposal of Solid Waste, as set forth in Title 27, California Code of Regulations, Division 2, Subdivision 1, Section 2000, et. seq." Section D.2. of the Elkhorn permit provides that "Any proposed change in sludge use or disposal practice shall be reported to the Executive Officer at least 90 days in advance of the change."

**B-12a.** As the Chief Plant Operator of the Elkhorn Wastewater Treatment Facility, Mr. Balling's failure to properly maintain or to direct the proper maintenance of the wastewater treatment plant constitutes failure to use care in the course of employment as an operator and failure to apply knowledge or ability in the performance of duties as the Chief Plant Operator. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-13. Facility Maintenance – Electrical Conductivity:** The Elkhorn permit limits the electrical conductivity (EC) of the effluent to 500µmhos/cm plus the EC of the source water, or a maximum of 750 µmhos/cm, whichever is less. During Mr. Balling's tenure as Chief Plant Operator of the Elkhorn Wastewater Treatment Plant, there have been chronic violations of the EC limitations reported in monthly self-monitoring reports for the facility. EC has been reported above the permit limitations nearly every month between January 2005 and July 2007, and has been reported as high as 1080µmhos/cm.

During the inspections of the Elkhorn Wastewater Treatment Plant conducted by State Water Board and Central Valley Regional Water Board staff on June 28, 2006 and August 29, 2006, Mr. Balling asked how the EC of the effluent could be reduced, and the inspectors explained that it needed to be reduced at the source. As a Grade II operator and the Chief Plant Operator of the facility, Mr. Balling should know this, especially given that Mr. Balling stated that he had already worked with the facility to reduce EC at its source in the past. In addition, in response to the inspectors' questioning, Mr. Balling stated that while he provided a copy of the self-monitoring reports to facility owner every month, he does not review them with anyone, nor does he discuss violations or the need for source control or other

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measures to be taken to ensure the facility operates within the limitations of the Elkhorn permit.

**B-13a.** As the Chief Plant Operator of the Elkhorn Wastewater Treatment Facility, Mr. Balling's failure to discuss violations and possible corrective measures with the facility owner constitutes failure to use care in the course of employment as an operator and failure to apply knowledge or ability in the performance of duties as the Chief Plant Operator. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-14. Reporting of Monitoring Results:** The self-monitoring reports for the Elkhorn Wastewater Treatment Plant submitted between January 2005 and July 2007 contain many inconsistencies and omissions, bringing into question the veracity of all the data submitted. For example, the November 2005 self-monitoring report states that on November 28, 2005, the entry gate to the facility was broken and the facility was not accessible. Yet, on that date, Mr. Balling reported freeboard and settleable solids. During the June 28, 2006 inspection, Mr. Balling agreed with the inspectors that this data could only be collected by entering the facility, and had no explanation for why this data was reported.

Additionally, the November 2005 self-monitoring report notes the average BOD to be 48 mg/l. In fact, a mathematical computation of the monthly average BOD using the weekly BODs reported for November 2005 is 60 mg/l. This same self-monitoring report also incorrectly implies that the maximum monthly average BOD allowed by the permit is 80mg/l. In fact, 80 mg/l is maximum *daily* BOD allowed. The maximum monthly average BOD is only 40mg/l. The way the BOD data is presented in this self-monitoring report makes it appear that no BOD violation has occurred, when in fact it has. Moreover, the effluent EC had not been recorded in November 2005 for two consecutive weeks, despite a permit requirement that it be monitored weekly. The problems found in the November 2005 self-monitoring report are common throughout the review period of January 2005 through July 2007.

In addition, Gina Monroy, Mr. Balling's secretary, posted original monitoring data to the self-monitoring reports, even though she is not an operator and has not been to the facility.

**B-14a.** Failure to submit true, accurate, and complete information and being unaware of the data which Mr. Balling submits to the Central Valley Regional Water Board constitutes a failure to use care or good judgment as the Chief Plant Operator of the Elkhorn Wastewater Treatment Plant. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-15. Records Maintenance:** Mr. Balling and his operators failed to properly maintain records at the Elkhorn Wastewater Treatment Plant. It is standard practice for Chief Plant Operators to ensure that a log book is maintained on site in which facility operations are documented in ink. Furthermore, a logbook is explicitly

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required in the Pond Monitoring section of the Monitoring and Reporting Program portion of the Elkhorn Permit. Additional record keeping requirements are spelled out in the Standard Provisions of the permit, including but not limited to section C.3. The information recorded in a log book generally includes, but is not limited to: dates and times that activities/operations occur; name of the operator(s) on duty; observations; instrument readings; monitoring activities; maintenance; instrument calibration; failures or problems; repairs; etc.

Mr. Balling and his operators failed to keep a log book for the Elkhorn Wastewater Treatment Plant and no other original records of operations, maintenance or monitoring data are kept. A copy of the permit is also not maintained on site, and Mr. Buttle, the day-to-day operator, did not have a copy of the permit either. It is standard industry practice as well as a requirement of Elkhorn permit section F.10 that a copy of the Elkhorn Permit is maintained on site and that key operating personnel shall be familiar with its contents.

**B-15a.** Mr. Balling's failure to maintain records and failure to direct operators at the Elkhorn Wastewater Treatment Plant in the proper preparation and maintenance of records in accordance with the Elkhorn Permit requirements and standard industry practice constitutes failure to use care or good judgment in the course of employment as an operator or failing to apply knowledge or ability in the performance of his duties. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**B-16. Improper use of monitoring equipment:** One of the operators of the Elkhorn Wastewater Treatment Plant, Mr. Buttle, inappropriately used the field dissolved oxygen (DO) meter, a YSI 55, to determine the DO content within the treatment and disposal ponds at the Elkhorn facility. During the inspection of the Elkhorn Wastewater Treatment Plant that occurred on August 29, 2006, the inspectors observed Mr. Buttle drop the DO probe into the water, wait approximately 30 seconds, then take a reading. Mr. Buttle did not wait for the reading to stabilize before writing down what he felt was the "true" DO reading. Mr. Buttle confirmed that this is his standard operating procedure. Mr. Buttle explained that the appropriate procedure is to take the reading 30 seconds after the probe has been dropped into the water, because if it is left to stabilize, the readings will eventually stabilize near zero as the probe "uses up" all the DO in its proximity. Mr. Buttle did not use a wristwatch or timer to determine when 30 seconds were up; he said that he has enough experience now to know when 30 seconds have passed.

According to YSI, the manufacturer of the DO probe, the reading should be taken when the meter reading has stabilized, usually after two to three minutes. As the DO meter stabilizes, the DO drops. A DO probe does cause an area of oxygen deficit near the probe's membrane in the absence of mixing or flowing water. The measured DO will approach zero if the probe is allowed to be suspended motionless in non-flowing water and will not necessarily be reflective of the actual DO in the water body. Mr. Buttle should have been trained to slowly swish the submerged probe (to avoid the oxygen deficit issue) until the reading stabilized. Use of a timer is neither necessary nor appropriate. It is the lack of change in the DO reading on the



meter that determines when the test is complete. By not waiting until the probe has stabilized, the DO that is reported is higher than the actual DO. Compliance with the DO limit in the permit is not being properly determined and reported.

**B-16a.** Mr. Balling's failure to ensure that the operators at the Elkhorn Wastewater Treatment Plant receive training and use equipment properly is a failure to use care and good judgment and failure to apply knowledge or ability in the performance of his duties as the plant's Chief Plant Operator. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

### **City of Huron Wastewater Treatment Plant**

**B-17.** The City of Huron Wastewater Treatment Plant (Huron Wastewater Treatment Plant) is a Class I Wastewater facility. Discharges from the Huron Wastewater Treatment Plant are regulated by the Central Valley Regional Water Board under Waste Discharge Requirements No. 87-012 (Huron Permit).

**B-18.** During the time during which Mr. Balling was the Chief Plant Operator of the Huron Wastewater Treatment Plant, the facility was poorly maintained and operated, as described below.

**B-19. Facility Maintenance:** An inspection of the Huron Wastewater Treatment Plant was conducted by State Water Board and Central Valley Regional Water Board staff on June 28, 2006. At the time of the inspection, the Huron Wastewater Treatment Plant was undergoing facility upgrades, including the construction of new aeration basins and the decommissioning of the old aeration and facultative ponds. The old facultative ponds had been drained of liquid approximately three years earlier, but the sludge had never been removed. The inspectors observed that the old aeration ponds, sludge drying beds and storage ponds, which were still in use, showed severe neglect. Only one disposal pond had a freeboard gauge. There was evidence of levee erosion and many of the old ponds were nearly overtaken with weeds.

During the inspection, Mr. Balling was unaware of the daily operations of the facility, as evidenced by his inability to answer fundamental questions about the plant. For example, Mr. Balling did not know where the operator's records were kept, did not know which records were collected and maintained, and admitted to knowing little about the record keeping process at the facility. Similarly, Mr. Balling did not know when certain plant upgrades would be put into service.

**B-19a.** As the Chief Plant Operator of the Huron Wastewater Treatment Plant, Mr. Balling is responsible for the overall operation of the facility. His lack of involvement in the facility's operations, his lack of knowledge about the fundamental operation of the facility, and the lack of adequate record keeping and poor maintenance of the plant constitute a failure to use care or good judgment in the course of employment as an operator and failure to apply knowledge or ability in the performance of Mr. Balling's duties as the Chief Plant

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Operator. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(6) and Water Code section 13627(e)(3), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C. WILLFULLY OR NEGLIGENTLY VIOLATING WASTE DISCHARGE REQUIREMENTS**

**C-1.** Pursuant to California Code of Regulations, Title 23, Section 3710(a)(7), a certified operator may be subject to administrative sanctions, including suspension or revocation of the operator's certificate, for willfully or negligently causing or violating or allowing the violation of appropriate waste discharge requirements or federal National Pollutant Discharge Elimination System permits.

**C-2.** Similarly, pursuant to Water Code section 13627(e)(5), a certified operator may be subject to administrative sanctions, including suspension or revocation of the operator's certificate, for "willfully or negligently violating, or causing, or allowing the violation of, waste discharge requirements or permits issued pursuant to the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.)" According to Water Code section 13627.1(c), a person who willfully or negligently allows a violation of such a permit may also be liable civilly in an amount not to exceed five thousand dollars (\$5,000) for each violation. The State Water Board is authorized to impose this liability administratively pursuant to Water Code section 13627.4.

**City of Mendota Wastewater Treatment Plant**

**C-3.** The City of Mendota Wastewater Treatment Plant is a Class I Wastewater facility. Discharges from the City of Mendota Wastewater Treatment Plant are regulated by the Central Valley Regional Water Quality Control Board (Central Valley Regional Water Board) under Waste Discharge Requirements No. 91-192 (Mendota Permit).

**C-4.** During the time during which Mr. Balling was the Chief Plant Operator of the City of Mendota Wastewater Treatment Plant, Mr. Balling willfully or negligently allowed violations of the Mendota Permit, as described below.

**C-5. Unlawful Discharges:** Section A.1. of the Mendota Permit states, "Discharge of wastes to surface waters or surface water drainage courses is prohibited." During the August 30, 2006 inspection of the Mendota Wastewater Treatment Plant conducted by State Water Board and Central Valley Regional Water Board staff, the inspectors observed discharges of partially treated wastewater from several joints in the pipes conveying wastewater around the facility. Nearly every joint was leaking and a significant amount of wastewater had ponded in a storm drain channel, resulting in an unlawful discharge. According to Mr. Morales, one of the discharges had persisted for at least a week. As the Chief Plant Operator of the Mendota Wastewater Treatment Plant, Mr. Balling has, or should have, direct control over the operation of the treatment system. If Mr. Balling believed the treatment system was in some way inadequate, and it could not comply with the Mendota Permit with

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available equipment or resources, he should have discussed the violations and the potential inadequacies of the treatment system with the facility owner and requested additional equipment or improvements to ensure the treatment system could operate in compliance with its permit.

**C-5a.** Mr. Balling's failure to take action to stop the unlawful discharges, either directly or by proper direction to the facility's operators, falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-6. Late Reporting:** The Monitoring and Reporting Plan portion of the Mendota Permit requires all self-monitoring reports to be submitted to the Central Valley Regional Water Board by the 15<sup>th</sup> day of the following month. Mr. Balling has control over the preparation and submittal of the reports and it is his responsibility to submit these reports on time. From the time period of January 2005 through July 2007, Mr. Balling failed to submit the self-monitoring reports for the Mendota Wastewater Treatment Plant in a timely manner. Each self-monitoring report during that time period was submitted between 2 and 15 days late.

**C-6a.** Mr. Balling's failure to timely submit the self-monitoring reports for the Mendota Wastewater Treatment Plant falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-7. EC Permit Violations:** Section B.8 of the Mendota Permit states that the electrical conductivity (EC) of the effluent shall be monitored weekly and shall not exceed 500  $\mu$ mhos/cm, plus the EC of the source water. Based on the permit requirements, the EC of the effluent should generally be around 1200  $\mu$ mhos/cm. The EC reported at Mendota during the period of January 2005 through July 2007 was over the limit every month, and was reported as high as 3254  $\mu$ mhos/cm. There is no indication that Mr. Balling used his expertise and authority as the Chief Plant Operator to work with the City of Mendota to address this issue. While Mr. Balling did not have control over the source, Mr. Balling should have discussed the violations and possible corrections with the City of Mendota to bring the EC into compliance.

**C-7a.** Mr. Balling's failure to discuss with the City of Mendota the EC violations and possible ways to bring the EC into compliance falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

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**C-8. Accurate and Complete Reporting; Omissions:** Standard Provisions and Reporting Requirement B.3.d.3 of the Mendota Permit requires the submission of monthly monitoring reports. Mr. Balling signs the self-monitoring reports for the Mendota facility with the following statement: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

The Mendota self-monitoring reports for the period of January 2005 through July 2007 contain numerous omissions and what appear to be obvious typographical errors. For example, the Mendota Permit requires daily monitoring of the influent's settleable solids and pH, and the effluent's dissolved oxygen (DO). On a routine basis, none of this data is reported for at least a few days of each month. Some months, no data for a specific parameter is reported. For example, the effluent's settleable solids were not reported at all for the months of March, May and June 2006. There is no indication that Mr. Balling worked with the operators to ensure that all required sampling and analyses were performed. As the Chief Plant Operator with the responsibility for the overall operation of the Mendota Wastewater Treatment Plant, Mr. Balling should ensure that all required sampling is conducted and that the analysis results are reported to the Central Valley Regional Water Board as required by the Mendota Permit.

**C-8a.** Mr. Balling's failure to collect and report true, accurate and complete information falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-9. Accurate and Complete Reporting of Violations of permit prohibitions or limitations:** The Monitoring and Reporting Program for the Mendota Wastewater Treatment Plant requires that data be reported in a tabular form and that "[t]he data shall be summarized in a manner that clearly illustrates whether the discharge is complying with waste discharge requirements." Mr. Balling submits data in a tabular form, as required, however, from the time period of January 2005 through July 2007, he failed to summarize the data or clearly illustrate whether the facility was in compliance with its permit. Similarly, Section B.1 of the Standard Provisions section of the Mendota Permit requires that "In the event the discharger does not comply or will be unable to comply with any prohibition or limitation of this Order for any reason, the discharger shall notify the Board...in writing within two weeks. The written notification shall state the nature, time and cause of noncompliance, and shall include a timetable for corrective actions." Despite regular violations of permit prohibitions and limitations, there is no indication that Mr. Balling has ever complied with this reporting requirement.

**C-9a.** Mr. Balling's failure to completely and accurately report violations of permit prohibitions or limitations falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota

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Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-10. Inaccurate Reporting:** The Monitoring and Reporting Program portion of the Mendota Permit requires the monitoring and monthly reporting of numerous parameters of the influent, the effluent and the source water. As described in Paragraph B-7, above, Mr. Balling has failed to accurately report laboratory analytical results to the Central Valley Regional Water Board.

**C-10a.** Mr. Balling's failure to accurately report laboratory analyses and monitoring information to the Central Valley Regional Water Board falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-11. Record Keeping:** Standard Provisions and Reporting Requirements of the Mendota Permit states in section C.3 that

"The discharger shall retain records of all monitoring information, including all calibration and maintenance records.... Records of monitoring information shall include: the date, exact place and time of sampling; the individuals who performed the sampling of the measurements; the date(s) the analyses were performed; the individual(s) who performed the analyses; the laboratory which performed the analysis; the analytical techniques or methods used; and the results of such analyses."

As described in Paragraph B-8, above, there is little to no record keeping performed at the Mendota Wastewater Treatment Plant. It is standard industry practice for a facility logbook to be kept with the required information; however, these records are not being produced or maintained. As the Chief Plant Operator responsible for the overall operation of the Mendota Wastewater Treatment Plant, Mr. Balling should direct the Mendota operators to collect such data and to maintain it as required by the permit.

**C-11a.** Mr. Balling's failure to collect and maintain monitoring information at the Mendota Wastewater Treatment Plant falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Mendota Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**Elkhorn Correctional Facility Wastewater Treatment Plant**

**C-12.** The Elkhorn Correctional Facility Wastewater Treatment Plant (Elkhorn Wastewater Treatment Plant) is a Class I Wastewater facility. Discharges from the Elkhorn Wastewater Treatment Plant are regulated by the Central Valley Regional Water Board under Waste Discharge Requirements No. 97-207 (Elkhorn Permit).

**C-13.** During the time during which Mr. Balling was the Chief Plant Operator of the Elkhorn Wastewater Treatment Plant, Mr. Balling willfully or negligently allowed violations of the Elkhorn Permit, as described below.

**C-14. Timely Reporting:** The Monitoring and Reporting Plan portion of the Elkhorn Permit requires all self-monitoring reports to be submitted to the Central Valley Regional Water Board by the 20<sup>th</sup> day of the month following sampling. In an August 29, 2002 letter from the County of Fresno to the Central Valley Regional Water Board, Mr. Balling was identified as the person authorized to sign the Elkhorn facility self-monitoring reports. Mr. Balling had direct control over the preparation and submittal of the reports and it was his responsibility to submit these reports on time. During the period from January 2005 through July 2007, Mr. Balling submitted late self-monitoring reports for at least 18 of the 31 months.

**C-14a.** Mr. Balling's failure to timely submit the self-monitoring reports for the Elkhorn Wastewater Treatment Plant falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Elkhorn Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-15. Effluent EC violations:** Section B.7 of the Elkhorn Permit states that the weekly EC shall not exceed 500  $\mu$ mhos/cm plus the EC of the source water, or a maximum of 750  $\mu$ mhos/cm, whichever is less. The EC reported for the Elkhorn facility from January 2005 through June 2006 was in chronic violation of this discharge requirement. The EC was routinely over 750  $\mu$ mhos/cm, as high as 1080  $\mu$ mhos/cm. In at least 5 instances within this same time period, the effluent EC was not reported at all. The reported EC was only within the Elkhorn Permit limitations 3 out of 76 times throughout this period. There is no indication that Mr. Balling used his expertise and authority as the Chief Plant Operator to work with the owner of the Elkhorn Wastewater Treatment Plant to address this issue. While Mr. Balling did not have control over the source of EC into the facility, Mr. Balling should have discussed the violations and possible corrections with the facility owner to bring the EC into compliance.

**C-15a.** Mr. Balling's failure to discuss with the owner of the Elkhorn Wastewater Treatment Plant the EC violations and possible ways to bring the EC into compliance falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Elkhorn Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations,

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Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-16. pH, BOD, DO and Settleable Solids violations:** The Monitoring and Reporting Program portion of the Elkhorn Permit requires the pH of all ponds to be measured daily and limits the pH to a range between 6.5 to 9.5. As Chief Plant Operator of the Elkhorn Wastewater Treatment Plant, Mr. Balling is responsible for the collection and reporting of pH samples to the Central Valley Regional Water Board. Despite requirements for daily analysis, the pH was virtually never reported for weekends on self-monitoring reports submitted during the period January 2005 through July 2007, and during some months, pH results were omitted on weekdays as well as weekends. For example, in June 2006, pH was not reported for each of the four ponds for 11 days, over one-third of the month. In November 2006, the pH for two ponds (Lagoon 2 and the Storage Pond) was not reported for 11 days. Inexplicably, during the same month, the pH of the Lagoon 1 was not reported for 12 days, and Lagoon 3 was not reported for 13 days. These ponds are mere feet from each other and there is no reasonable explanation why the pH data was not reported for all ponds. Additionally Mr. Balling reported pH levels in violation of permit limitations for 17 months between January 2005 and July 2007, resulting in 139 daily limit violations of the permitted pH level.

The Monitoring and Reporting Program portion of the Elkhorn Permit requires the BOD of the effluent to be measured weekly and limits BOD to a daily maximum of 80 mg/L and a monthly average of 40 mg/L. From January 2005 through July 2007, Mr. Balling reported 8 monthly BOD limit violations, and 5 daily BOD limit violations, and on two occasions, the weekly BOD limit was not reported when it should have been.

The Monitoring and Reporting Program portion of the Elkhorn Permit requires the dissolved oxygen (DO) of all ponds to be measured daily and imposes an effluent limitation of a minimum of 1.0 mg/L. From January 2005 through July 2007, Mr. Balling failed to report DO during weekends in virtually every self-monitoring report. During some months, Mr. Balling failed to report the DO for weekdays as well as weekends. For example, in November 2006, Mr. Balling failed to report one pond's DO for 12 days. In total, from January 2005 through July 2007, Mr. Balling failed to report the DO at least 1054 times. Additionally, during that same time period, Mr. Balling reported the DO below the permit limitation (in violation) at least 46 times.

The Monitoring and Reporting Program portion of the Elkhorn Permit requires the settleable solids of the effluent to be measured daily. Between January 2005 and January 2006, settleable solids were reported fairly regularly, except on weekends. Between February 2006 and July 2007, the reporting of settleable solids dropped off and was usually only reported weekly. In December 2006, Mr. Balling reported settleable solids only once. Within the entire review period of January 2005 through July 2007, Mr. Balling failed to report settleable solids at least 558 times.

As the Chief Plant Operator of the Elkhorn Wastewater Treatment Plant, Mr. Balling has direct control over the sampling of pH, BOD, DO and settleable solids. The standard practice for a Chief Plant Operator is to direct the operators working under

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his/her direction to collect and analyze samples in accordance with the monitoring requirements of the permit, or complete the work himself/herself. Similarly, if a Chief Plant Operator believes that the treatment system is inadequate, and compliance with effluent limitations cannot be met with available equipment or resources, the standard of care for a Chief Plant Operator is to discuss the violations and the potential inadequacies of the treatment system with the wastewater treatment plant owner and to request additional equipment or improvements to ensure the treatment system is capable of maintaining compliance with its permit. During the June 28, 2006 inspection, Mr. Balling admitted that he had not discussed the violations with the owner of the Elkhorn Wastewater Treatment Plant, or discussed measures or improvements that the owner could have made to bring the facility into compliance.

**C-16a.** Mr. Balling's failure to direct the operators working under his direction to collect and analyze samples in accordance with the monitoring requirements of the permit, or complete the work himself, and his failure to discuss with the owner of the Elkhorn Wastewater Treatment Plant the pH, BOD, DO, and Settleable Solids violations and possible ways to bring the facility into compliance falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Elkhorn Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-17. Record keeping:** As described in Paragraph B-15, above, there is little to no record keeping performed at the Elkhorn Wastewater Treatment Plant, both in violation of the permit and counter to standard practice. In the Monitoring and Reporting Program, the Elkhorn Permit explicitly requires the use of a bound log book, and Standard Provision C.3 requires the maintenance of all monitoring records for a minimum of three years. Further, the permit states that "A copy of the entries made in the [bound] log [book] during each month shall be submitted along with the monitoring report..." Mr. Balling admitted during the inspection that occurred on June 28, 2006 that he was "not much of a paperwork guy" and that he understood the need to keep better records. Yet, during the follow-up inspection that occurred two months later, Mr. Balling had not instituted any record keeping practices, or discussed the record keeping requirements with the day-to-day operator, Mr. Buttle.

**C-17a.** Mr. Balling's failure to maintain and submit records and failure to direct operators at the Elkhorn Wastewater Treatment Plant to maintain records falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Elkhorn Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-18. Accurate and Complete Reporting:** Standard Provisions and Reporting Requirement Section B.3.d.3, adopted by reference into the Elkhorn Permit, requires the submission of monthly monitoring reports, which Mr. Balling certifies under penalty of law to be true, accurate and complete. Mr. Balling is duly authorized by the Discharger (Fresno County) to sign the self-monitoring reports for the Elkhorn Wastewater Treatment Plant. The self-monitoring reports Mr. Balling submitted



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during the time period of January 2005 through July 2007 routinely contain numerous omissions and what appear to be obvious typographical errors. During the inspection of June 28, 2006 inspection, Mr. Balling agreed that there were problems with the data he reported, and had no explanation for the poor data.

The Monitoring and Reporting Program for the Elkhorn Wastewater Treatment Plant requires that data be reported in a tabular form and that "[t]he data shall be summarized in such a manner that illustrates clearly whether the Discharger complies with waste discharge requirements...." Mr. Balling submits data in a tabular form, as required. However, during the time period of January 2005 through July 2007, he failed to summarize the data and clearly illustrate whether the Elkhorn Wastewater Treatment Plant had complied with the Elkhorn Permit.

Section F.9 of the WDRs states "If noncompliance is being reported, the reasons for such noncompliance shall be stated, plus an estimate of the date when the Discharger will be in compliance. The Discharger shall notify the Board by letter when it returns to compliance with the time schedule." During the time period of January 2005 through July 2007, Mr. Balling failed to comply with this reporting requirement.

**C-18a.** Mr. Balling's failure to submit true, accurate, and complete information, to clearly report and accurately summarize the data reported, and to explain reported noncompliance falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Elkhorn Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**City of Huron Wastewater Treatment Plant**

**C-19.** The City of Huron Wastewater Treatment Plant (Huron Wastewater Treatment Plant) is a Class I Wastewater facility. Discharges from the Huron Wastewater Treatment Plant are regulated by the Central Valley Regional Water Board under Waste Discharge Requirements No. 87-012 (Huron Permit).

**C-20.** During the time during which Mr. Balling was the Chief Plant Operator of the Huron Wastewater Treatment Plant, Mr. Balling willfully or negligently allowed violations of the Huron permit, as described below.

**C-21. Signing of Self-monitoring reports:** Section D.6 of the Standard Provisions of the Huron permit states that all reports shall be signed by ... "a duly authorized employee." On August 4, 1999, the City of Huron delegated to Mr. Balling the authority to sign and submit self-monitoring reports on behalf of the City. The self monitoring report submitted in May 2006 was not signed by Mr. Balling, but rather was signed by William Walsh. While Mr. Walsh is a certified operator, he does not operate the Huron Wastewater Treatment Plant and is not authorized to sign reports on behalf of the City of Huron.

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**C-21a.** Allowing unauthorized personnel to sign self-monitoring reports falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Huron permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-22. Untimely Submittal of Reports:** The Monitoring and Reporting Plan portion of the Huron Permit requires all self-monitoring reports to be submitted to the Central Valley Regional Water Board by the 15<sup>th</sup> day of the following month. Mr. Balling has control over the preparation and submittal of the reports and it is his responsibility to submit these reports on time. A review of the self-monitoring reports from January 2005 through July 2007 shows that Mr. Balling has consistently violated the conditions of its permit by submitting the self-monitoring reports late. Each self-monitoring report submitted during this time period was submitted between 1 to 15 days late.

**C-22a.** Mr. Balling's failure to submit self-monitoring reports in the time period required by the Huron Permit falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Elkhorn Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5), as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c) for this conduct.

**C-23. Unlawful Discharges:** Section A.1. of the Huron Permit states, "The direct discharge of wastes to surface waters or surface water drainage courses is prohibited." On July 31, 2000, Jon Risinger, a Water Resources Control Engineer with the Central Valley Regional Water Board conducted a routine compliance inspection of the Huron Wastewater Treatment Plant. Mr. Risinger found the facility in neglect and noted several violations, including sewage seeping from rodent holes into a canal that drains to the Friant-Kern Canal. On July 31, 2000, Mr. Balling admitted to Mr. Risinger that he had not frequented the Huron Wastewater Treatment Plant and was unfamiliar with its layout and operations, even though he had been the plant's Chief Plant Operator since February 1999.

On February 20, 2004, Peter Ruggiero, an Environmental Scientist with the Central Valley Regional Water Board conducted a compliance inspection of the Huron Wastewater Treatment Plant in response to two separate complaints of a sewage spill. This inspection resulted in a Notice of Violation (NOV) dated April 13, 2004 for numerous violations including illegal discharge of approximately 10 million gallons to a City-owned parcel adjoining the Huron Wastewater Treatment Plant and failure to properly maintain the facility.

**C-22a.** Mr. Balling's failure to properly operate and maintain the Huron Wastewater Treatment Plant, as described above, resulted in unlawful discharges and his conduct falls below the standard of care for a Chief Plant Operator, and therefore constitutes negligently allowing violations of the Huron Permit. Mr. Balling is subject to discipline pursuant to California Code of Regulations, Title 23, Section 3710(a)(7) and Water Code section 13627(e)(5),

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as well as civil liability up to \$5,000 pursuant to Water Code section 13627.1(c)  
for this conduct.

**D. FAILURE TO SUPERVISE OPERATORS-IN-TRAINING**

**D-1.** Pursuant to California Code of Regulations, Title 23, Section 3710(b), a Chief Plant Operator may be subject to administrative sanctions, including suspension or revocation of the operator's certificate, for "willfully or negligently failing to ensure that an operator-in-training is directly supervised as required by Section 3707." California Code of Regulations, Title 23, Section 3707 provides that an "agency may employ a person to act in the capacity of any grade of certified operator, provided the person is certified as an operator-in-training, is under the direct supervision of a certified operator of the same or higher grade, and is performing the duties of the grade of operator for which the certificate was issued."

**D-2.** Mr. Balling was the Chief Plant Operator of the Mendota Wastewater Treatment Plant from August 2002 until the last quarter of 2008. Domingo Morales was certified as a Grade I operator-in-training (OIT) for the Mendota Wastewater Treatment Plant from July 7, 2003 to June 1, 2005. Henry Sanchez was certified as a Grade I OIT for the Mendota Wastewater Treatment Plant from March 25, 2005 to December 1, 2006. Marc Banuelos was certified as a Grade I OIT for the Mendota Wastewater Treatment Plant from August 28, 2006 to June 30, 2008. As described below, Mr. Balling failed to provide each of these OITs the required level of supervision.

**D-3. Mr. Morales:** In Mr. Morales' application for certification as an OIT, Mr. Balling indicated that he was Mr. Morales' direct supervisor. During the August 30, 2006 inspection of the Mendota Wastewater Treatment Plant, Mr. Morales said that he had met Mr. Balling only twice in person, and did not have regular telephone contact with Mr. Balling. Mr. Bill Walsh, the Grade II certified operator that visits the Mendota facility on a weekly basis stated that he did not supervise Mr. Morales either. Mr. Morales stated that he had received some operations direction from the Mendota City Engineer, Mr. Giersch, related to setting timers on aerators in Pond #2, however, Mr. Giersch is not and has never been a certified Wastewater Treatment Plant operator.

**D-3a.** As the Chief Plant Operator of the Mendota Wastewater Treatment Plant, allowing Mr. Morales to operate without the direct supervision of a certified operator constitutes willfully or negligently failing to ensure that an OIT is directly supervised as required by California Code of Regulations, Title 23, Section 3707, and subjects Mr. Balling to discipline pursuant to California Code of Regulations, Title 23, Section 3710(b).

**D-4. Mr. Sanchez:** In Mr. Sanchez's application for certification as an OIT, Mr. Balling indicated that he was Mr. Sanchez's direct supervisor. In a February 2008 interview with Mr. Sanchez, Mr. Sanchez stated that he never received direction from Mr. Balling or Mr. Walsh. Mr. Sanchez stated that he

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received direction from Mr. Morales, that Mr. Morales was his supervisor, and that Mr. Morales directed his work at the WWTP.

**D-4a.** As the Chief Plant Operator of the Mendota Wastewater Treatment Plant, allowing Mr. Sanchez to operate without the direct supervision of a certified operator constitutes willfully or negligently failing to ensure that an OIT is directly supervised as required by California Code of Regulations, Title 23, Section 3707, and subjects Mr. Balling to discipline pursuant to California Code of Regulations, Title 23, Section 3710(b).

**D-5. Mr. Banuelos:** In Mr. Banuelos' application for certification as an OIT, Mr. Balling indicated that he was Mr. Banuelos' direct supervisor. In a February 2008 interview with Mr. Banuelos, Mr. Banuelos stated that he never received direction from Mr. Balling or Mr. Walsh. Mr. Banuelos stated that he has only met Mr. Balling once, and that was to discuss what to expect on the operator certification exam. Mr. Banuelos stated that he had only received feedback or guidance regarding operations from Mr. Walsh two or three times. When asked who was in charge and who directed operations, Mr. Banuelos stated that Mr. Morales was in charge of the facility and that Mr. Morales makes all of the operational determinations.

**D-5a.** As the Chief Plant Operator of the Mendota Wastewater Treatment Plant, allowing Mr. Banuelos to operate without the direct supervision of a certified operator constitutes willfully or negligently failing to ensure that an OIT is directly supervised as required by California Code of Regulations, Title 23, Section 3707, and subjects Mr. Balling to discipline pursuant to California Code of Regulations, Title 23, Section 3710(b).

**THE DIRECTOR OF THE STATE WATER BOARD OFFICE OF ENFORCEMENT AND MR. TITO BALLING HEREBY STIPULATE AS FOLLOWS:**

- A.** The Director of the State Water Board Office of Enforcement and Mr. Tito Balling (collectively referred to as "The Parties") agree that upon adoption by the Executive Director, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations or causes of action alleged in this Order or which could have been asserted by the Office of Enforcement based on the specific facts alleged in this Stipulated Order against Mr. Tito Balling, as of the effective date of this Stipulated Order.
- B.** The Parties agree to support, advocate for, and promote the Stipulated Order before the Executive Director.
- C.** The Parties covenant and agree that they will not contest the Stipulated Order before the State Water Board, or any court.
- D.** Neither this Stipulated Order nor any payment pursuant to the Order shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as admission of violation of any law, rule, or regulation. However, this Stipulated Order and/or any actions or payments

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pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Stipulated Order may be used as evidence of a prior enforcement action in any future enforcement actions by the State Water Board against Mr. Balling.

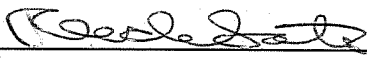
- E. Tito Balling agrees to pay \$10,000 to the State Water Board, payable to the State Water Pollution Cleanup and Abatement Account within thirty (30) days of receiving written notice that the Stipulated Order has been executed by the Executive Director.
- F. The Parties agree that Mr. Balling's Grade II Certificate will be revoked by the State Water Board and that he will be issued a Grade I Certificate immediately upon receiving written notice that the Stipulated Order has been executed by the Executive Director. The Parties agree that Mr. Balling may not reapply for certification as a wastewater treatment plant operator at any grade level higher than Grade I for one (1) year following the effective date of the Stipulated Order. Mr. Balling, however, may take the examination for certification as a wastewater treatment plant operator at a grade level higher than Grade I at any time, so long as Mr. Balling does not submit an application for certification for one (1) year following the effective date of the Stipulated Order. If Mr. Balling fails to comply with this Provision, and submits an application for certification at a grade level higher than Grade I within one (1) year following the effective date of the Stipulated Order, the Parties agree that the State Water Board will not issue any higher certification to Mr. Balling, and will return the application for certification to Mr. Balling.
- G. In the event that this Stipulated Order does not take effect because it is not approved by the Executive Director, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liability and operator certification discipline for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to: (1) objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the State Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing on the Complaint in this matter; or (2) laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
- H. Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
- I. This Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.

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- J. This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the State Water Board.
- K. This 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.

**IT IS SO STIPULATED**

  
 \_\_\_\_\_  
 Reed Sato  
 Director  
 State Water Resources Control Board, Office of Enforcement

3/13/09  
 \_\_\_\_\_  
 Date

\_\_\_\_\_  
 Tito Balling

\_\_\_\_\_  
 Date

**HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE STATE WATER BOARD FINDS THAT:**

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Stipulated Order, the State Water Board has considered all the factors prescribed in California Water Code section 13327.

**IT IS HEREBY ORDERED, pursuant to section 11415.60 of the California Government Code that**

1. Tito Balling is assessed a civil liability of **\$10,000**, to be paid within thirty (30) days of receipt of written notice that this Order has taken effect.

Tito Balling is ordered to submit the payment in the form of a check, payable to the *State Water Resources Control Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. Tito Balling shall send the original signed check to State Water Resources Control Board, Department of Administrative Services, P.O. Box 1888, Sacramento, CA 95812-1888, with a copy sent to: David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812-0100.

2. Tito Balling is ordered to surrender his Grade II Wastewater Treatment Plant Operator Certificate to the State Water Board immediately upon receiving written notice

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Stipulated Order Imposing Administrative Civil Liability and Operator Certification Discipline; Tito Balling

- J. This Order shall not be modified by any of the Parties by oral representation made before or after the execution of this Order. All modifications must be made in writing and approved by the State Water Board.
- K. This 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.

**IT IS SO STIPULATED**

\_\_\_\_\_  
 Reed Sato  
 Director  
 State Water Resources Control Board, Office of Enforcement

\_\_\_\_\_  
Date

  
 \_\_\_\_\_  
 Tito Balling

3-25-09  
 \_\_\_\_\_  
 Date

**HAVING CONSIDERED THE ALLEGATIONS DESCRIBED ABOVE AND THE PARTIES' STIPULATIONS, THE STATE WATER BOARD FINDS THAT:**

1. Issuance of this Stipulated Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.
2. In adopting this Stipulated Order, the State Water Board has considered all the factors prescribed in California Water Code section 13327.

**IT IS HEREBY ORDERED, pursuant to section 11415.60 of the California Government Code that**

1. Tito Balling is assessed a civil liability of **\$10,000**, to be paid within thirty (30) days of receipt of written notice that this Order has taken effect.

Tito Balling is ordered to submit the payment in the form of a check, payable to the *State Water Resources Control Cleanup and Abatement Account*, and shall indicate on the check the number of this Stipulated Order. Tito Balling shall send the original signed check to State Water Resources Control Board, Department of Administrative Services, P.O. Box 1888, Sacramento, CA 95812-1888, with a copy sent to: David Boyers, State Water Resources Control Board, Office of Enforcement, P.O. Box 100, Sacramento, CA 95812-0100.

2. Tito Balling is ordered to surrender his Grade II Wastewater Treatment Plant Operator Certificate to the State Water Board immediately upon receiving written notice

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and Operator Certification Discipline; Tito Balling

that this Order has taken effect. Tito Balling shall send his Grade II Wastewater Treatment Plant Operator Certificate to Valerie Gregory, State Water Resources Control Board, Office of Operator Certification, P.O. Box 944212, Sacramento, CA 94244-2120. The State Water Board Office of Operator Certification shall, upon receipt of Tito Balling's Grade II Certificate, issue Tito Balling a Grade I Certificate.

3. Tito Balling is ordered not to apply for certification as a wastewater treatment plant operator at any grade level higher than Grade I for one (1) year following the effective date of the Stipulated Order. Tito Balling, however, may take the examination for certification as a wastewater treatment plant operator at a grade level higher than Grade I at any time, so long as he does not submit an application for certification for one (1) year following the effective date of the Stipulated Order. If Tito Balling fails to comply with this Provision, and submits an application for certification at a grade level higher than Grade I within one (1) year following the effective date of the Stipulated Order, the State Water Board shall not issue any higher certification to Mr. Balling, and will return the application for certification to Tito Balling.



\_\_\_\_\_  
Dorothy Rice  
Executive Director

4.14.09

\_\_\_\_\_  
Date